

# Early years compliance handbook

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This handbook sets out Ofsted's policy and approach to its compliance and enforcement work for providers who are registered on the Early Years and/or the Childcare Register.

**Age group:** 0–5

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## Part 1. Ofsted's compliance and enforcement work – an overview of policies and thresholds

### Our compliance and enforcement policy

1. Protecting children from harm is at the heart of Ofsted's compliance and enforcement policy. We:
  - act immediately on any information that suggests the welfare of children is not safeguarded
  - work in accordance with our safeguarding policy and agreed protocols
  - take action to raise standards and improve lives, as set out in our Ofsted strategy<sup>1</sup>
  - take proportionate action – this means that we use the least action that is appropriate to bring about compliance, which:
    - is proportionate to the seriousness of the non-compliance
    - is capable of mitigating any risk of harm to children
    - will secure improvement in the quality of the provision
  - use our statutory powers when a relevant threshold is met.
2. Ofsted may bring forward an inspection when we receive information, which raises a concern. We will carry out a risk assessment on receiving this information to determine whether to inspect the provision or to carry out a regulatory visit or both.
3. Although we liaise with other agencies, we will always carry out our own risk assessment to decide whether to inspect the provision or carry out a regulatory visit. We publish our protocols on how we work with other agencies at: [www.gov.uk/government/publications/protocols-between-ofsted-and-other-organisations-in-relation-to-childcare](http://www.gov.uk/government/publications/protocols-between-ofsted-and-other-organisations-in-relation-to-childcare).
4. We publish early years inspection reports on our website and include any evidence of non-compliance we find in the inspection report. If we find non-compliance that we or the provider needed to take action to remedy; we publish details separately on our website in an outcome summary.

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<sup>1</sup> 'Ofsted strategy: 2017 to 2022'; [www.gov.uk/government/publications/ofsted-strategy-2017-to-2022](http://www.gov.uk/government/publications/ofsted-strategy-2017-to-2022).

5. In carrying out our enforcement work, we:
  - keep accurate records and an audit trail of decision-making
  - are consistent in our approach by following the guidance set out in the handbook
  - regularly review the progress of a case
  - revise our approach as appropriate
  - ensure that all staff are suitably trained and have access to high-quality support and advice when taking enforcement action.
6. The use of some of our statutory powers is subject to review on appeal, by the first-tier tribunal (Health, Education and Social Care Chamber) ('the tribunal'). Our powers of prosecution are subject to the scrutiny of the courts.

### **The legal basis of our work and our options for ensuring compliance**

7. The legal basis of our enforcement work is set out in the Childcare Act 2006 and its associated regulations ([www.legislation.gov.uk/ukpga/2006/21/contents](http://www.legislation.gov.uk/ukpga/2006/21/contents)).
8. This legislation defines Ofsted, in the person of Her Majesty's Chief Inspector (HMCI), as the regulatory authority for childminding and childcare providers. The Act sets out our powers and duties relating to the regulation and inspection of registered childminders and childcare providers, and the powers we have to enforce compliance with the law. There are additional powers for HMCI in the Education and Inspections Act 2006 ([www.legislation.gov.uk/ukpga/2006/40/contents](http://www.legislation.gov.uk/ukpga/2006/40/contents)).
9. We have a duty to ensure that we only register those people who are suitable, including:
  - childminders and childcare providers caring for children aged from birth to the 31 August following their fifth birthday – these providers must meet the 'Statutory framework for the early years foundation stage' ([www.gov.uk/government/publications/early-years-foundation-stage-framework--2](http://www.gov.uk/government/publications/early-years-foundation-stage-framework--2)) and register on the Early Years Register, unless exempt from compulsory registration
  - childcare providers who care for children aged from the 1 September following their fifth birthday until they reach the age of eight, and those who choose to register with us on the voluntary part of the Childcare Register (later years provision) – these providers must meet The Childcare (General Childcare Register) Regulations 2008 ([www.legislation.gov.uk/uksi/2008/975/contents/made](http://www.legislation.gov.uk/uksi/2008/975/contents/made)), as amended.
10. Ofsted's role is to establish whether a registered person is meeting the requirements of the 'Statutory framework for the early years foundation stage'

or the requirements for registration on the Childcare Register, and make a decision on whether a person remains suitable for registration.

11. The tribunal considers appeals in relation to the following decisions made by Ofsted:
  - the decision to refuse an application to register
  - the decision to refuse an application to approve additional or different non-domestic premises to those which form part of an existing registration
  - the decision to refuse an application from a childminder or childcare provider on domestic premises to provide childcare on non-domestic premises for up to 50% of their total operating time, under their existing registration
  - the decision to suspend a childminder or childcare provider's registration generally or only in relation to particular premises
  - the variation, imposition or removal of conditions of registration
  - a refusal to waive disqualification from registration as a childminder or childcare provider
  - a decision to cancel a registration.
12. In addition, a provider can appeal to the tribunal against an emergency order imposed by a magistrate – see the section on 'Taking emergency action'.
13. The tribunal publishes its decisions on its database:  
[www.carestandardtribunal.gov.uk/Public/recentDecisions.aspx](http://www.carestandardtribunal.gov.uk/Public/recentDecisions.aspx).

### **Deciding what enforcement action to take**

14. We consider the protection of children and risks to their safety when we are deciding on enforcement action. We also ensure that the action we take is proportionate to the risk involved.
15. We consider whether the provider:
  - has understood the issue
  - has sufficient knowledge about their responsibilities
  - demonstrates a willingness to put things right.
16. We assess the risk to children from any non-compliance and take stronger enforcement action if children are, or are likely to be, at risk.
17. If the incident is a first breach and/or when the impact on children is minor and/or when there was no deliberate intention to avoid compliance, the inspector does not need to move to statutory enforcement action. In these circumstances, we will:

- issue a letter to the registered person warning them that we may take statutory action for any future breach, if identified during a regulatory visit
- follow the inspection guidance on failure to meet conditions of registration if identified during an inspection.

If the evidence suggests that the offence has happened on more than one occasion, or the offence is serious enough that children may be at risk of harm, Ofsted must consider whether it is appropriate to take other enforcement action.

## Thresholds for our enforcement action

18. We can use our enforcement powers only when particular thresholds are met. We will take enforcement action alongside an inspection, if appropriate. This section sets out the thresholds for each type of enforcement we take.

### Suspension of registration

19. We will suspend the registration of a childminder or childcare provider generally or only in relation to particular premises, if:
- we reasonably believe that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm.<sup>2</sup>
20. The purpose of suspension is:
- to allow time to assess the risk of harm to children
  - or
  - to allow time for steps to be taken to reduce or eliminate the risk of harm to children.<sup>3</sup>

The initial period of suspension is six weeks.

### Extension of suspension

21. If we cannot complete our regulatory activity within the prescribed six-week period, we may extend the suspension. In this case, the extended suspension should not be for a continuous period exceeding 12 weeks in total, unless one of the following situations applies:
- we decide to cancel the provider's registration, either by notice or by an emergency application to a magistrate

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<sup>2</sup> The Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008, regulation 9; [www.legislation.gov.uk/uksi/2008/976/regulation/9/made](http://www.legislation.gov.uk/uksi/2008/976/regulation/9/made).

<sup>3</sup> The purpose of suspension is set out in the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008, regulation 10(3); [www.legislation.gov.uk/uksi/2008/976/regulation/10/made](http://www.legislation.gov.uk/uksi/2008/976/regulation/10/made).

- we are unable to complete our regulatory activity for reasons beyond our control, for example when we are not the lead agency looking into the matter.

22. In these cases, we may extend the suspension beyond 12 weeks.

### **Enforcement notices for unregistered childminders**

23. An enforcement notice is a legal letter that we send to a person telling them that they cannot provide childminding without being registered with us. Failure to comply with the notice is an offence.

24. We issue an enforcement notice if we have reason to believe that:

- a person is providing childminding for which registration is required without being registered with us  
and/or
- a person has not complied with our written request that she or he ceases to act as a childminder without being registered with us.

### **Welfare requirements notices**

25. We may issue a welfare requirements notice (WRN), which sets out the actions that a provider must take by a certain date to meet the safeguarding and welfare requirements in the 'Statutory framework for the early years foundation stage'.<sup>4</sup> The provider commits an offence if they fail to carry out the actions set in the WRN. We may prosecute providers who do not take the action required in a WRN within the set timescale.

26. We issue a WRN if:

- we consider that an early years provider has failed, or is failing, to comply with one or more of the welfare requirements in the 'Statutory framework for the early years foundation stage'  
and/or
- the early years provider has failed to meet any actions set (there is further information on setting actions in the 'Early years inspection handbook').

### **Conditions of registration**

27. We do not impose conditions of registration routinely, but in exceptional circumstances retain the power to do so.

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<sup>4</sup> Welfare requirements notices are issued under the Early Years Foundation Stage (Welfare Requirements) Regulations 2012, regulation 10;  
[www.legislation.gov.uk/uk/si/2012/938/contents/made](http://www.legislation.gov.uk/uk/si/2012/938/contents/made)

## Prosecutions

28. There are a number of offences that we can prosecute providers for. When we are considering prosecution, we will invite the person to an interview under a Police and Criminal Evidence Act 1984 (PACE) caution.<sup>5</sup>
29. If a person refuses to attend an interview under the Police and Criminal Evidence Act 1984 it does not prevent us taking action to prosecute that person if she or he has committed an offence – see the section on 'Prosecutions'.

## General prosecution thresholds

30. We must apply each of our five general prosecution thresholds, listed below, before deciding to prosecute for any offence. In addition, individual thresholds apply to each particular offence. Our five general prosecution thresholds are:
  - the registered person has committed an offence
  - the person committed the offence within the last three years
  - we begin proceedings within six months from the date on which evidence, sufficient in our opinion to warrant the proceedings, becomes known to us
  - there is sufficient and reliable evidence to support a prosecution according to the standard of proof needed
  - prosecution is in the public interest – we consider whether other enforcement action will achieve the required outcome when deciding whether prosecution is in the public interest.
31. The Code for Crown Prosecutors 2018 gives more information when considering the evidence and public interest tests.<sup>6</sup>

## Acting as a childminder without registration while a notice of enforcement is in place

32. We can prosecute a person who, without reasonable excuse, acts as a childminder without registration if we:
  - have, before 1 September 2008, served the person with an enforcement notice which is still current, and with which they have failed to comply
  - or
  - served the person with an enforcement notice after 1 September 2008 that we have not revoked, and the person continues to act as a childminder.

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<sup>5</sup> Police and Criminal Evidence Act 1984; [www.legislation.gov.uk/ukpga/1984/60/contents](http://www.legislation.gov.uk/ukpga/1984/60/contents).

<sup>6</sup> Code for Crown Prosecutors 2018; [www.cps.gov.uk/publication/code-crown-prosecutors](http://www.cps.gov.uk/publication/code-crown-prosecutors).



*Providing childcare for children under eight without registration on domestic or non-domestic premises, or on premises that are not approved by Ofsted*

33. We can prosecute a person who provides childcare for children aged under eight on domestic or non-domestic premises, if:
- we have reason to believe that the provider is looking after children aged under eight, without reasonable excuse, without being registered with us or on premises that we have not approved as suitable  
and
  - the provider does not immediately stop providing the care.

*Acting as a childminder or providing childcare while suspended generally or only in relation to particular premises*

34. We can prosecute a person for providing childminding or childcare provision while suspended if we:
- have served the notice of suspension correctly<sup>7</sup>
  - have reason to believe that the registered person continues to act as a childminder or childcare provider
  - consider that the registered person has not offered a reasonable excuse for their action.

*Intentionally obstructing a person carrying out their statutory duties*

35. We can prosecute a person who intentionally obstructs an inspector in carrying out their statutory duties under the Childcare Act 2006 if:
- any action we took was appropriate and within our prescribed duties
  - taking this action is necessary to enable us to carry out our statutory duties and deter obstruction in the future.<sup>8</sup>
36. This does not apply to providers registered on the voluntary part of the Childcare Register.

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<sup>7</sup> We serve all notices in accordance with the Childcare Act 2006 and the Interpretation Act 1978; [www.legislation.gov.uk/ukpga/1978/30](http://www.legislation.gov.uk/ukpga/1978/30). We send all notices to the last known registered address, which was notified to us by the registered person. A notice is deemed to be effectively served unless the contrary intention appears. This is when we, or the person, can prove that they did not receive the notice.

<sup>8</sup> Powers of entry are set out in the Childcare Act 2006, section 77 for childcare; [www.legislation.gov.uk/ukpga/2006/21/section/77](http://www.legislation.gov.uk/ukpga/2006/21/section/77).

### *Disqualification*

37. It is an offence to provide childminding or childcare while disqualified.<sup>9</sup> It is also an offence to be directly concerned in the management of a childcare or early years provision if disqualified. We will prosecute a person in these cases if:
- the person refuses to cease providing, or being involved in, the service
  - the person applies for a waiver of their disqualification but we refuse the request, and an appeal to the tribunal is not upheld, but the person continues to operate their service.<sup>10</sup>

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

38. We can prosecute a person if they knowingly employ a person in connection with the provision of childminding or childcare who is disqualified. We will do this if the person employed the individual knowing that the individual is disqualified.

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

39. We can prosecute a person if they fail to comply with any requirement to disclose information related to any order, offence or other matter that relates to disqualification. We will do this if:
- we have evidence that the registered person is disqualified a person living in the same household as a disqualified person is providing childcare in a domestic setting or under a domestic premises registration
  - a person employed to work with children is disqualified
  - the registered childminder or childcare provider has not provided us with the relevant information as soon as practically possible and in any case within 14 days of him or her becoming aware of it, or could have become aware of it had they made reasonable enquiries.

### *Failing to comply with the terms of a welfare requirements notice*

40. We can prosecute an early years childminder or childcare provider if she or he fails to comply with a WRN within the set timescale. We will do this if:
- the person has failed to complete the actions within the WRN within the required timescale

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<sup>9</sup> Offences under the Childcare Act 2006, section 76; [www.legislation.gov.uk/ukpga/2006/21/section/76](http://www.legislation.gov.uk/ukpga/2006/21/section/76).

<sup>10</sup> A person is disqualified from providing childminding or childcare provision under the Childcare Act 2006, section 75; [www.legislation.gov.uk/ukpga/2006/21/section/75](http://www.legislation.gov.uk/ukpga/2006/21/section/75).

- service of the notice was effective.

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

41. We can prosecute any provider for failing to comply with a condition of their registration if:
- we served the notices of intention and decision to impose or vary the condition correctly
  - the period in which the registered person may appeal against the decision has expired
  - there is sufficient evidence to show how the registered person failed to comply with the condition
  - we consider that the registered person has not offered a reasonable excuse for their action.

*Failing to notify Ofsted of a significant or notifiable event*

42. We can prosecute a provider who fails to notify us of a significant or notifiable event as set out in regulations.<sup>11</sup> We will do this if:
- there is sufficient evidence to show that a notifiable event has occurred
  - there is no evidence to suggest that we have received notification as soon as reasonably possible, and in any case within 14 days of the provider becoming aware of it
  - any time in which the registered person may make representation has expired.
43. This does not apply to providers registered only on the Childcare Register.

*Making a false or misleading statement*

44. We can prosecute any person if she or he knowingly makes a statement that is false or misleading in a material respect. We will do this if we have evidence to show that:
- the statement in question is false or misleading
  - the provider knowingly made the false or misleading statement in question.

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<sup>11</sup> For early years childminding and other early years childcare provision, this is the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 (as amended), regulation 12 [www.legislation.gov.uk/uksi/2012/938/contents/made](http://www.legislation.gov.uk/uksi/2012/938/contents/made).

### *Corporal punishment*

45. We can prosecute a provider if, without reasonable excuse, in relation to a child in their care, they:
- give corporal punishment
  - allow a person who cares or is in regular contact with a child to give corporal punishment
  - do not take sufficient steps to ensure that those who live with them, or who work on the premises, do not administer corporal punishment.
46. We can do this if:
- we have sufficient evidence to provide a realistic prospect of conviction
  - other enforcement action is unlikely to safeguard the welfare of children
  - there is sufficient evidence to provide a realistic prospect of conviction and we consider that the registered person did not take steps, so far as is reasonably practicable, to prevent the event occurring
- or
- there is sufficient and reasonable cause to believe that the registered person is not acting appropriately to prevent a reoccurrence of corporal punishment
- or
- there is insufficient evidence that the physical intervention was taken for reasons that include averting an immediate danger of personal injury to any person, or to manage a child's behaviour if absolutely necessary.
47. This does not apply to providers registered on the voluntary part of the Childcare Register.

### *Simple caution*

48. We may issue a simple caution, if:
- the person admits the offence
  - there is a realistic prospect of a conviction
  - the offender understands the significance of a simple caution and gives informed consent to being formally cautioned
  - other enforcement action (for example an informal warning) is unlikely to be effective
  - prosecution would not be in the public interest.

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

49. If the only reasons for cancelling are the matters covered in the WRN, we are not permitted to cancel the registration until the notice time expires. We **must** cancel the registration of a childminder or childcare provider if the person becomes disqualified from registration.
50. If we cancel the registration of a childminder or childcare provider, cancellation will apply to all settings covered by the registered person's registration and will apply to one or both registers, as set out in the cancellation notice.
51. We **may** cancel the registration of a childminder or childcare provider for any one or more of the following reasons:
  - the registered person has ceased, or will cease, to satisfy the prescribed requirements for that registration type
  - the registered person has failed to comply with a condition of registration
  - the registered person has failed to comply with a requirement set out in regulations (this includes failure to comply with requirements relating to suitability checks)
  - a childminder or childcare provider on the Early Years Register has failed to meet the legal requirements in the 'Statutory framework for the early years foundation stage'
  - the registered person has failed to pay the prescribed fee
  - a registered childminder has not provided childminding for more than three years during which she or he was registered
  - other enforcement action (recommendations/actions/warning letters/welfare requirement notices) has failed to achieve, or is unlikely to achieve, the outcome needed within a reasonable timescale
  - successful prosecution is unlikely to achieve the safety and well-being of children
  - there is minimal evidence to suggest that the provider is acting purposefully to resolve the matter within a reasonable timescale
  - we consider that cancellation is the only way to assure the safety and well-being of children.

### **Taking emergency action against a provider**

52. In some cases, we may ask a magistrate to grant an order to:
  - cancel the registration
  - vary or remove conditions
  - impose conditions on the registration.
53. We may take emergency action if:

- we have evidence to show that any child who is being, or may be, looked after by that person is suffering or is likely to suffer significant harm
- any other action is unlikely to reduce the risk of significant harm to the child with immediate effect
- taking this action has a less detrimental effect on children than not taking this action.

## **Part 2. Our approach to compliance and enforcement**

### **Responding to information and notification of events**

54. This section covers the action we take when we receive information concerning:

- providers who are registered on the Early Years Register
- providers who are registered on both the Early Years Register and the Childcare Register
- unregistered childcare provision.

55. This section does **not** cover circumstances when we will carry out an inspection of providers who are only registered on the Childcare Register.

## Notifications from providers

56. Childminders and childcare providers must inform us of the following events no later than 14 days after the event occurred.

Setting type		Childminders and childcare providers – Early Years Register	Childminders and childcare providers – Childcare Register
Type of information		Notify Ofsted as soon as practical, and in any case within 14 days. The method of notification is not prescribed in regulations; therefore the childcare provider can decide how to notify us.	
1	Allegations of serious harm or abuse by any person living, working, or looking after children at the premises (whether the allegations relate to harm or abuse committed on the premises or elsewhere) and the action taken in respect of these allegations.	√	√ (no qualification to any person, and not required to notify Ofsted of action taken)
2	Serious accident, illness or injury to, or death of, any child while in their care, and the action taken.	√	√ (not required to notify Ofsted of action taken)
3	Death, serious accident, illness or injury to someone on the premises.		√
4	The sudden serious illness of any child for whom later years provision is provided.		√

Setting type		Childminders and childcare providers – Early Years Register	Childminders and childcare providers – Childcare Register
Type of information		Notify Ofsted as soon as practical, and in any case within 14 days. The method of notification is not prescribed in regulations; therefore the childcare provider can decide how to notify us.	
5	<p>Details of any order, determination, conviction, or other ground for disqualification from registration under regulations made under section 75 of the Childcare Act 2006.</p> <p>The date of the order, determination or conviction, or the date when the ground for disqualification arose</p> <p>The body or court which made the order, determination or conviction, and the sentence (if any) imposed; and</p> <p>A certified copy of the relevant order (in relation to an order or conviction).</p>	<p>√ (Applies to the registered person (Early Years Foundation Stage (Welfare Requirements) Regulations 2012, regulation 9(2)) and any person living in the same household as the registered early years provider or who is employed in that household).</p>	



Setting type		Childminders and childcare providers – Early Years Register	Childminders and childcare providers – Childcare Register
Type of information		Notify Ofsted as soon as practical, and in any case within 14 days. The method of notification is not prescribed in regulations; therefore the childcare provider can decide how to notify us.	
6	<p>Details of any criminal convictions and cautions of the applicant and the nominated individual</p> <ul style="list-style-type: none"> <li>■ the date of the offence</li> <li>■ the nature of the offence</li> <li>■ the place at which the offence was committed and either</li> <li>■ the name of the court, the date of conviction and the penalty imposed</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>■ the date of the caution.</li> </ul>		√
7	Food poisoning affecting two or more children cared for on the premises.	√	√
8	Any significant event likely to affect the suitability of the registered person or any person who cares for, or is in regular contact with, children on the premises to look after children.	√	√

Setting type		Childminders and childcare providers – Early Years Register	Childminders and childcare providers – Childcare Register
Type of information		Notify Ofsted as soon as practical, and in any case within 14 days. The method of notification is not prescribed in regulations; therefore the childcare provider can decide how to notify us.	
9	Any change: in the address of the premises; to the premises that may affect the space available to children and the quality of childcare available to them; in the name or address of the provider, or the provider's other contact information; to the person who is managing the early years provision; in the persons aged 16 years or older living or working on childminding premises.	√	√ (The General Childcare Registration Regulations, schedule 3, paragraph 26(b) refers to suitability rather than just change of details)
10	Change to the registered person, nominated individual or manager.		√
11	Change to the name or registered number of the company or charity providing care.	√	√
12	Change of name or address of the committee, partnership, unincorporated body or agency.		√
13	Days and hours during which later years childcare is to be provided.		√
14	Any proposal to change the hours during which childcare is provided; or if the provision will include overnight care.	√	
15	Change of manager.	√	√
16	Change of member of the partnership, committee or corporate or unincorporated body.		√

Setting type		Childminders and childcare providers – Early Years Register	Childminders and childcare providers – Childcare Register
Type of information		Notify Ofsted as soon as practical, and in any case within 14 days. The method of notification is not prescribed in regulations; therefore the childcare provider can decide how to notify us.	
17	If the childcare is provided by a partnership, body corporate or unincorporated association whose sole purpose is the provision of childcare, any change to the individuals who are partners in it, or any change in a director, secretary or other officer or members of its governing body.	√	√
18	If the childcare is provided by a partnership, body corporate or unincorporated association, any change to the 'nominated individual'.	√	√

57. We define serious injuries as:

- any injury that requires resuscitation or admittance to hospital for more than 24 hours
- broken bones, a fracture or dislocation of any major joint
- any loss of consciousness, severe breathing difficulties or asphyxia
- loss of sight (temporary or permanent), any penetrating injury to the eye, any chemical or hot metal burn to the eye
- any injury leading to hypothermia or heat-induced illness
- any injury or medical treatment arising from absorption of any substance by inhalation, ingestion or through the skin
- any injury or medical treatment resulting from an electric shock or electrical burn
- any injury or medical treatment where there is reason to believe that this resulted from exposure to harmful substance, a biological agent, or its toxins, or infected material.

Some examples of serious injuries that must be notified to us are set out below.

- A child trips and falls in a nursery and loses consciousness due to a bang on the head.
- A child is accidentally hit hard in the chest by a football during outdoor play at an out of school club, and has persistent, severe breathing difficulties.
- A baby breaks a leg during a fall at the nursery.
- A child takes a heavy fall while running around and is taken to hospital; the child is kept in hospital for over 24 hours.

58. Providers are not required to inform us of minor injuries, nor of general appointments to hospital or routine treatment by a doctor, such as the child's general practitioner, that is not linked to, or is a consequence of, a serious accident or injury.

We define minor injuries as:

- sprains, strains and bruising
- cuts and grazes
- wound infections
- minor burns and scalds
- minor head injuries
- insect and animal bites

- minor eye injuries
  - minor injuries to the back, shoulder and chest.
59. Some examples of minor injuries that do not need to be notified to us are set out below.
- A child trips over their shoelaces, falls and sprains a wrist in the nursery.
  - A baby, attempting to sit up, loses balance and drops face first onto the floor, cutting their lip.
  - A bee stings a child while playing in the outdoor space. The child is not allergic to bee stings and does not require hospital treatment.
60. If we are informed of the death of a child in an early years or childcare provision, we always draft a letter for HMCI to send to the parents or carers of the child offering our condolences and a meeting, if appropriate. We aim to do this within 24 hours of becoming aware of the incident. The Chief Operating Officer will decide if the letter should be passed to HMCI to sign.
61. When a registered provider notifies us of an event we may ask them to provide us with more information about what they have done in relation to the event. We may carry out an inspection and/or a regulatory visit if we are not satisfied with the explanation from the provider as to why the event occurred and/or if the action taken in response to the event indicates risks or potential risks to children.

### **How we respond to information received**

62. 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. If we receive the information by telephone we ask the information-giver for their contact details. Information that suggests a provider may be operating without registration is dealt with in accordance with the guidance on 'Unregistered services'.
63. Information from an anonymous source (except from a whistle-blower or if the information concerns safeguarding – see paragraph 63) is referred back to the registered provider. We tell the information-giver and encourage them to speak directly to the provider. We also note the information for the next visit so we can follow this up with the provider. If the information-giver provides us with 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.
64. We take proportionate action based on the information we receive and all other relevant information available to us about the setting or registered provider, and in line with the Ofsted-wide policies relating to safeguarding and whistleblowing. We may:

- carry out an initial assessment in cases which meet the relevant criteria (see paragraph below)
- arrange for a 'priority' inspection – that is, normally within seven working days of the risk assessment decision
- note the information on our database so that it can be considered at the next inspection. In these cases we also write to the provider giving them the information and asking them to take appropriate action. The letter makes it clear that they must record the information and the action they have taken in their complaints record. They do not need to tell us of the action they take in response to our letter but we will assess that action as part of the next visit or inspection.

### **Gathering information to assess the action to take**

65. When we receive information we may ask the information-giver for further details, to clarify the matter or to indicate to them whether other action is appropriate; for example, we may ask the information-giver to refer the matter to a child protection agency. We always ask a parent or carer, member of the public or staff member if they have referred the matter to the registered provider and if they have not, we ask them to do so, unless it is a safeguarding matter that needs to be treated in line with our whistleblowing or safeguarding policies.<sup>12</sup> When we need to seek further information before we can complete the risk assessment, we do so as speedily as possible.
66. The risk assessor always reviews:
- the provider information portal
  - the record of any previous risk assessments, so we can see if we have already received other information about this matter; if so we decide whether this is new information that requires a separate decision or whether it should be dealt with as part of the response to the information already received.
67. If the provider information portal identifies issues for the risk assessor to follow up, the risk assessor checks:
- details of previous compliance cases or information that triggered an inspection and the outcomes
  - comments for the next visit, including any low-level concerns
  - details of any active compliance case

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<sup>12</sup> 'Safeguarding children and young people and young vulnerable adults policy', Ofsted, 2015; [www.gov.uk/government/publications/ofsted-safeguarding-policy](http://www.gov.uk/government/publications/ofsted-safeguarding-policy).

- the registration history of the setting, including comments on appropriate fields in the database
- any action(s) we set at the last and previous inspections, during monitoring visits and in previous compliance cases and the response to the action(s) by the provider.

68. We also check, when relevant:

- the registration history of any other settings that the registered person is linked to; this may include notifications, changes of manager and so on
- the accuracy of the registration; for example, Companies House (for limited companies) and the Charities Commission (for registered charities), to determine whether the provider is still recorded with those organisations.

### **Escalation route for three or more concerns (other than notifications by the provider) in a two-year period**

69. If a new concern arises and there have been two or more previous concerns within the past two years (a total of three concerns in two years), the risk assessment decision is to carry out a priority inspection or refer for regional action.
70. In these cases, the decision on the course of action is made in the first instance by the central risk assessment team. Regulatory professionals within the central team will decide whether the concern requires a priority inspection or regional action. If it requires regional action, the region will decide whether to carry out a regulatory visit, inspection or both, taking into consideration the information provided by the risk assessor.
71. In relation to escalating concerns, it is important to note that a notification from the provider is not the same as a concern that comes from another person about the provision. While three or more notifications may indicate there are serious weaknesses within the setting that need to be looked at, they may indicate that the provider is dealing proactively with any issues that arise in the setting while fully complying with their legal responsibility to notify us of the matters set out in regulations. When considering cases in which there have been three or more notifications, the risk assessment team will need to consider whether, in the light of the rest of the provider's history, the case needs to be escalated to a senior officer or senior regulatory professional.
72. If a series of notifications arise over a short period identifying similar matters, risk assessors should follow the guidance above in paragraphs 66 to 68. However, we do not open a new case when either we receive new information about the provider, or we receive the same information from a different source. In these circumstances, we log the information as part of the existing case.

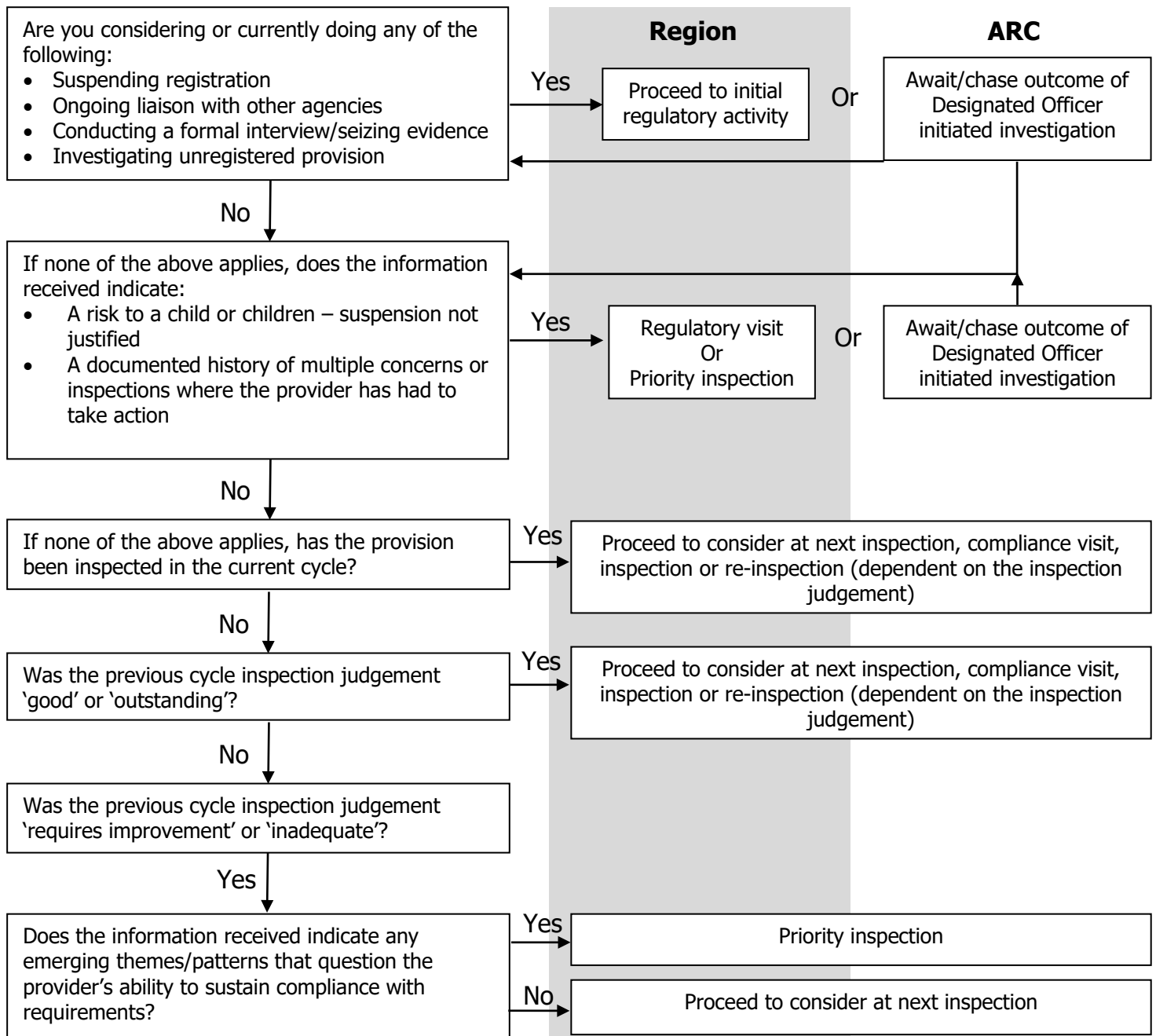
### **Recording information for inspectors in the risk assessment action plan**

73. We record relevant information in the risk assessment form. In addition, the inspector will be given access to the previous inspection history. This means that the inspector will have all the information they need to plan and carry out their visit. The risk assessment form must include:
- full details of the information that we have received
  - lines of enquiry for the inspector to pursue during the visit
  - reasons for the risk assessment decision.
74. If there is no information of a particular type, the risk assessor should make it clear in the risk assessment form that 'there is no information' rather than just leaving the relevant field blank.



## The criteria – regulatory visit and inspection

### Process flowchart following receipt of information or concern



75. We may carry out an inspection while we are undertaking regulatory activity, particularly if the inspector notes during the activity that the setting is not operating within the grade it was awarded at the previous inspection.

### **Carrying out several inspections during the inspection cycle**

76. When we receive information against a provider who we have already inspected in the cycle, we make a decision about whether a further inspection is appropriate. To do this, we assess whether the inspection identified any action for the provider to take and the response from the provider.
77. If we have already carried out several inspections in the inspection period, we decide whether we need to take other enforcement action. If we find further evidence of non-compliance, we must consider cancelling the provider's registration.
78. If we receive new information not relating to any previous concerns, we complete a risk assessment and decide on the course of action, as set out above.

### **Risk assessment criteria for referring the matter to the next inspection**

79. When deciding whether to refer the information to the next inspection we must consider:
- whether the information-giver is anonymous
  - any risks to children from the information
  - how many children are or could be affected
  - whether from the information we hold we think the provider is able to deal with the matter appropriately
  - the history of the provider, including:
    - the outcome of the last inspection or monitoring visit
    - any previous concerns about this matter or other matters at the setting, or at any other setting covered by the provider's registration
    - the frequency of concerns about the setting
    - whether the provider has previously told us about things that they are legally obliged to notify to us.
80. We note the information for the next visit and write to the provider when:
- the information-giver is anonymous (unless it is a safeguarding matter or from a whistle-blower – see above)
  - the information is of a minor nature (see guidance on minor matters)
- and

- there is no history of concerns about the provision or registered provider and the information received does not indicate there is any risk of harm to children
- no action was required by us or the provider in relation to similar minor previous concern(s)
- no actions were identified at the last inspection.

81. When we decide that the registered provider should deal with the matter we must:

- note the information for the next inspection
- write to the provider asking them to take action to deal with the information
- ask the provider to record the information and action taken in their complaints record
- refer to the information when we receive any further concerns and as part of the preparation for any future inspection.

### **Risk assessment information considered to be of a minor nature**

82. The chart below gives some examples of the type of information that could be considered minor, though this list is not exhaustive.

#### **What we mean by 'minor' in the above categories**

<b>Category</b>	<b>When would this be minor?</b>	<b>When would it not be minor?</b>
Provision of food and drink	Parent says this week their child has had fish fingers, chips and peas two days running.	Parent says their child is only ever given unhealthy food; the nursery has chips every day and the children are never given fresh vegetables or fruit.  Children only have drinking water at set times of the day and cannot ask for a drink or help themselves when they are thirsty.
Children's behaviour	Parent says their child has complained of being bitten today by another child at the nursery.	More than one parent complains about biting over a period of time.  The nursery does not appear to have taken parental concerns about children's behaviour seriously and/or biting

Category	When would this be minor?	When would it not be minor?
		occurs frequently and/or leaves severe marks.
Animals or pets	Parent says when she collected her child from the childminder, she noticed the budgerigar's cage was dirty and needed cleaning.	Parent says her three-year-old child was knocked over in the garden by the childminder's 'boisterous' dog, which was allowed to run around unleashed when the children were playing in the garden.
Meeting children's individual needs	Parent says their baby has come home from nursery today with a dirty nappy.	Parent says their baby frequently comes home from nursery with a wet and soiled nappy and/or has a severe nappy rash which doesn't seem to be healing and/or the parent has raised this before with her baby's key worker but nothing has changed.
Conditions within the setting	Parent says their child complained of being too hot at playschool today; she asked the manager who explained that there was a fault with the central heating thermostat which was being replaced shortly.	Parent says their child came home from playschool with what appears to be a quite severe burn mark on her leg. The child said she had burned it on a radiator when she fell against it during a game with other children.

## Child protection concerns

83. A child protection concern is anything that involves abuse or neglect that amounts to ill-treatment or any action or omission that may cause harm to a child. Ofsted does not hold a statutory responsibility for child protection matters, but we work together with other statutory agencies by sharing information we hold to protect the welfare of children and young people. Ofsted does have a statutory responsibility to decide whether a registered person remains suitable for registration. We make this decision as quickly as possible, taking into account involvement by other agencies. We must not put off our own regulatory activity while other agencies are carrying out their investigations. Instead, we should make the other agency aware of the timescales of our regulatory activity so that they can adjust their own timescales, if necessary. When necessary, we discuss with the other agency how best to go about our regulatory activity without, for example,

contaminating criminal evidence. We gather our own evidence to make our decision and do not delegate our investigatory powers or our decision-making responsibility in this respect to a child protection agency, although we will take into account evidence gathered by other statutory bodies.

84. We have regard to Ofsted's own safeguarding children policy.<sup>13</sup> It provides our staff with consistent advice on dealing with potential issues involving the safeguarding and protection of children and young people, and promotes effective multi-agency working in line with 'Working together to safeguard children'.<sup>14</sup>
85. We have a number of protocols with other agencies, which set out in detail our agreed working arrangements with them. We have a protocol with Local Safeguarding Children Boards that sets out how we and other key agencies work effectively together to safeguard children.<sup>15</sup>
86. We refer all child protection concerns to the children's services department at the local authority and/or the police. Our criteria for referral may differ from those of other agencies and we do not assume that local authority children's services will actively take forward our referral as a child protection investigation. If the local authority decides not to investigate the matter as a child protection concern, then we still carry out our own assessment into whether or not the provider meets the requirements for continued registration.
87. If registered providers have concerns about a child's behaviour that may indicate abuse, for example a child is exhibiting over-sexualised behaviour, they should tell the relevant local authority. If they also tell us, or do so instead of telling the local authority, we tell them to inform the local authority children's services department but we also pass the information to the local authority children's services department.

### **Referring concerns to local authority children's services and/or police**

88. We refer all child protection concerns to the duty desk of the local authority children's services department (or to the appropriate referral point that the local authority has in place to receive child protection referrals) and/or the police. If a concern involves an allegation made against a person in a position of trust, such as a person who works in a setting with children, we refer the matter to the local authority in line with the procedures set out in 'Working together to safeguard children'.

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<sup>13</sup> 'Safeguarding children and young people and young vulnerable adults policy', Ofsted, 2015; [www.gov.uk/government/publications/ofsted-safeguarding-policy](http://www.gov.uk/government/publications/ofsted-safeguarding-policy).

<sup>14</sup> 'Working together to safeguard children', Ofsted, 2018; [www.gov.uk/government/publications/working-together-to-safeguard-children--2](http://www.gov.uk/government/publications/working-together-to-safeguard-children--2).

<sup>15</sup> 'Protocols between Ofsted and other organisations in relation to childcare', Ofsted, 2011; [www.gov.uk/government/publications/protocols-between-ofsted-and-other-organisations-in-relation-to-childcare](http://www.gov.uk/government/publications/protocols-between-ofsted-and-other-organisations-in-relation-to-childcare).

89. We aim to contact the relevant local authority children's services and/or the police within two hours of receiving the information. We confirm the information to the local authority children's services department in writing, within 24 hours. We provide clear, unambiguous information and the name of the relevant point of contact in Ofsted.
90. We pass on any information that meets our threshold for a referral. Our threshold is any information we receive that indicates abuse or neglect or any action or omission that may cause harm to a child. Local authority children's services have varying thresholds for accepting child protection referrals. It is their responsibility to decide which concerns they will investigate.
91. A statutory agency may share information with us about a child protection matter that involves a registered provider. We record any information received, including verbal concerns, on our database. If the concern is complex, we may ask the statutory agency to send written confirmation of the referral. However, not having the written confirmation does not prevent us from taking appropriate action in relation to the provider in a timely manner to ensure that children are protected.
92. Wherever possible, we work in partnership with other agencies so that we do not jeopardise investigations by local authority children's services or the police. However, we must not allow our own regulatory activity to be delayed unnecessarily, for example if we believe that the other authority is not acting in a timely manner. If another agency asks us to delay our regulatory activity, and we think this is inappropriate, given the information we have obtained so far and any potential risks to children, we escalate the matter to a higher authority, as set out below. We keep in contact with all agencies involved to be clear about any action they take, and how that links with any action we may take against the provider's registration. Strategy discussions are one way in which we maintain contact with other agencies. However, we are responsible for any actions or decisions we take about the continued suitability and registration of the provider.
93. When we are working in partnership with other agencies, we must ensure that we liaise with them regularly to gain information that will help us to progress our own regulatory action. If another agency is not cooperating with us, and this is having a negative impact on our own action, we raise the matter urgently with the relevant senior HMI or regional director, so that s/he can escalate the matter to a more senior level within the other agency. This would be the director of children's services in the local authority, or the chief constable of the relevant police authority. Such escalation may take place by telephone but when we judge it necessary, for example if resistance or delay continues, we follow this up in writing.
94. We share information with child protection agencies in line with our legal duties and other statutory guidance issued by the government, and as set out under the following legislation:

- Childcare (Supply and Disclosure of Information) (England) Regulations 2007 ([www.legislation.gov.uk/uksi/2007/722/contents/made](http://www.legislation.gov.uk/uksi/2007/722/contents/made))
- Childcare Act 2006, section 84(1)(b) ([www.legislation.gov.uk/ukpga/2006/21/section/84](http://www.legislation.gov.uk/ukpga/2006/21/section/84))
- Children Act 1989, section 27 ([www.legislation.gov.uk/ukpga/1989/41/section/27](http://www.legislation.gov.uk/ukpga/1989/41/section/27))
- Children Act 2004, section 10 ([www.legislation.gov.uk/ukpga/2004/31/section/10](http://www.legislation.gov.uk/ukpga/2004/31/section/10))
- Education and Inspections Act 2006, section 149 ([www.legislation.gov.uk/ukpga/2006/40/section/149](http://www.legislation.gov.uk/ukpga/2006/40/section/149))
- Data Protection Act 2018 (<http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>).
- General Data Protection Regulation (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0679>).

## Working directly with other agencies

### *Strategy discussions<sup>16</sup>*

95. 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.
96. We always attend strategy discussions when the investigation concerns a:
  - registered person or their nominated individual
  - childminder (as the registered person) and/or a person aged 16 or over who lives or works on the premises where childminding takes place.
97. If the case owner is unable to attend a strategy discussion, for example because it is rearranged at short notice and the case owner is out on inspection, they should liaise with their senior officer or senior HMI to arrange for another person to attend in their place.
98. We do not normally attend strategy discussions when the concern relates to a member of staff (including the manager), unless there is evidence of non-compliance by the registered person. When we attend a strategy discussion in these circumstances, we make it clear that our regulatory role is only in relation to the registered person or their nominated individual and that we have no regulatory relationship with other staff members.

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<sup>16</sup> This meeting can be known by other names such as a 'section 47 meeting'.

99. Our role at strategy discussions is to:
- share and receive information
  - explain the remit of our powers and the extent of our involvement and decisions
  - explain to other agencies that providers can appeal to tribunal
  - ensure that, when necessary, we secure the agreement of those attending the strategy meeting to attend the tribunal, and/or supply witness statements.
100. We can only suspend the registration of a childcare provider when the threshold for suspension is met and we take this decision in a case discussion – see the section on 'Decision-making'. We agree with the other organisations the information that we can share with the registered person about the concern. The police or local authority make a decision on how much information they are willing to place in the public domain, without it having a negative impact on their investigation. We inform the appropriate organisations if we decide to suspend the registration, generally or only in relation to particular premises, of a person registered to provide childminding or childcare services.
101. We do not have the authority to suspend staff who work in settings registered to provide childminding or childcare services, and have no power to direct a provider to do so. However, we will give the registered person information that we hold and then assess how she or he responds to that information. If the registered person does not take sufficient steps to safeguard children we may take action against them.
102. The information considered at a strategy discussion may suggest that a child at a setting is at risk of harm. In these cases, we will consider whether there is a risk to other children at the same setting and decide whether we need to take our own action, in line with our enforcement approach, to ensure that children are safe – see the section on 'Decision-making'.
103. We must always review the minutes of any strategy discussion when we receive them from the local authority. We must also ensure that they are considered alongside all other relevant information at the next case-review discussion. We record in the case-review proforma where strategy meeting minutes are included.

*Visiting at the same time as other statutory agencies*

104. In some circumstances, we may agree to undertake a visit to a registered person at the same time as a representative from a different statutory agency, such as the local authority or the police. The visit must be planned with the relevant agency so that both parties are clear and in agreement before the visit about:



- the purpose of the visit
  - the respective roles
  - the questions to be asked and who is going to ask them
  - whether there will be one central record of the visit or whether each officer/agency will keep their own record, and what arrangements will be in place to share information after the visit
  - any other specific tasks to be undertaken at the visit or as a result of the visit.
105. When carrying out a visit at the same time as another agency, both parties must be clear about their respective roles at the visit. This must be discussed in advance with the representative of the other agency. We must explain to the registered provider, at the outset of the visit with another agency, the respective roles of the agencies.
106. In any visit with another agency, our responsibility is to determine whether or not the provider continues to meet the requirements for registration. We must gather our own evidence to help us reach that decision. We must not take evidence on behalf of the other party, nor must we use their evidence instead of collecting our own.

### **When we carry out a case discussion**

107. If there are concerns about non-compliance as a result of a child protection concern, we must hold a case discussion to consider and decide what action, if any, we need to take in line with our enforcement powers (see section on 'Decision-making').
108. We must not wait for the completion of an investigation by other agencies before taking action ourselves. We should work as closely as possible with the other agencies and keep them informed of any action we intend to take. We would not normally delay an inspection by an early years regulatory inspector if other investigations are ongoing. When we need to progress with our action and other agencies are still investigating, we will let the other agency know.

### *Serious case reviews*

109. Local Safeguarding Children Boards are required to carry out a serious case review for every case when abuse or neglect is known or suspected and either:
- a child dies
  - a child is seriously harmed and there are concerns about how organisations or professionals worked together to safeguard the child.
110. The purpose of a serious case review is to analyse what happened in the case and why, and to learn lessons about how organisations and professionals can work together more effectively to protect children from harm. Guidance on the

process that Local Safeguarding Children Boards should follow is in the statutory guidance 'Working together to safeguard children 2018'.

111. Any agency involved in the case may be asked to review their involvement in the case submit a report to the Local Safeguarding Children Board. Individual management reviews are done by a person who is at least of HMI grade, who has experience in the area of concern but has had no previous involvement in the case, and who has had appropriate training. They review Ofsted's interactions with the setting, produce a report and make recommendations. The reports are considered by the Individual Management Review (IMR) sub-group of Ofsted's safeguarding group.

### **Regulatory activity: planning, considering a telephone call, carrying out the visit, recording evidence, considering inspection, closing the case and when to write an outcome summary**

#### *Considering a telephone call*

112. Our regulatory work frequently involves face-to-face contact with those who are applying to register, those who are already registered, and people associated with those registrations. There are some circumstances, however, when it might be appropriate to carry out some aspects of our regulatory work over the telephone, rather than in a face-to-face interview.
113. In considering whether or not we can carry out aspects of our work by telephone, we need to consider each case on its merits. We need to consider whether a telephone discussion is the best approach. Factors that we should take into account are:
  - the type and seriousness of the matter we are addressing
  - the speed at which we need to have the discussion
  - what information we need to gather, for example, are we just seeking clarification of something that they have or haven't done or that is unclear, or do we need to question/probe/examine something more fully
  - how likely it is that a telephone discussion will allow us to gather the robust evidence we might need, for example to make a determination on a regulatory matter or to take subsequent enforcement action
  - the information we hold about the provider from our regulatory work, for example the confidence we have in their practice, their willingness or propensity to be honest and open with us, the likelihood that they might be able to 'mask', or be coerced into masking, an issue if we do not meet them face-to-face, any previous suggestion that they might minimise the seriousness of a matter and so on
  - the purpose of any visit we might carry out, and whether doing the work by telephone instead represents a reasonable alternative

- whether matters such as having direct eye contact, observing body language and so on, might be important in supporting our evidence-gathering and/or our regulatory decision-making.
114. We **must not** carry out regulatory work by telephone when this might involve cautioning a provider for an offence, or interviewing them under caution.
115. If we decide to carry out regulatory work by telephone, in line with the above principles, we must plan properly for the evidence that we may need to collect. We must also record the reasons for our decision to carry out the work by telephone rather than through a visit.

### **Regulatory visit**

116. The purpose of a regulatory visit is to decide whether a registered person is complying with statutory requirements set out in legislation and the 'Statutory framework for the early years foundation stage'<sup>17</sup>, any conditions of registration, or whether the person has committed an offence under the Childcare Act 2006 or the regulations.<sup>18</sup> We do not gather evidence to prove or to disprove allegations.
117. We normally carry out a visit to the setting when we receive an allegation against a staff member or someone else who is working at the setting to consider whether the allegation affects the suitability of the setting. The involvement of other agencies must not prevent us from making a visit to the setting as we must make our own decision about whether the provider remains suitable for registration.
118. During a regulatory visit, the inspector will consider whether it is necessary to return to carry out a full inspection. A full inspection is likely to occur when the provider appears to be operating below the grade awarded at the previous inspection.

#### *Before the regulatory visit*

119. If the information received meets the criteria for regulatory activity, we consider the factors we need to take into account including:

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<sup>17</sup> 'Statutory framework for the early years foundation stage', Department for Education, 2017 [www.gov.uk/government/publications/early-years-foundation-stage-framework--2](http://www.gov.uk/government/publications/early-years-foundation-stage-framework--2).

<sup>18</sup> The prescribed requirements of registration are set out in the schedules made under the Childcare (Early Years Register) Regulations 2008 (as amended); [www.legislation.gov.uk/uksi/2008/974/contents/made](http://www.legislation.gov.uk/uksi/2008/974/contents/made), the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 (as amended); [www.legislation.gov.uk/uksi/2012/938/made](http://www.legislation.gov.uk/uksi/2012/938/made), and the Childcare (General Childcare Register) Regulations 2008 (as amended); [www.legislation.gov.uk/uksi/2008/975/contents/made](http://www.legislation.gov.uk/uksi/2008/975/contents/made).

- the impact of any non-compliance on children attending the setting and any other settings registered to the provider
- each aspect of possible non-compliance from the information available to us.

120. We must consider the provider's full history, including:

- all previous concerns raised with Ofsted about the provision
- the provider's inspection history
- any action taken by the provider or by Ofsted to remedy past weaknesses.

121. We consider whether it is necessary for more than one inspector to carry out a visit by taking into account:

- whether the information suggests there is a risk of harm to children
- the nature and severity of non-compliance
- the location of the premises and the potential personal risks to staff and children
- the size of the premises and number of staff who work there
- whether there is a history of concerns about the provider
- whether there is a history of complaints made by the registered person against us
- any other information known about the registered person or provision.

122. When we are undertaking regulatory activity in relation to a provider who has more than one setting within their registration, we consider whether the outcomes from the regulatory activity should extend to the other settings run by the registered provider.

### *Planning the regulatory visit*

123. The inspector should use the agreed action plan to prepare for the regulatory visit to ensure that all relevant areas are covered. The plan must include:

- the reasons for the regulatory visit and how it will proceed, including whether it will be announced or unannounced
- a review of the provider's history, including an overview of all settings under the registration
- lines of enquiry that the inspector will follow and how they will pursue them.

124. In planning the lines of enquiry, the following should be taken into consideration when appropriate:

- what details of the concern to share with the relevant parties (see below); the inspector records any decisions not to share information on the concerns with all or certain individuals
- whether to contact or interview the person who reported the non-compliance to get more information about the concern and if so, where and how the interview will be carried out
- whether to observe children to gain an understanding of what it is like for a child attending the setting
- whether to contact other persons identified in the initial information, such as other parents, carers or children
- which documents to see during the visit, such as the setting's attendance register to see the names of particular children against specific dates
- whether there may be a need to seize documents or evidence or take photographs
- whether to undertake direct observations of, or interviews with, staff at the setting and, if so, which staff to observe and/or interview and whether the interviews need to take place in private (we must ensure that we observe practice and interview staff who are the subject of any allegation, while being mindful of the work of other agencies, such as a criminal investigation by the police)
- the sequence of events, such as speaking with witnesses, visiting the setting, interviewing staff and interviewing the provider
- what action may be needed if the provider is non-compliant, including if the regulatory visit may identify concerns about the welfare of children
- whether it is appropriate to take a witness statement
- what else to see during the visit, the reasons for this and the important points to look for
- what to do if the provider refuses us entry into the setting – if a person persists in obstructing an inspector from entering premises, the inspector may seek assistance from the police to gain entry; in some cases, we may apply to a court for a warrant for a constable to assist<sup>19</sup>
- whether it is likely that the regulatory activity will lead to a prosecution for an offence – if so, we work in accordance with the Police and Criminal Evidence Act 1984 revised codes of practice.

125. When two inspectors visit, they decide and record in the action plan:

- who will take the lead

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<sup>19</sup> We do not have powers of entry under section 77 of the Childcare Act 2006 for those registered only on the voluntary part of the Childcare Register.

- whether they will work together during the visit or concentrate on separate areas of concern
  - who will make notes
  - who will do any interviews and observations.
126. The inspector should plan lines of questioning so that she or he can gain information relevant evidence that allows us to decide whether a registered person is meeting the statutory requirements, and whether they have committed an offence under the Childcare Act 2006 or the relevant regulations – see the section on 'Prosecutions'.
127. The lines of questioning act as a guide and prompt during the visit. The inspector must use his or her professional judgement during the regulatory visit to include any additional areas that come to light or to amend the lines of questioning based on the responses given. The inspector must therefore be alert to any other issues that come up during their questioning and must ensure that they pursue these thoroughly as well as following the planned lines of questioning.

### **Carrying out the visit**

#### *Announced and unannounced visits*

128. We carry out an:
- announced visit when it is important for the provider to be 'on site' and in a position to respond to our enquiries
  - unannounced visit when the information we receive relates to poor practice of staff in the setting and in particular, how they are meeting the requirements of the early years foundation stage in delivering learning and care for children.
129. When arriving for all regulatory visits the inspector must ask to see the registered person, or in their absence the manager, introduce themselves and confirm their identity by showing the inspector identification and authorisation document.

#### *Providing information about the concern*

130. The inspector must make it clear at the visit that our role is to consider and decide whether or not the registered person is meeting statutory requirements and remains suitable for registration.
131. If a registered person or other staff employed at the setting refuses to cooperate, the inspector must explain our powers under the Childcare Act 2006 to enter premises. If the inspector believes the registered person is obstructing them, they should consider whether it is appropriate to issue the person with a caution under the Police and Criminal Evidence Act 1984. In these cases, the

inspector must record sufficient evidence relating to the offence – see the section on 'Prosecutions'.

132. Inspectors may not always be able to give full details of why we wish to see the provider, for example if we intend to suspend a childminder or childcare provider due to child protection concerns and another agency is carrying out an investigation. However, the inspector must give the registered person enough information for them to realise that we are visiting about a serious matter.
133. The inspector must ask the manager to contact the registered person if they are not present at the visit, but should not delay the regulatory visit. The inspector must tell the registered person (or their nominated individual) about any information we receive that suggests their non-compliance and that may require them or us to take appropriate steps to eliminate risk and safeguard children.
134. When appropriate, inspectors should share all the information about the concern with the registered person so that they have sufficient information to be able to address the concern. In addition, inspectors must maintain confidentiality and protect sensitive information. Inspectors must not confirm the identity of the person who has given us the information, even if asked to do so by the provider, and should take all reasonable steps to protect their identity during the regulatory visit.
135. If the concern is about the manager at the setting, we only communicate with the registered person through their nominated individual. If the concern is about the nominated individual or another person who is part of the registered organisation providing the childcare, we communicate with someone else who represents that organisation, such as another director.
136. Other agencies, such as the police or local authority, may request that we do not share certain information with an individual under investigation. In these circumstances, we consider this request in conjunction with our regulatory duties as far as we can, being mindful that investigations from other agencies may overlap. In cases that involve other investigating agencies, we decide, when possible with the other agency, what information we can disclose and when we can share that information with the registered person.
137. The inspector must consider any aspect of the provider's previous history which may have a bearing on the current regulatory activity. This is the case even if we or the provider have taken action in the past that has remedied the weakness. The inspector must take into account what the provider has done in relation to previous concerns when deciding what action to take.
138. Inspectors should be sensitive to any distress experienced by the provider and may withdraw for a short period of time, if appropriate and necessary. However, the inspector should make sure the distress does not divert them from collecting the necessary evidence.

139. If during a regulatory visit the inspector considers that the provider may no longer be operating at the grade awarded at the previous inspection, the inspector must consider carrying out an inspection at the earliest opportunity.

#### *Recording evidence*

140. The inspector must make notes throughout the visit in the agreed format, recording all evidence that demonstrates that either the provider is meeting requirements or is failing to meet them. The evidence must:
- be sufficient in quality and range to describe the regulatory activity undertaken, including planning, methodology and findings about the specific requirements
  - support any enforcement outcomes
  - include confirmation that there is a record of a valid Disclosure and Barring Service (DBS) check for every person who lives or works in the setting (group settings)
  - provide a record that underpins and secures the judgements.
141. When the inspector judges that they need photographic evidence or to seize physical evidence, they must record the details in their inspection evidence.
142. The inspector must ensure that they record in their evidence:
- the responses to any lines of enquiry identified in the action plan
  - any additional lines of enquiry that have come up during the regulatory activity
  - the outcome of any interviews or observations with those who are at the centre of an allegation
  - the names of any members of staff or others interviewed as part of the regulatory visit, so that there is no doubt about which members of staff are referred to in the evidence
  - that they have reviewed and thoroughly considered all relevant prior information, and whether or not those previous incidents have a bearing on the provider's continuing suitability
  - details about any discussions with the provider relating to previous weaknesses.

#### *Using photographs as evidence*

143. If the inspector wishes to take photographs during a regulatory visit, they must show a documentary chain of evidence from the time they take the photographs to when we offer them as evidence. They must record this in their evidence.



144. In any court or tribunal hearing, we must provide copies of every photograph taken rather than just those on which we intend to rely on in evidence. We must also disclose any material that in our opinion might undermine our own case. Alternatively, we must provide a written statement that there is no such material.<sup>20</sup>

### *Seizing evidence*

145. The inspector may wish to seize evidence during a regulatory visit to support enforcement action. We can seize evidence if, for example:

- a registered person commits an offence
- we are using other powers such as cancellation of a registration
- we are serving a statutory notice or enforcement notice.

146. An inspector must not seize an item:

- to examine it later
- to see if it does provide evidence
- as part of a visit when we suspect non-compliance but have no evidence to support any suspicions.

147. If a provider is keeping duplicate records, then the inspector may seize both sets even if one does not show a failure to comply. This may show that a provider was aware of the breach and seizing both sets can help in removing 'reasonable excuse' as a defence.

148. The inspector may seize any item if it is evidence that a person present may have committed an offence. The inspector must tell that person what the offence is and our grounds for believing they have committed the offence. If the inspector is obstructed they may give a caution under the Police and Criminal Evidence Act 1984 – see the section on 'Prosecutions'.

149. If we seize any item as evidence, we must be able to prove to a court or the tribunal that the item we produce is the actual item.

### *Providing feedback*

150. The inspector must summarise the information at appropriate times during the regulatory visit and share this with the provider/manager. The inspector should consider other matters as they emerge, pursue other lines of questioning and ensure that they have fully understood and noted the responses correctly.

151. When giving feedback to the provider, the inspector should:

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<sup>20</sup> Criminal Procedure and Investigations Act 1996; [www.legislation.gov.uk/ukpga/1996/25/contents](http://www.legislation.gov.uk/ukpga/1996/25/contents).

- use plain English
- support the judgements with clear explanations and illustrations
- make sure that judgements comply with the requirements and associated guidance, legislation and our handbooks
- explain the options for further action, non-statutory and statutory, if there is evidence that the provider is failing or has failed to meet statutory requirements – or the conditions of their registration – which may result in enforcement action.

152. The inspector must:

- be clear about whether the provider is complying with statutory requirements, including any conditions of registration
- give a clear basis for any action by identifying issues that are central to improvement
- ensure that what they say to the provider is fully consistent with the evidence
- be proportionate and fair in line with our enforcement policy – see the section on 'The legal basis of our work and our options for ensuring compliance'.

153. When we need to take statutory action, the inspector must state that the evidence will be reviewed with colleagues before making a final decision on the next steps. The inspector should give registered providers an estimated timescale in which they will receive a decision or update.

### **After the visit**

154. We must record all the information necessary to undertake our regulatory work on our database. If we need to refer to children on our database, we may use their full name(s) if it is necessary to secure the evidence or when it relates to important safeguarding concerns. We should not record names in fields that are widely accessible to people, such as the contact journal. We can record children's names in more restricted fields, such as risk assessment and case input forms.

155. We record:

- the outcome of the regulatory visit, including any action that we or the provider has taken or will take, and in the case of a person registered on the Childcare Register whether she or he is complying with the Childcare Register regulations
- any evidence of non-compliance
- any action we are taking in response to any non-compliance.

156. The inspector must:

- complete any electronic notes as soon as possible after the visit
- normally, submit their evidence within three working days (exceptionally, when this is not possible, for example because of illness, the inspector must record in the database the reasons for the delay)
- arrange to store securely any evidence, including photographic and seized evidence in line with guidance – see The Police and Criminal Evidence Act 1984 in the section on 'Prosecutions'
- decide on the next steps to take, through consultation with their manager if appropriate or necessary
- consider whether we should do an inspection when the regulatory activity is finished and if so, when that inspection should take place
- complete an outcome summary in cases where the provider was found not to be complying and we or the provider needed to take action to put the matter right (further guidance on how we write outcome summaries can be found in '[Complaint and compliance action summaries: guidance for inspectors](#)').

### **Completing and closing the case**

157. We mark the regulatory activity as complete within five working days of reaching a decision on the outcomes and initiating first steps, such as issuing a notice of intention to cancel registration or a welfare requirements notice. We always complete a case outcome in our database when we close a case.
158. On some occasions, we may be able to close the case at the same time as we mark the regulatory activity as complete. On other occasions, we will need to keep the case open due to a dependent activity, for example when there are appeal rights. When we need to keep the case open for matters outside our control, we close the case within three working days of the conclusion of the dependent activity. For example, we close the case within three working days of receiving the tribunal's written decision on the case, or within three working days of the provider completing actions in a welfare requirements notice. When, exceptionally, this is not possible, for example because of illness, we record the reasons for this.

### **Writing an outcome summary**

159. We write an outcome summary for providers on the Early Years Register when we or the provider need to take action outside of inspection. This includes when a provider has notified us of a breach of requirements. Any regulatory action taken during an inspection will be covered in the inspection report and does not need a separate outcome summary. We publish outcome summaries on the provider's page on our website.
160. The outcome summary will focus on the breaches found and details of the action taken, rather than the concern that prompted the action.

161. The table below lists events and situations when we will write and publish an outcome summary.

Event or action type	Situation when we publish
Regulatory visit that identifies a breach in requirements	When we have taken regulatory action or we set any action for the provider. This includes when the provider has already taken the action to address the breach before we make the visit.
Issuing a welfare requirements notice	When it is not issued during an inspection.
If any actions have been set	When they have not been set as part of an inspection. Also, when the action applies to more than one setting, we will write a separate summary for each setting.
Taking steps to cancel a provider	We indicate we have taken steps to cancel but we refer to the provider's objection and appeal rights. We update the outcome summary after the outcome of the objection and/or appeal.
Suspension of a setting or registration when we have also taken other regulatory action	We do not write an outcome summary when the provider has been suspended and at that point have taken no other action. This is because we tell parents using the setting that we have suspended the setting/registration. When we have taken other regulatory action alongside suspension, we note the suspension in the outcome summary we write for the other regulatory action.
Issuing a caution or a final warning letter	The outcome summary will note that we have issued a caution or final warning letter.
Prosecution	If the prosecution is successful, we will produce an outcome summary. If we had already published an outcome summary in respect of other regulatory action, we will update it to reflect the prosecution. If the prosecution is unsuccessful, we will not produce an outcome summary or refer to it in a summary about other regulatory activity.
The death of a child	We will refer to the death of a child (without naming them) in the outcome summary unless the parents of the deceased child indicate they do not want

Event or action type	Situation when we publish
	us to refer to it.
We find a different weakness when carrying out regulatory activity than the information that prompted that activity	The focus will be on the breach found or the action set rather than the information received.
We take enforcement action but this is subject to objection and/or appeal	The outcome summary will cover the regulatory action taken and make clear that the provider has rights to object and/ or appeal, and whether the provider has made an objection or appeal. We will update the summary once we know the outcome of the objection or appeal.
When a provider has made a 'notification' about a breach in regulations	We will publish an outcome summary when we set any actions for the provider or the provider had already taken action because their policy, procedures or practice were not effective. This includes cases when we are satisfied that the provider has dealt with the breach through the action they took.
When we carry out a compliance visit following actions set during inspection	We will publish an outcome summary giving an update on whether or not the actions have been met.

162. We will not publish an outcome summary when:

- we carry out an inspection, including a priority inspection, because the inspection report will cover any breaches that we find
- we carry out an inspection at the end of our regulatory activity, because the inspection report will cover any breaches that we find
- we reinspect a provider previously judged as inadequate or requires improvement, because the inspection report will cover any new or existing breaches we find
- we suspend a provider's registration because suspension is not an enforcement action and we use other ways to let parents and prospective parents know about the suspension; an outcome summary may have details of a suspension when other enforcement action has also been taken
- the provider is only on the Childcare Register. Any concerns in such cases are always followed up through an inspection as part of the 10% sample. If we find that the provider is not meeting requirements, we will include this in the published inspection letter.

## Complaints about the publication of outcome summaries

163. If a provider makes a complaint or raises a concern about the publication of the outcome summary, or the details included in the outcome summary, we will follow our normal complaints procedure.<sup>21</sup> In line with that policy, we will not delay publishing the outcome summary or remove the outcome summary from the website unless there are exceptional circumstances. This is because it is important for parents and carers to have up-to-date information. If the outcome changes following the regulatory activity we take, we will amend and republish the outcome summary. We keep outcome summaries published on our website for five years.

## Decision-making

164. Following an inspection or regulatory activity, we make a decision in line with the table below, using the appropriate forum.

Action	Decision-maker	Forum
Actions following regulatory activity	Regulatory Inspector	N/A – inspector’s decision
Welfare requirements notice	Inspector	Ofsted inspector to discuss with the duty desk in the region. Regulatory Inspector to discuss with Senior Officer (if necessary)
Registration – no response to request for further information (case closed)	Regulatory Professional	N/A – no notice issued – application closed as incomplete
Notice to refuse registration when an Ofsted Inspector makes a recommendation to refuse	Regulatory Professional	Discussion with inspector and/or senior officer (may hold a case discussion)
Notice to refuse approval of additional or different premises when an Ofsted Inspector makes a recommendation to refuse	Regulatory Professional	Discussion with inspector and/or senior officer (may hold a case discussion)
Notice to refuse registration when a Regulatory Inspector makes a decision to refuse	Regulatory Inspector	N/A – inspector’s decision (may hold a case discussion)

<sup>21</sup> ‘Complaints about Ofsted’; <https://www.gov.uk/government/publications/complaints-about-ofsted>

Action	Decision-maker	Forum
Notice to refuse approval of additional or different premises when a Regulatory Inspector makes a decision to refuse	Regulatory Inspector	N/A – inspector’s decision (may hold a case discussion)
Approval of registration when an Ofsted Inspector recommended refusal but the Regulatory Professional disagrees	Senior Officer	Discussion with senior officer in the region (may hold a case discussion)
Notice to vary/refuse to vary/impose condition of registration	Senior Officer	Case discussion
Warning letters – issued after an interview under the Police and Criminal Evidence Act 1984	Senior Officer	Case discussion
Enforcement notice – unregistered childminding (no other concerns)	Regulatory Professional	N/A
Enforcement notice – unregistered childminding (other concerns)	Regulatory Inspector	N/A – inspector’s decision
Suspension of registration generally or in relation to particular premises	Senior Officer	Case discussion
Notice to cancel registration of a provider in relation to administrative matters <sup>22</sup> : <ul style="list-style-type: none"> <li>- no children on roll (childminding only)</li> <li>- failure to comply with request for new or additional suitability checks</li> </ul>	Senior Regulatory Professional	Senior officer to be consulted on decisions to cancel existing day care
Notice to cancel registration of a provider – all other circumstances	Senior Officer	Case discussion

<sup>22</sup> The fees team handles cancellation for non-payment.

Action	Decision-maker	Forum
Surveillance	Deputy Director, Early Years	Support for Deputy Director can be provided by any officer at Senior Officer level or above who has completed training in surveillance authorisation
Prosecution	Senior Officer	Case discussion
Offer a simple caution following an interview under the Police and Criminal Evidence Act 1984	Senior Officer	Case discussion
Asking a constable to assist in exercise of power of entry	Senior Officer	Case discussion
Emergency action application to Justice of the Peace	Senior Officer	Case discussion
Waive disqualification	Senior Officer or Senior Regulatory Professional	Waiver process
Objection against cancellation for: <ul style="list-style-type: none"> <li>- non-payment of fees</li> <li>- no children on roll (childminding only)</li> <li>- failure to comply with request for new or additional suitability checks</li> </ul>	Senior Regulatory Professional	Objection process – Senior Officer to be consulted on objections in relation to existing day care
Objections – all other cases	Senior Officer	Objection process
Appeals – all cases	Senior Officer	Appeals process
Referral to Disclosure and Barring Service	Senior Officer	Case discussion

### Case discussions

165. Case discussions are an important part of our decision-making process. They help us to ensure that we have taken into account all relevant information, allow us to consider a range of options and alternatives for enforcement action, and act as a written record of how we reached our decision, including all factors that we have taken into account. We review case discussions in line with the quality assurance standards, so it is essential that we ensure that we follow the guidance in this section when carrying out and recording case discussions.

166. The purpose of a case discussion is to:



- review the consistency in approach to taking statutory enforcement action
- explore whether or not we have considered all other options before making a decision
- review historic information relating to alleged or actual non-compliance
- test that the evidence is sufficient and supports the proposed action
- decide whether we need to obtain further evidence.

167. There may be circumstances when a case discussion is not prescribed in the decision-making table, but the decision-maker feels will be helpful to the overall case to discuss the matter with their senior. The requirement to carry out case discussions in the circumstances set out in the decision-making table should not preclude regulatory inspectors or senior officers from holding a case discussion in other cases if they judge this might be appropriate. Examples of when a case discussion may be held include when:

- we are following the 'inadequate with enforcement' process (see below), but a new concern arises
- we have issued a welfare requirement notices but have found, at either a compliance visit or a subsequent reinspection, that the provider is not showing signs of being able to sustain any improvements arising from the welfare requirements notices
- we need an opportunity to consider the provider's complete history to reach the right decision on enforcement action, such as if a provider has persistently dipped in and out of compliance with requirements.

168. Each case discussion must include a decision-maker in line with the table above. For each case discussion we carry out, we must complete all sections of the case-review proforma. The proforma must have attached to it any new information received since the last case discussion or since we began looking into the issue, whichever is later. The proforma must be signed off by the senior officer. We record the decision(s) made at a case discussion on our database. We include the reasons for our decision and the reasons why other options were not appropriate.

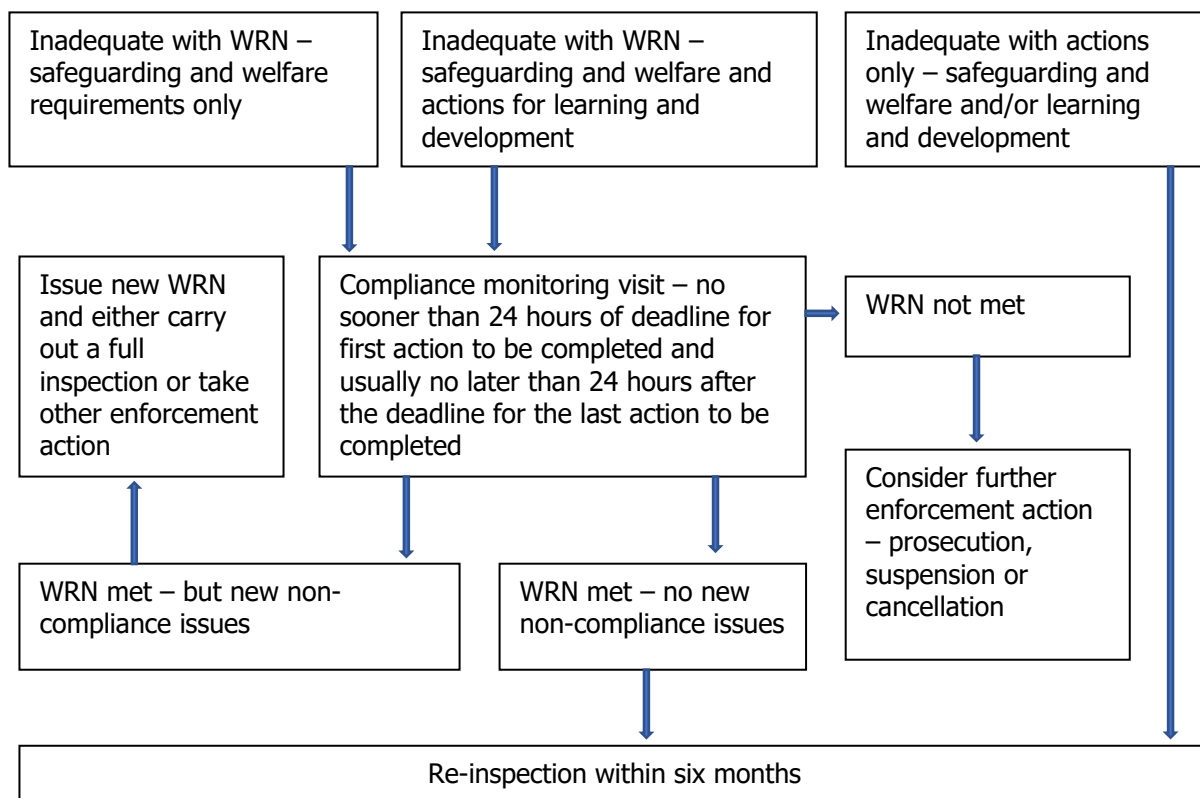
169. In a case discussion we consider:

- history, including all compliance information from previous cases, trends and information from other provision registered to the provider
- all new information gained during the course of the regulatory activity, including any information from other agencies that we have received since the last case review, such as minutes of strategy meetings or concerns about persistent weaknesses from local authority early years advisers
- key issues and concerns prior to the case discussion
- options available and why alternative options are inappropriate

- risks and impact of the decision and any additional risks that particular decision may have for the provider, children in the care of the provider and the wider community
- the actual decision and reasons why it is appropriate
- the outcome and necessary actions, including who is responsible and timescales
- implications, such as possible contact from parents or carers, the level of any potential media interest, consequences for other provision registered to the provider, as well as any follow up work required
- arranging a further case discussion, if required.

### Providers judged as inadequate at inspection

170. If a provider is judged as inadequate at inspection, we issue them with a copy of our factsheet 'The next steps: when a provider is judged inadequate or is not complying with requirements'.<sup>23</sup> We may or may not take enforcement action against the provider. The chart below sets out how we deal with providers who are judged inadequate.



<sup>23</sup> 'The next steps: when a provider is judged inadequate or is not complying with requirements', Ofsted, August 2015; [www.gov.uk/government/publications/childcare-the-next-steps-when-a-provider-is-judged-inadequate-or-is-not-complying-with-requirements](http://www.gov.uk/government/publications/childcare-the-next-steps-when-a-provider-is-judged-inadequate-or-is-not-complying-with-requirements).

## Part 3. Types of enforcement action

### Welfare requirements notices

171. We serve welfare requirements notices (WRNs) under regulation 10 of the Early Years Foundation Stage (Welfare Requirements) Regulations 2012.<sup>24</sup>
172. A WRN sets out the actions that a provider must take by a certain date to meet one or more requirements of the 'Statutory framework for the early years foundation stage'.<sup>25</sup>
173. A provider commits an offence if they do not take the action(s) set out in a WRN within the specified time. We can prosecute providers who do not take the action required.
174. We do not have any power to issue a WRN to a provider registered on either the compulsory or voluntary part of the Childcare Register. A WRN cannot be issued in relation to breaches of the learning and development requirements in the EYFS. If a provider fails to meet learning and development requirements, inspectors should set actions for them to complete. If the provider has failed to comply with the learning and development actions, we consider taking steps to cancel their registration.
175. If we decide to issue a WRN for breaches of the safeguarding and welfare requirements in EYFS, we set out all the breaches of requirement in the WRN. We do not issue separate actions in relation to the safeguarding and welfare requirements.

### When to serve a welfare requirements notice

176. We serve WRNs when we have evidence of a breach or breaches of the 'Statutory framework for the early years foundation stage'.
177. We do not need to serve a WRN prior to bringing criminal proceedings for other offences.

### Decision to serve a welfare requirements notice

178. If the inspector is considering recommending a WRN, the inspector must tell the provider that this is an option open to us and that it is an offence not to comply with the requirements of a statutory notice.

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<sup>24</sup> Early Years Foundation Stage (Welfare Requirements) Regulations 2012; [www.legislation.gov.uk/uksi/2012/938/made](http://www.legislation.gov.uk/uksi/2012/938/made).

<sup>25</sup> 'Statutory framework for the Early Years Foundation Stage', Department for Education, 2017; [www.gov.uk/government/publications/early-years-foundation-stage-framework--2](http://www.gov.uk/government/publications/early-years-foundation-stage-framework--2).

179. The decision to serve a WRN must be based on documentary evidence that shows the failure to comply, including inspection or regulatory visit evidence, photographs and provider records – copies or originals.

180. We must record each failure to comply with the 'Statutory framework for the early years foundation stage' on our database together with the reasons for the decision to issue a WRN.

### How we record the matters set out in the WRN

181. How we record the matters set out in the WRN depends on whether we have issued the WRN at inspection or following a regulatory visit. It also depends on whether we have also raised actions for learning and development. The table below sets out how we record the matters in a WRN in each of these circumstances.

Inspection: Inadequate with WRN – safeguarding and welfare requirements only	Inspection: Inadequate with WRN – safeguarding and welfare and actions for learning and development	Inspection: Inadequate with actions only – safeguarding and welfare and/or learning and development	Regulatory visit: Any actions and/or WRN
<p>Inspection report – records in 'enforcement' section that a WRN has been issued</p> <p>WRN matters included in inspection report with dates for compliance</p> <p>Separate WRN issued to provider recording the WRN matters and dates for compliance</p> <p>Inspection report covering letter – refers to WRN</p>	<p>Inspection report records in 'enforcement' section that a WRN has been issued</p> <p>WRN matters actions included in inspection report with dates for compliance</p> <p>Actions recorded in the 'Actions' sections of the inspection report with dates for completion</p> <p>Separate WRN issued to provider</p> <p>No separate actions letter and no reply slip</p> <p>Inspection report covering letter –</p>	<p>Inspection report includes 'Actions' set in the 'Actions' section of the report with dates for completion</p> <p>No separate actions letter and no reply slip</p> <p>Inspection report covering letter – refers to actions included in report</p>	<p>Actions recorded in separate actions letter with dates for completion</p> <p>Actions letter includes reply slip (to help RI/SO gauge when/how to follow up)</p> <p>Separate WRN issued to provider recording the WRN matters and dates for compliance</p>

	refers to WRN and to actions included in report		
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### Drafting a welfare requirements notice

182. We issue one notice, if possible, when the timescales for completing each action are the same. We issue separate notices if the dates for completing the actions are different.
183. When drafting a notice there are specific legal requirements that we include. These are, as a minimum:
- which legal requirement or requirements the provider is not complying with
  - how the provider is failing, or has failed, to comply with the legal welfare requirements
  - what actions the provider need to take to comply with the legal welfare requirements, or to prevent the re-occurrence of the failure
  - the period of time in which the provider must complete each action.
184. Inspectors must record all the evidence for the breaches of WRN they have identified in their evidence. The inspector should summarise the main points of evidence in the WRN and may include examples to illustrate the breaches that have occurred. However, the inspector does not need to record their verbatim evidence in the WRN. The inspector should include reference to previous notices to improve issued, so that we record evidence of any previous failures to meet requirements.
185. In setting the actions that the provider must take, inspectors must include a precise date by which the provider must take the action and allow a minimum period of 24 hours for a provider to take urgent action.

### Serving a welfare requirements notice

186. We serve all legal notices to the registered person at the address we have recorded in their registration. If an organisation is registered, we serve the notice to the organisation at the registered person's address.
187. A notice is effectively served on the day that the registered person receives it. If the notice is returned to us then we must try to locate the provider and serve the notice to them. As long as we have made every effort to serve the notice to the correct address we treat the notice as effectively served. In cases when we have evidence that we have served the notice correctly, the court will presume that service of the notice took place.

### Follow-up compliance visits and inspections for welfare requirements notices

188. Providers judged as inadequate, but who are considered to be able to meet the requirements without the support of external agencies, will usually have actions

they must take within a prescribed timescale. Such providers will get a re-inspection within six months of the inadequate judgement. They will not be monitored in advance of this.

189. If provision is judged too poor to improve without further intervention, we will issue the provider with a WRN, because the provision fails to meet the safeguarding and welfare requirements of the EYFS.
190. In either case the provider may also be issued with actions for learning and development because the provision fails to meet the learning and development requirements of the EYFS.
191. If a provider is judged inadequate and we have issued a WRN, we may visit to check compliance with the WRN. If we decide to visit, we should aim to do so at an appropriate time, taking into account the dates when the actions are to be completed. Alternatively, we may decide to proceed straight to the reinspection, again depending on the dates of the actions and the seriousness of the matters covered in the WRN.
192. Whether or not we carry out a separate compliance visit following a WRN at inspection, we must always re-inspect the provider within six months of the inspection at which it was judged inadequate.
193. If we have issued a WRN to a provider following a regulatory visit, we may:
  - carry out a visit to the provider to check compliance with the notice
  - consider a [telephone call to the provider to check compliance](#) with the WRN dependant on the type and seriousness of the matter
  - schedule an inspection to check compliance of WRN and to ensure that the provider is meeting all requirements.
194. If the concern or notification does not pose a risk of harm to a child, we will take it into account during the compliance or re-inspection.
  - If the concern or notification does pose a risk to a child then Ofsted will either carry out an urgent regulatory visit or carry out a priority inspection.
  - If we are looking into new concerns, we will absorb them into our work on the new case. The outcomes of the regulatory visit or priority inspection will determine what further steps Ofsted will need to take.
195. If the WRN contains actions with completion dates that have not yet been reached, the inspector will review and record evidence about the progress the provider is making towards those other actions. Similarly, if a provider has also been issued with actions for learning and development, and the date for the completion of these actions has not been met, the inspector should record in their evidence what progress the provider has made towards completing this action.

196. If the inspector finds that a provider has fully met actions set out in the welfare requirements notice, including those where the date for completion has not yet been reached, they will update the relevant published outcome summary. The update will indicate that all the actions in the WRN have been met and the provider is now fully complying with the safeguarding and welfare requirements of the early years foundation stage.
197. If the inspector finds that a provider has met the actions in the welfare requirements that are due for completion, but still has further progress to make in relation to those that had a longer timescale, they should update the published outcome summary to reflect this. The updated summary will indicate the actions that have been met, but will say that other actions remain outstanding as they are not yet due for completion. They should record in their evidence the steps already taken to meet the actions that are not yet due so that the inspector who carries out the next inspection can take these into account when deciding if the provider is now fully meeting all requirements.
198. If an inspector finds that a provider has failed to meet the actions set in the welfare requirements notice, we will take the appropriate enforcement action in line with our enforcement thresholds and decision-making provisions. This includes, when necessary, holding a case discussion.

## Suspension of registration

### Our powers to suspend a registration

199. We suspend registration generally or only in relation to particular premises when we **reasonably believe** that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm.<sup>26</sup>
200. The 'reasonable belief' test means that a reasonable person, judging a situation in the light of the law and the information concerned, would believe that a child might be at risk. We can only suspend registration when we are satisfied that it meets this test.
201. We suspend a provider's registration under section 69 of the Childcare Act 2006<sup>27</sup> and/or in the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008.<sup>28</sup>

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<sup>26</sup> The term 'harm' is defined in the Children Act 1989, section 31 ([www.legislation.gov.uk/ukpga/1989/41/section/31](http://www.legislation.gov.uk/ukpga/1989/41/section/31)) and section 105 ([www.legislation.gov.uk/ukpga/1989/41/section/105](http://www.legislation.gov.uk/ukpga/1989/41/section/105)) – amended by the Adoption and Children Act 2002, section 120 ([www.legislation.gov.uk/ukpga/2002/38/section/120](http://www.legislation.gov.uk/ukpga/2002/38/section/120)) – as 'ill treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another'.

<sup>27</sup> Childcare Act 2006, section 69; [www.legislation.gov.uk/ukpga/2006/21/section/69](http://www.legislation.gov.uk/ukpga/2006/21/section/69).

202. We suspend to allow time for an assessment into the grounds that give rise to our belief that a child may be exposed to a risk of harm, or for any necessary steps to be taken to eliminate or reduce the risk of harm. In some cases, we may take steps to cancel a registration while it, or any particular premises within the registration, is suspended. When we have suspended registration in relation to particular premises, but we decide to cancel the registration, cancellation will apply to all premises within that registration. Providers registered on both the early years register and the childcare register.
203. If a provider is registered on the Early Years Register and the Childcare Register we consider whether to suspend registration, generally or only in relation to particular premises, across both registers, and both parts of the Childcare Register, and decide whether this is appropriate in each case. We must set out clearly the register(s) that the suspension relates to in the suspension notice. If a person is registered on both parts of the Childcare Register, we must make it clear whether the suspension relates to one or both parts.
204. In the case of childminders and childcare providers on domestic premises, who operate on non-domestic premises for up to 50% of their total time, we can suspend their registration in relation to the non-domestic premises or both premises. Under the 50% rule, we cannot suspend such providers from operating only on the domestic premises; any such suspension would apply to their non-domestic premises too. If we only suspend the registration in relation to their non-domestic premises, the childminder will still be able to continue to operate from their domestic premises.
205. If we suspend the registration of a person registered on the voluntary part of the Childcare Register, she or he can continue providing any childminding or childcare for which compulsory registration is not required. However, we still notify the parents or carers of the children who are cared for in the childcare provision (see below).

### **Considering when to suspend**

206. We should suspend registration when the threshold for suspension is met (see section on 'Thresholds for our enforcement action').
207. If we believe that children's welfare is safeguarded by taking alternative action, we may inspect and continue to monitor the setting to ensure that the registered person safeguards the children.

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<sup>28</sup> The Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 ([www.legislation.gov.uk/uksi/2008/976/part/4/made](http://www.legislation.gov.uk/uksi/2008/976/part/4/made)) are made under the Childcare Act 2006, section 69; [www.legislation.gov.uk/ukpga/2006/21/section/69](http://www.legislation.gov.uk/ukpga/2006/21/section/69).



208. We must **not** encourage providers to resign their registration instead of being suspended. Although we cannot legally prevent a provider from resigning their registration at any point before or during the suspension, we must ensure that we safeguard children. We must retain information on providers who resign their registration at the point of or during suspension.

### **Dealing with the suspension notice**

209. The senior officer who makes the decision to suspend must also decide how to serve the notice – that is, whether we serve the notice in person, by email subject to the registered person’s agreement, or send it by recorded delivery – and when to deliver it.

210. The inspector or other officer drafting the suspension notice will:

- draft a notice of suspension for the registered person to display on the relevant premises if required (see paragraphs 197–199 below)
- liaise with legal advisers when necessary, including sending the suspension notice to legal advisers for review, if appropriate, before we serve it on the registered person
- telephone the registered person to inform them of our decision and to explain how and when we will serve the notice of suspension – the registered person can continue to care for children until we have served the notice of suspension and we must make clear to them in the telephone call that they are not suspended until we have delivered the notice
- write to parents or carers of children who attend the setting to inform them about our decision to suspend the registered person’s registration – we obtain this information when we visit the setting
- keep the registered person informed of the progress of the regulatory activity throughout the period of suspension, either by written correspondence or telephone (or both), and record these contacts on our database
- maintain regular telephone contact with any other agency that is investigating the allegations or actions that led to the suspension
- write to parents or carers to inform them of the progress of our regulatory activity
- write to other agencies who are carrying out or thinking about carrying out an investigation to tell them when we will commence our regulatory activity
- notify the local family information service about the suspension of registration and when we lift the suspension.

211. Once we have made a decision to suspend the registration generally or only in relation to particular premises, we do not change this without a further case discussion.

212. The notice must include as much information as possible about why we believe the continued provision of childcare exposes children to a risk of harm, without breaching any confidentiality or jeopardising any other organisation's investigations. The registered person should understand what action we have taken and why. Information may include the nature and subject of the regulatory activity, for example:

'The regulatory activity concerns your 20-year-old son, Joe Bloggs, whose actions may have exposed a child to a risk of harm. It is alleged that on 3 June 2011, Joe Bloggs caused an injury to a minded child that you look after while at your house/or at [insert details of non-domestic premises]. The notice of suspension also explains the process we follow during our regulatory activity to safeguard the welfare of a child or children in general.'

### **Recording the decision**

213. Inspectors must record all decisions to suspend registration on our database, including a brief description of why we decided to suspend the registration, any alternative action we considered and why that alternative action was not an appropriate or proportionate response.

### **Other agency investigations**

214. If we suspend registration because of child protection concerns, following evidence received at inter-agency strategy discussions, we may suspend registration to eliminate any risk of harm to children while the police or local authority investigates the child protection allegations.
215. When we are made aware of concerns but no inter-agency strategy meeting is planned, we seek as much information as possible by telephone from the relevant child protection agencies to assist in our decision-making. Our role is to assess a provider's compliance with the Childcare Act 2006 and associated regulations, including the requirements in the 'Statutory framework for the early years foundation stage'.<sup>29</sup>
216. Although a police or local authority investigation may be ongoing, we will still carry out our own regulatory activity, although we take care not to compromise any other agency's investigation.
217. Inspectors must commence regulatory activity promptly and should write to any other agency carrying out or thinking about carrying out an investigation to inform them of our intention to carry out our own regulatory activity and when this will begin. Any request by another agency for us to delay our regulatory activity must be considered against the risks to children of our not taking our

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<sup>29</sup> 'Statutory framework for the early years foundation stage', Department for Education, 2014; [www.gov.uk/government/publications/early-years-foundation-stage-framework--2](http://www.gov.uk/government/publications/early-years-foundation-stage-framework--2).

own action promptly. We do not delay our activity just because another agency has asked us to. We have our own regulatory powers and we must apply these in line with our responsibilities to safeguard children. We should keep in regular contact with any other investigating agency about the progress of its investigation and review our decision on a regular basis. We should ensure that we do not jeopardise any child protection investigation by another agency.

218. If we suspend registration because the risk to children involves child protection issues and other agencies carry out an investigation, we cannot always tell registered providers the full reasons for the suspension of their registration. This is because it may jeopardise other agencies' investigations. We agree with the lead investigation agency, wherever relevant and possible, what information we can share with the registered person in the notice of suspension.

### **Displaying a suspension notice**

219. The law requires providers registered on:

- the Childcare Register to display (or show to parents or carers, in the case of home childcare providers) a notice of suspension<sup>30,31</sup>
- both the Early Years Register and Childcare Register to display a notice of suspension if we suspend their registration on the Childcare Register, regardless of whether we also suspend their registration on the Early Years Register.

220. Providers who are only on the Early Years Register are not legally required to display a notice of suspension.

221. When the law requires a registered person to display a notice of suspension, we must issue a display notice at the same time as the notice of suspension. We do this to avoid contravening the Data Protection Act 2018 and the General Data Protection Regulations (GDPR), as our notices of suspension can contain personal or sensitive information. The display notice provides limited information, including:

- the reason why we are suspending registration
- whether the suspension applies generally or only in relation to particular premises the period of suspension
- that it is an offence to provide childcare that requires registration, generally or only in relation to particular premises, while suspended

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<sup>30</sup> Paragraph 32(2) of schedule 6 of The Childcare (General Childcare Register) Regulations 2008 provides that home childcarers must show the notice of suspension to the parents or carers of each child for whom care is provided.

<sup>31</sup> Paragraph 29 of schedule 3 and paragraph 32 of schedule 6 of The Childcare (General Childcare Register) Regulations 2008.

- our contact details for further information.

### **Reviewing the decision and progress**

222. When we suspend registration, the provider may lose their livelihood for the period of the suspension (unless the suspension only relates to some of their premises). We must therefore review suspension on an ongoing basis and before the period of suspension ends – see the section on 'Decision-making'. We must not allow suspension of registration to drift, nor must we continually extend it without considering whether it is appropriate to do so.
223. We can only initially suspend registration for a period of six weeks beginning with the date specified in the notice. If necessary, we can impose a further six-week period of suspension on the same grounds. In exceptional circumstances we can suspend beyond the two six-week periods (see below).
224. We hold a case discussion – see the section on 'Decision-making' – as soon as possible whenever we receive further information that affects the initial assessment of the risk of harm. We consider:
- whether there continues to be a risk of harm to children
  - whether the grounds for the suspension still apply or if alternative reasons are identified
  - what other action, if any, is appropriate and proportionate – such as prosecution or cancellation of registration.
225. When we review suspension, we will try as far as possible to involve the same staff who were involved in the initial case discussion. If the decision is to continue the suspension, the decision-maker also decides who will serve the notice, when and how. We must record the decision and details on our database.
226. If, following the case discussion, we decide the registered person has failed to meet the prescribed requirements for registration and is therefore no longer suitable, we may begin to cancel the registration. The suspension may remain in place while we are taking action to cancel the registration if the threshold for suspension continues to be met. We may continue suspension if we continue to believe children are at risk of harm.
227. Sometimes we receive new information or evidence that leads us to believe that a child is exposed, or may be exposed, to a risk of harm, for different reasons than we based our original decision on and therefore our 'reasonable belief' is different. In these cases, we should arrange another case discussion to consider if the reasons for suspension are different from those stated in the original suspension notice.
228. If the first 'reasonable belief' comes to an end because the facts do not support it anymore, but a new 'reasonable belief' comes into play because of different

facts, this new information amounts to different circumstances. Therefore, we must issue a new suspension notice setting out the new reasons that we believe a child is, or may be, exposed to a risk of harm. The time period for suspension begins again – that is, at week one.

### **Extending suspension beyond 12 weeks**

229. The circumstances that allow us to extend the suspension beyond 12 weeks are set out in legislation. We can only consider extending a suspension beyond 12 weeks if:

- it has not been reasonably practicable (for reasons beyond our control) to complete our regulatory activity or carry out the steps within 12 weeks<sup>32</sup>
- we are satisfied that the grounds for continued suspension still exist.

230. We cannot base our decision to extend a suspension solely on the grounds that there is an ongoing police or local authority investigation.

231. We must continue to review the extended suspension at six-week intervals unless there are good reasons for not doing so; for example the date of a court hearing is set or known. We record on our database any consideration to seek a further period of suspension, and include in the record of the case discussion:

- the precise circumstances outside of our control that prevented the completion of the regulatory activity
- the decision – and who made it – about whether or not to continue suspension.

232. We write to the registered person to inform them of the outcome of a case discussion. We draft any new or revised suspension notice, providing clear and accurate information, and outline the reasons for the continued suspension. For example:

‘We have not concluded our regulatory activity because we are not yet at the stage where we can decide on an appropriate course of action. This is because we require further detailed information from another agency/medical adviser to enable us to make a decision.’

### **Lifting suspension**

233. We lift the suspension when we are satisfied that the grounds identified for suspending a registration, generally or only in relation to particular premises, no longer apply.<sup>33</sup> We inform the local authority when we lift suspension.

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<sup>32</sup> The Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008, regulation 10(3), [www.legislation.gov.uk/ukxi/2008/976/regulation/10/made](http://www.legislation.gov.uk/ukxi/2008/976/regulation/10/made).

234. If we are considering lifting the suspension we:

- evaluate our evidence and come to an informed decision on the risk to children
- set out the views and evidence of the other agencies and our consideration of these
- decide whether we need to consider the suitability of the provider
- consider whether to carry out an inspection when the suspension is lifted, so that we can assess the provider's practice once they are able to operate again.

235. If we have made reasonable efforts to contact other agencies who may be carrying out their own investigation for their views and evidence but they fail to provide a response, we proceed to make our decision on the evidence available to us. We cannot delay making our decision on whether to lift a suspension or not. We record the efforts we have made to obtain information from the other agencies.

### **Requests to lift suspension and receipt of new information**

236. Providers can inform us about any new information that indicates a change in their circumstances and request that we lift suspension. In these cases, we must consider the impact of the information and whether the suspension remains an appropriate step.

237. If we decide to lift the suspension, we inform the registered person in writing within 24 hours and will telephone the registered person in advance to inform them of our decision. The suspension is lifted from the time the registered person is notified of the revocation of the notice, even if this is by telephone in the first instance.

### **Appeals**

238. A registered person has the right of appeal to the tribunal against our decision to suspend their registration whether generally or only in relation to particular premises and if we continue the suspension at the end of the first six-week period.<sup>34</sup> However, the registered person does not have a right of appeal against a decision to refuse to lift a suspension. See the section on 'Appeals'.

239. The tribunal will take account of evidence provided by other agencies, such as the police and local authority, when making its judgement. We may request that other agencies attend the tribunal hearing as witnesses. In addition, the

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<sup>33</sup> The Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008, regulation 11; [www.legislation.gov.uk/uksi/2008/976/regulation/11/made](http://www.legislation.gov.uk/uksi/2008/976/regulation/11/made).

<sup>34</sup> The Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008, regulation 12, [www.legislation.gov.uk/uksi/2008/976/regulation/12/made](http://www.legislation.gov.uk/uksi/2008/976/regulation/12/made).

other agencies may submit a written statement. During our regulatory activity, and as far as possible at a multi-agency strategy discussion, we seek to gain written support from the other agencies that they agree to attend any subsequent tribunal hearing, in cases when a registered person appeals against our decision to suspend registration.

240. The Tribunal has a swifter process for appeals against suspension of registration with the tribunal under a memorandum of understanding.<sup>35</sup> In this process, the following timescales apply.

- The tribunal will send a copy of an appeal to Ofsted within 24 hours of receipt by the tribunal office.
- The tribunal will fix a hearing date on receipt of an appeal or, in any case, no later than 48 hours after receiving an appeal. The tribunal will give notice to the applicant and to Ofsted of the date of the hearing as soon as it is set.
- Ofsted must respond to an appeal within three working days of receiving a copy of it from the tribunal.
- The tribunal will aim to hear the appeal within 10 working days of receipt of Ofsted's response for an oral hearing and within five working days of Ofsted's response for a paper hearing.
- The tribunal will issue its decision within three working days of the conclusion of the hearing (or may give a decision orally on the day of the hearing).

241. The decision-maker responsible for the decision to suspend registration whether generally or only in relation to particular premises, will make a statement, identifying the reasons for making the decision, including the rationale against taking alternative courses of action. The decision-maker will almost certainly be required to attend any hearing. When we suspend a registration due to child protection concerns and are dependent on the outcome of other organisations' or other agencies' investigation, we include the following information in any statement:

- what information we are waiting for from the other organisation
- the relevance of the information from the other agencies and their importance in our decision-making
- why we are unable to make our decision before the completion of the other agencies' investigation

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<sup>35</sup> 'Memorandum of understanding between Ofsted and the First-tier Tribunal of the Health, Education and Social Care Chamber', Ofsted, 2011; [www.gov.uk/government/publications/memorandum-of-understanding-between-ofsted-and-hesc](http://www.gov.uk/government/publications/memorandum-of-understanding-between-ofsted-and-hesc).

- the reasons and potential impact the other agencies' investigation may have on our decision-making
- what action we may take because of the other agencies' investigation – the enforcement options open to us.

### **Compliance with a suspension notice**

242. It is an offence for a provider registered on the Early Years Register or compulsory part of the Childcare Register to fail to comply with a suspension notice. If the suspension notice relates only to particular premises, the registered person can continue to operate from other approved premises which are not suspended. However, we will take into consideration any continued provision of care when making a decision about that registered person's suitability to remain registered.
243. We may monitor a provider's compliance – usually by carrying out an unannounced visit to the suspended premises at least once within each six-week period of suspension. We will visit more frequently if we have reason to believe that a provider is still caring for children while suspended, whether generally or only in relation to particular premises. It is not an offence for a provider registered on the voluntary part of the Childcare Register to continue to provide care for children while suspended as registration is not compulsory. However, we may consider whether the reasons for the suspension warrant a review of that registered person's suitability to remain registered.
244. If an inspector carries out a monitoring visit and the registered person is operating in breach of the suspension notice, the inspector must caution the registered person registered on the Early Years Register or compulsory part of the Childcare Register and record any response in their evidence.
245. If a registered person whose registration is suspended generally or only in relation to particular premises cares for children during a period of suspension, we decide on a course of action, including whether:
- children are at risk of harm and, if so, the action we must take to reduce or eliminate that risk, including whether it is appropriate to cancel the registration, which would include all settings within the registration, and whether the threshold for emergency cancellation is met<sup>36</sup>
  - it is necessary to carry out a further visit to the setting or settings

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<sup>36</sup> Cancellation by emergency order to a magistrate is made under the Childcare Act 2006, section 72; [www.legislation.gov.uk/ukpga/2006/21/section/72](http://www.legislation.gov.uk/ukpga/2006/21/section/72).



- to caution the provider under the Police and Criminal Evidence Act 1984 if an offence is committed, and subsequently interview the person under this Act's code of practice<sup>37</sup>
- there is any other regulatory action we need to take.

## **Cancellation of registration**

246. There are two routes available to us to cancel a registered person's registration:

- issuing a notice (of intention/decision)
- making an application to a magistrate for an emergency order.

247. We do not take action to cancel a registered person's registration unless we have clear and compelling evidence that:

- it is the only option available to us
- the registered person is no longer suitable for registration because they cannot or will not meet the requirements for registration.

248. We always hold a case discussion to consider the case for cancellation of registration. Registered providers may object to a notice of intention to cancel their registration (see the section on 'Objections'.) They can appeal against a decision to cancel registration to the tribunal, whichever route we use to cancel their registration.

249. The tribunal will assess whether the step is proportionate and appropriate, because we have considered and tried other methods before taking steps to cancel registration or because the concerns are so significant that cancellation is appropriate to safeguard children.

250. This section of the handbook does not cover cancellation of registration for:

- non-payment of the fee – this process is handled separately by Ofsted's fees team
- no children on roll (childminders only).

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

251. The law states that if a registered person ceases to be suitable, by failing to satisfy one of the requirements, the registration authority may cancel the registration. This is a discretionary power; we do not have to cancel, except when a childminder or childcare provider becomes disqualified from registration. In these cases, we do not have a discretionary power; we must take steps to cancel the registration.

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<sup>37</sup> This applies to providers registered on the Early Years Register or the compulsory part of the Childcare Register.

252. The grounds for cancelling the registration of a childminder or childcare provider are set out in the Childcare Act 2006, section 68. We **may** cancel the registration of a person under section 68(2) (a)–(e), section 68(3) and (4), or section 68(5).<sup>38</sup> We **must** cancel the registration if the provider has become disqualified from registration by regulations under the Childcare Act 2006 section 75. In all instances, if a registered person operates more than one setting, cancellation will apply to all their settings. We do not have the power to cancel, or remove approval to operate from a single setting.
253. Before we start to cancel a registration, we must be satisfied that the evidence meets the required standard of proof. This standard of proof is met when it is more likely that information of concern is true than it is not true. Those responsible for considering cancelling a registration must be satisfied about the level of evidence before agreeing to serve any notice.
254. There may be occasions when children are at immediate risk of harm and we decide to cancel the registration straight away, without taking any previous action. We normally only decide to cancel a registration after we have followed a course of escalating actions which require the registered person to put matters right, and when the registered person has continually failed to carry these out.
255. In cancelling, inspectors must consider whether the well-being of the children who are looked after by that registered person is best served by the cancellation of the registration.
256. In all cases, we arrange a case discussion to:
- enable the decision-maker to decide, as appropriate, whether to cancel the registration
  - test if our reasons for cancelling the registration are sufficient to withstand the scrutiny of the tribunal at appeal
  - test if our reasons and evidence will support an emergency application to a magistrate and the scrutiny of the magistrate
  - collate sufficient documentation for the divisional manager to brief the director, if appropriate, on the intended action
  - decide on the frequency of monitoring visits if the registered person appeals to the tribunal.
257. If we decide to cancel the registration of a provider registered on the voluntary part of the Childcare Register, she or he can still provide care for which registration is not compulsory. However, we may consider whether the reasons for the cancellation meet the threshold for making a referral to the Disclosure

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<sup>38</sup> Childcare Act 2006, section 68; [www.legislation.gov.uk/ukpga/2006/21/section/68](http://www.legislation.gov.uk/ukpga/2006/21/section/68).

and Barring Service for consideration on the list of people who should be barred from working with children or vulnerable adults – see the section on 'Making referrals to the Disclosure and Barring Service'.<sup>39</sup>

### **The notice of intention to cancel**

258. We normally cancel a registration by notice unless there are grounds to make an application to a magistrate for an emergency order – see the section on 'Taking emergency action'. A notice of intention to cancel provides notification of our proposed step.
259. We serve notices of intention to cancel registration in writing under the Childcare Act 2006, section 73(2).<sup>40</sup> We give our reasons in the notice for intending to cancel the registration and inform the registered person of their rights to object to our action. The registered person is entitled to have an objection considered before we make our decision – see the section on 'Objections'.
260. The notice of intention includes:
- the reasons for the intention
  - the relevant part of the 'Statutory framework for the early years foundation stage'<sup>41</sup> and/or The Childcare (General Childcare Register) Regulations 2008, as amended
  - an overview of our evidence to support our action
  - the consequences of cancellation (disqualification)
  - the registered person's right to object, in accordance with the Childcare Act 2006, section 73.
261. We use a standard template for notices of intention (and decision) but write each notice according to the circumstances of the individual case and tell the registered person precisely why we are cancelling their registration.
262. If, after having issued the notice of intention to cancel, we receive further information that strengthens our reasons for cancellation, we must issue a fresh notice of intention. If we do not give a registered person enough information about the reasons, the registered person may reasonably argue that she or he did not have fair notice of the issues and was consequently unable to lodge an informed objection. See the section on 'Objections'.

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<sup>39</sup> Protection of Children Act 1999; [www.legislation.gov.uk/ukpga/1999/14/contents](http://www.legislation.gov.uk/ukpga/1999/14/contents).

<sup>40</sup> Childcare Act 2006, section 73(2); [www.legislation.gov.uk/ukpga/2006/21/section/73](http://www.legislation.gov.uk/ukpga/2006/21/section/73).

<sup>41</sup> 'Statutory framework for the early years foundation stage', Department for Education, 2014; [www.gov.uk/government/publications/early-years-foundation-stage-framework--2](http://www.gov.uk/government/publications/early-years-foundation-stage-framework--2).

### **Notice of decision to cancel**

263. Following the notice of intention to cancel on the registered person being served, a notice of the decision to cancel the registration can only be served at least 14 days after the notice of intention.
264. The notice of decision issued after an objection will include why we have decided to take the step, including any matters considered during the objection. The notice of decision must include information about the registered person's right to appeal to the tribunal against our decision.

### **Monitoring visits following cancellation pending an appeal hearing**

265. The registered person remains registered until 28 days after service of the notice of decision or, when there is an appeal, until the appeal is determined. If the registered person informs us that they do not intend to appeal to the tribunal, the decision takes effect at that point, or at the point any appeal to the tribunal is determined.
266. An appeal may take some months to process so we consider at the case discussion whether to carry out monitoring visits during that time. During this interim period, we are likely to consider either emergency cancellation or suspending the registration generally or only in relation to particular premises if we have reason to believe that:
- children's welfare is at risk
  - children are suffering or likely to suffer significant harm.
267. During the monitoring visit we normally give feedback to the registered person as well as the manager. However, if we gather evidence that we first need to consider in a case discussion for an application for emergency cancellation we do not provide feedback. If we need to take emergency action to cancel we may present evidence obtained during a monitoring visit to the tribunal hearing or to a magistrate.
268. If we find evidence on a monitoring visit that the registered person is making significant progress, we must consider whether cancellation of the registration is still appropriate. In such cases, we may want to consider carrying out a full inspection so that we can gather sufficient evidence to confirm that the registered person has made, and can sustain, the improvements made. If we decide not to defend the appeal, we inform the tribunal of the reason for such a decision.
269. We do not carry out monitoring visits after the cancellation has taken effect unless we believe unregistered care is being provided (see the section on 'Unregistered services').

## **Emergency cancellation of registration and twin-track cancellation**

270. Emergency cancellation takes effect immediately and applies to all settings under a single registration. For further information, please refer to the section on 'Taking emergency action'.
271. We may serve a notice of intention to cancel, at the same time as seeking cancellation by emergency order, when we believe that:
- there is a serious risk to the life, health or well-being of a child
  - a child is suffering or likely to suffer significant harm
  - the registered person is also no longer suitable for registration.
272. This is because even if we cannot demonstrate to the tribunal's satisfaction that the criteria for emergency cancellation are met, we may be able to convince the tribunal that the registered person is no longer suitable for registration. We can apply to the tribunal to hear both appeals together. This saves time and costs. It also ensures that the tribunal considers all the relevant evidence.
273. If we decide to issue a notice of intention to cancel after obtaining an emergency order cancelling registration but before an appeal is heard, we will issue the notice as soon as is reasonably possible. This will allow the tribunal to hear appeals against both decisions at the same time.

## **Taking emergency action**

274. We make applications for emergency cancellation, imposition, variation or removal of conditions of registration under the Childcare Act 2006, section 72 for childminding and childcare<sup>42</sup>
275. We seek an emergency order from a magistrate if we believe that by allowing the continuation of services for children a child is suffering, or is likely to suffer, significant harm.
276. We hold a case discussion to decide whether to seek an emergency order – see the section on 'Decision-making'. When we decide to take emergency action we are legally represented, in line with our agreed arrangements for seeking legal advice.

## **Seeking an emergency order**

277. Once we have decided to seek an emergency order, we must act quickly. We can approach a magistrate at any time, day or night, to take emergency action. However, only in exceptional circumstances do we make an application 'out of hours'. The clerk to the justices at the court provides advice on how to do this.

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<sup>42</sup> Childcare Act 2006, section 72; [www.legislation.gov.uk/ukpga/2006/21/section/72](http://www.legislation.gov.uk/ukpga/2006/21/section/72).

We make an application to the court and submit statements based on evidence which:

- demonstrates that the risk to a child or children who use the service is likely to occur,<sup>43</sup> and that the consequences for them are serious; for example, a service user may die, suffer abuse or significant harm
- shows that we have considered alternative action and ruled it out as having failed to reduce, or being unlikely to reduce, the serious risk identified
- complies with the duty to provide full and frank disclosure to the court – this means we disclose all material evidence to the court, including any evidence that does not support our case; our witness statements contain a statement that the writer understands and has complied with their duty of full and frank disclosure to the court.

278. The clerk to the justices provides any necessary forms to support an application, and is responsible for arranging for a magistrate to hear the application. We direct the clerk to the appropriate legislation, namely the Childcare Act 2006, section 72, showing HMCI's power to make the application and we provide a briefing about our powers, when this is necessary.<sup>44</sup>

### **Taking action with or without both parties present**

279. We usually make an application to a magistrate in the area where the registered person operates, so it is easier for them to attend. We seek to make these applications with both parties (Ofsted and the registered person) present. This is called an 'inter-parte' application. If the registered person refuses to attend, does not attend, or delays attendance, we must demonstrate the steps we have taken to facilitate their attendance. We must record on our database the attempts that we have made to contact them.

280. We only make an application without the registered person present – called an 'ex-parte' application – in exceptional circumstances when we believe that an inter-parte application will jeopardise the immediate safety and welfare of children by telling the registered person in advance about our application.

### **Note of the hearing**

281. We take notes during the application hearing. The notes include details of the submissions made to the magistrate, questions asked and answers provided and evidence used in support of the application. We do this to provide a copy

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<sup>43</sup> The test for 'likely to suffer' considers whether there is a real possibility that a child will suffer significant harm. The existence of danger, as an action or omission, is not sufficient grounds in itself. We must provide evidence to support the view that the danger poses a real possibility of significant harm, or serious risk of harm, occurring as a result.

<sup>44</sup> 'Briefing note for magistrates and magistrates' courts in England: the Early Years and Childcare Registers', Ofsted, 2013; [www.gov.uk/government/publications/briefing-note-for-magistrates-and-magistrates-courts-in-england-the-early-years-and-childcare-registers](http://www.gov.uk/government/publications/briefing-note-for-magistrates-and-magistrates-courts-in-england-the-early-years-and-childcare-registers).

as part of the information we give to the registered person. The notes are not an exact record of the hearing, but are as full a summary as possible.

### **The order**

282. If the magistrate decides to make the order, the court will write out the order and pass it to us. The order is effective from the time that the magistrate grants it.<sup>45</sup> The registered person may appeal to the tribunal. However, the order remains in place until the appeal is determined. The tribunal operates an expedited process for appeals against a magistrate's order.<sup>46</sup>
283. If the decision of the magistrate is to vary or add conditions to the registration we check that we are able to regulate and enforce the condition/s and that the wording of any varied or new condition/s excludes named individuals.

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

284. We serve the registered person with a copy of the order, a copy of the written statement which supports the application, and a notice of their right to appeal to the tribunal against the decision as soon as it is practicable do so after the hearing. If the application was held without both parties present, we also provide the registered person with a copy of the notes of the hearing and copies of all evidence and documentation relied upon to grant the order, unless to do so would prejudice an investigation into whether children are at risk.
285. When the emergency action relates to variation, removal or imposition of conditions of registration, we also issue a new certificate of registration.

### **Notifying local authorities and others of our action**

286. We must inform the local authority if we take action to cancel the registration of a childminder or childcare provider.

### **Unregistered provision and provision on unapproved premises**

287. We consider information concerning unregistered services and provision on unapproved premises and take appropriate action. We consider all of the information available to us, including whether the person is previously known to Ofsted. We normally visit when the information indicates there is unregistered childcare or childcare is being provided on unapproved premises. Only if we have information that suggests children may be at risk of harm will we issue an enforcement notice to an unregistered childminder without first visiting the individual.

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<sup>45</sup> The Childcare Act 2006, section 72(4)(b); [www.legislation.gov.uk/ukpga/2006/21/section/72](http://www.legislation.gov.uk/ukpga/2006/21/section/72).

<sup>46</sup> 'Memorandum of understanding between Ofsted and the First-tier Tribunal of the Health, Education and Social Care Chamber', Ofsted, 2012; [www.gov.uk/government/publications/memorandum-of-understanding-between-ofsted-and-hesc](http://www.gov.uk/government/publications/memorandum-of-understanding-between-ofsted-and-hesc).

288. We record all considerations and decisions on our database. We may:

- write to the individual (or registered person for childcare being provided on unapproved premises) for a description of the service that they are providing or are alleged to be providing
- write to the person or registered person telling them that they must register or apply for approval of the premises and requesting that they submit an application preferably immediately but in all cases within 20 working days
- decide, from information we have received about the care provided, that the person does not need to register with us and confirm this in writing
- refer the information to the local authority or the police, if it suggests child protection concerns
- issue an enforcement notice if it appears a person is acting as a childminder without being registered
- carry out a visit to assess whether registration is required.

289. If, after we have gathered information, we need to consider taking enforcement action, we hold a case discussion. In this, we may decide to:

- invite the person to an interview under a Police and Criminal Evidence Act caution – see 'Prosecutions'
- serve an enforcement notice if it appears the person is acting as a childminder without being registered prosecute the person for committing an offence – see 'Decision-making'
- recommend the use of surveillance powers under the Regulation of Investigatory Powers Act 2000.

290. If appropriate, we encourage providers to apply for registration or approval. We allow no more than 20 days for the person to make an application before deciding on what further action we will take. A person must not continue to operate a service which requires registration or on premises which have not been approved during this period as we cannot condone unregistered care or care on unapproved premises continuing. If we do not receive an application form within this period, we check to see that the person is no longer operating.

### **Enforcement notices (childminding only)**

291. An enforcement notice takes immediate effect from the date the notice is served and lasts until HMCI revokes it. We do not need to have sufficient evidence to prosecute a person at the point when we serve an enforcement notice; it only needs to appear to us that childminding requiring registration may be taking place.

### **Revoking a notice**

292. If a person applies to register as a childminder with us after we have issued an enforcement notice, we must revoke the notice at the same time as we grant



registration. If we decide to refuse registration then the notice remains in effect.

293. In all other cases, we may visit the person to monitor compliance with the notice. If there is sufficient information to confirm that the person is not providing childminding, we will revoke the notice and take no further action. If we do not have sufficient information to support this view, we will not revoke the notice but we may close the case. If, after we have closed the case, we receive information that indicates that unregistered childminding is taking place we will open a new case and take the appropriate action.
294. When we decide to revoke a notice, we send the person confirmation of our decision in writing.

### **Warning letters and simple cautions**

295. We offer a simple caution when we have sufficient evidence to secure a prosecution and all the tests for prosecution are met (see section on 'Thresholds for our enforcement work'), but when we decide it is not in the public interest at that stage to pursue a prosecution. Before we issue a simple caution, the person must admit the offence and be willing to accept the caution.
296. Simple cautions are different from a Police and Criminal Evidence Act (PACE) caution. We administer a PACE caution when we suspect that a person may have committed an offence, under the Childcare Act 2006, before questioning that person about the offence(s) – see 'Prosecution'.

### **Final warning letter – issued after an interview under caution**

297. We can decide during a case discussion to issue a warning letter rather than recommend giving a simple caution or taking prosecution action. A final warning letter states:
- the offence that we identified
  - the actions or omissions that constituted the offence and what the registered person needs to do to remedy the position
  - the fact we interviewed the registered person in connection with the offence
  - the fact that the registered person admitted the offence
  - on this occasion we will not pursue a prosecution for the offence
  - that if the registered person should commit the same offence – or another offence – in the future we may pursue a prosecution
  - that the details of the case will remain on our files
  - that we will take the warning letter into consideration if we need to take any other action in relation to their registration in the future.

298. The issuing of a final warning letter does not constitute administering a simple caution and the evidence of such a letter is not admissible in any future prosecution.

### **Simple caution**

299. A simple caution is given at the discretion of the prosecuting authority, subject to the offender admitting the offence, agreeing to accept the caution and there being sufficient evidence to provide a realistic prospect of conviction. It does not have a statutory basis. As a regulator, Ofsted must consider the 'Regulator's Code'.<sup>47</sup> We must also refer to the 'Penalty notices for disorder: guidance for police officers', issued for the police to follow when cautioning adult offenders.<sup>48</sup>

300. If a person admits to the offence, then we must first consider whether we have sufficient evidence to secure a prosecution. The admission (of the offence) has to be a genuine admission and we do not use the possibility of a simple caution as an incentive to obtain that admission. We must also be confident that we could secure a conviction if the case went to court and the person pleaded 'not guilty' – in spite of any earlier admission under a Police and Criminal Evidence Act (PACE) caution.

301. Before offering a simple caution, we must also be satisfied that the person's admission under a PACE caution includes an acknowledgement that she or he did not have a reasonable excuse for committing the offence – as the person may later claim this in their defence.

302. We always seek to interview the person under a PACE caution, to gather more evidence, which may help to determine whether a prosecution is viable – see the section on 'Prosecutions'.

303. We must make the decision to offer a simple caution in a case discussion and be prepared to pursue a prosecution if the person refuses to accept the simple caution.

### **Offering a simple caution**

304. We inform the person who committed the offence in writing that we have grounds for prosecuting them, but that we are willing to offer a simple caution as an alternative to prosecution, if they accept. If the person agrees to accept a simple caution for the offence a senior officer will meet with them to issue the simple caution.

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<sup>47</sup> 'Regulators' Code', Better Regulation Delivery Office, 2014;  
[www.gov.uk/government/publications/regulators-code](http://www.gov.uk/government/publications/regulators-code).

<sup>48</sup> 'Penalty notices for disorder: guidance for police officers', Ministry of Justice, 2014;  
[www.justice.gov.uk/out-of-court-disposals](http://www.justice.gov.uk/out-of-court-disposals).

305. If the person does not agree to accept the simple caution, either by informing us after they receive our letter or prior to signing to accept it, we proceed to prosecution.

### **Storage of a simple caution**

306. The senior officer issuing the simple caution ensures that a signed copy is retained in line with Ofsted's file retention policy. We destroy the caution after the retention period.

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

307. We take the simple caution into account for five years from the date we issue it, when making any future judgements about a person's registration, including their suitability to be registered. We must also consider the caution when making further decisions about whether or not to pursue a future prosecution, when a simple caution is relevant. However, there is an exception to the five-year rule if the person has a conviction on her or his record and/or further simple cautions have been given. In these cases records can be 'kept for longer periods of time'.<sup>49</sup>

308. We may use the offence and simple caution as part of any evidence to the tribunal if a provider appeals against any future action that we take, in respect of her or his registration.

## **Prosecutions**

309. Our powers to prosecute a person are set out in the Childcare Act 2006. A table of offences for which we may prosecute is set out in Annex A.

### **Offences: single and two-stage**

310. Some offences are single-stage offences. This means that the initial action or inaction is itself an offence; for example a childminder registered on the Early Years Register using corporal punishment on a child.

311. Other offences are two-stage offences; this means that the initial action or inaction is not itself an offence, but an offence is committed with action or inaction at the second stage. For example, if a registered person fails to comply with the safeguarding and welfare requirements of the EYFS, we may issue a WRN (the first stage). If the registered person then fails to comply with the notice, they commit an offence (the second stage).

### **Who we can prosecute**

312. We can prosecute any registered person who commits an offence, when we could be the prosecuting authority. This could be as:

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<sup>49</sup> 'Penalty notices for disorder: guidance for police officers', Ministry of Justice, 2014; [www.justice.gov.uk/out-of-court-disposals](http://www.justice.gov.uk/out-of-court-disposals).

- an individual
- a corporate body
- an unincorporated association.

313. Under certain circumstances, we are able to prosecute both an individual and the organisation. If the registered person is a corporate body, or an unincorporated association, and we decide to prosecute for an offence, we will prosecute the organisation and not an individual person. However, if the offence was committed with the consent of, or is attributable to any neglect on the part of, a member of the organisation, then that member is also guilty of an offence. In these circumstances we may prosecute either or both parties.

### **Timescales**

314. We must bring a prosecution within six months from the date that evidence, sufficient to warrant the proceedings, comes to our knowledge.<sup>50</sup> In such cases, we involve lawyers as early as possible.

315. We will not always obtain evidence of an offence until a period of time after the offence has occurred. If this is the case, we cannot bring proceedings more than three years after the date on which the offence occurred.<sup>51</sup>

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

### **Decision to prosecute**

317. When we believe that prosecution may be a proportionate response, we arrange a case discussion to consider the evidence. The case discussion must consider whether it is in the public interest to pursue a prosecution.<sup>52</sup>

318. We only make a decision to prosecute if:

- non-statutory actions, or the serving of a WRN are unlikely to achieve the desired outcome
- we believe the actions or omissions are of such significance that this is the only reasonable response in the public interest.

319. If we do not believe that a prosecution will improve the service provided to a level where it meets minimum acceptable standards, we consider whether to

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<sup>50</sup> The Childcare Act 2006, section 86(1); ([www.legislation.gov.uk/ukpga/2006/21/contents](http://www.legislation.gov.uk/ukpga/2006/21/contents)).

<sup>51</sup> The Childcare Act 2006, section 86(2); ([www.legislation.gov.uk/ukpga/2006/21/contents#pt3-ch5-pb7-l1g86](http://www.legislation.gov.uk/ukpga/2006/21/contents#pt3-ch5-pb7-l1g86)).

<sup>52</sup> We test the quality and quantity of evidence with lawyers at the decision-making stage although we are responsible for making the final decision.

take alternative enforcement action, such as cancellation – see 'Our compliance and enforcement policy'.

320. We only consider cancelling a provider's registration at the same time as bringing a prosecution in rare cases. For example, when we cancel the registration to ensure that we safeguard and protect the welfare of children and we believe it is in the public interest to pursue a prosecution.

### **Evidence required for a prosecution**

321. To ensure a successful prosecution, our evidence must show, beyond reasonable doubt, that the individual person or organisation that we are prosecuting committed the offence.
322. In all cases, before taking steps to prosecute, we must interview the individual or the registered person under a Police and Criminal Evidence Act caution. We do not make a final decision to prosecute until we have gathered all the evidence, including information obtained at that interview. If a person fails to attend an interview under caution or refuses to attend, this does not prevent us from prosecuting the person. In these cases, we must be able to demonstrate to the courts the action we have taken to try to carry out the interview.

### **Reasonable excuse**

323. In many cases, the offences for which we may prosecute include the words 'without reasonable excuse'. There is no legal definition of reasonable excuse and what is reasonable will vary from case to case. In general, 'reasonable excuse' means an excuse that an ordinary and prudent member of the community would accept as reasonable in the circumstances. The failure to do something must not simply be a deliberate act of non-compliance.
324. If a person claims they have a reasonable excuse then we ask them to tell us what it is. They may decide not to tell us; in effect they exercise their right to silence, in which case we need to make our decision on whether to prosecute on the evidence we have available to us. If they tell us their reasonable excuse, we must consider their explanation carefully in deciding whether it is reasonable. We may decide that, to test their claim, we require further information or need to carry out further enquiries. We may seek advice from our legal advisers in deciding if the excuse given is reasonable. We must seek legal advice about the quality and quantity of our evidence before instructing a lawyer to proceed with a prosecution.

### **Representations by childminders or childcare providers**

325. When we begin the process to prosecute a childminder or childcare provider on the Early Years Register we must allow time for the provider to make representation to us. The purpose of the representation is to allow an opportunity for the person to provide new information to us to explain why it is not in the public interest for us to prosecute. It is not an opportunity to provide additional evidence in relation to the offence.

326. The offences for which we must allow a childminder or childcare provider to make representation to us are:

- use of corporal punishment on a child
- failure to notify us of certain information as set out in regulations
- failure to comply with a welfare requirements notice.

327. Providers must make their representations to us within one month of the date of our letter of intention to prosecute. The law does not allow us to extend this timescale. If we receive a representation outside the one-month timescale, we cannot consider it. We ask for representations to be in writing.

### **Considering the representation**

328. Once we receive the representation we arrange a case discussion to consider the information. The discussion will include, when possible, the members of the original case discussion. This group may recommend to the decision-maker that:

- we continue with our action to prosecute
- it is not in the public interest to prosecute
- an alternative course of action, such as to issue a simple caution or warning letter, is appropriate.

### **The Police and Criminal Evidence Act 1984**

329. The Police and Criminal Evidence Act 1984 and the associated revised codes 2005<sup>53</sup> apply to all our inspectors who look into offences for which we may subsequently prosecute someone. We carry out our work in line with these codes.<sup>54</sup>

### **Giving a Police and Criminal Evidence Act codes of practice caution<sup>55</sup>**

330. We caution a person if we suspect they have committed an offence and we believe that we may want to prosecute the person for that offence. We must caution the person in line with Code C of the Police and Criminal Evidence Act codes of practice before asking any questions that will lead to evidence we may want to rely on in court.<sup>56</sup>

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<sup>53</sup> [www.gov.uk/police-and-criminal-evidence-act-1984-pace-codes-of-practice](http://www.gov.uk/police-and-criminal-evidence-act-1984-pace-codes-of-practice).

<sup>54</sup> The Police and Criminal Evidence Act 1984, section 67(9) states that 'persons other than police officers who are charged with the duty of investigating offences or charging offenders shall in the discharge of that duty have regard to any relevant provision of such a code'.

<sup>55</sup> This is different to the use of the word 'caution' as a disposal – see separate section on 'Issuing a simple caution'.

<sup>56</sup> Police and Criminal Evidence Act (1984) revised codes, Code C; [www.gov.uk/police-and-criminal-evidence-act-1984-pace-codes-of-practice](http://www.gov.uk/police-and-criminal-evidence-act-1984-pace-codes-of-practice).

331. The wording of the caution is as follows:

‘You do not have to say anything, but it may harm your defence if you do not mention, when questioned, something which you later rely on in court. Anything you do say may be given in evidence.’

332. The caution advises the person about her or his rights, if asked to explain her or his actions or omissions. Any evidence we gather before cautioning may not always be admissible in court, as part of a prosecution case.

333. There two circumstances when we need to give the caution are:

- when we are carrying out a visit to a provider, we suspect they may have committed an offence and it is likely that we will want to prosecute them for that offence
- when we invite a person into one of our offices for a formal ‘interview under caution’.

334. We may find evidence of an offence at any time during a visit to, or an inspection of, a provider or applicant for registration or approval of premises. However, unless we are realistically going to pursue a prosecution, it is not necessary for us to interview the person under caution or initiate action that may lead to a prosecution.

335. We do not need to give a caution if the evidence we gather is more likely to be used for other enforcement action. For example, although a provider commits an offence if they fail to comply with a WRN, it is much more likely that we will take steps to cancel their registration for failing to meet legal requirements than prosecute them for the offence of failing to comply with a WRN. Inspectors should use their professional judgement in deciding whether to caution a provider for an offence, but they only need to do so if prosecution is a likely outcome. If in doubt, inspectors should seek advice from their regional duty desk.

336. If an offence is discovered during an inspection or regulatory visit, and the inspector considers that a prosecution is likely, they must caution the provider. In these circumstances, we would not expect the inspector to ask more than a few focused questions about the offence and then withdraw to consider next steps. We do not caution the provider if we are not intending to ask them any further questions about the alleged offence at that time.

337. If we need to carry out a more in-depth interview under caution, for example if there are a number of questions and issues that need to be pursued, we invite the provider to attend one of our offices for an interview under caution. We need to be mindful of the PACE codes in relation to the person being allowed representation and appropriate support if they have particular requirements, such as needing mental health support. Before beginning the interview, we must give the caution.

338. When cautioning the person, the inspector must:
- record any questions the person asks and the responses given in their evidence
  - carry out the questioning away from others, including any potential witnesses to the offence, for example in a private office at the setting
  - record all observations in their evidence.
339. The inspector must take a proportionate approach to any breach and assess the impact on children, any excuse the person has, and the person's attitude and willingness to comply. If an offence is identified during an inspection by an Ofsted inspector and the inspector thinks this should be looked into, they should contact their regional duty desk for advice.
340. We must record all statements on the witness statement form. A court will require the original of the statement (rather than a copy of it) so we must keep this.<sup>57</sup>
341. Inspectors must preserve and securely store any evidence of the offence that they gather at the visit and adopt the PACE revised codes. Inspectors must collect and record all other evidence in the input form and store this on the database. Inspectors may take or seize original documents or take photographs of the documents instead of seizing the original document.
342. If we uncover evidence of a separate offence during an interview under a PACE caution, we must caution the provider again before asking any questions about that separate offence. If necessary, we carry out a separate interview under caution about the separate offence.

### **Recorded interviews under a Police and Criminal Evidence Act caution**

343. We record any interviews we do under a PACE caution. We tell the person subject to the interview how we will store the records of that interview.
344. We follow Code E of the PACE revised codes 2010 when carrying out a recorded interview carried out under a PACE caution.<sup>58</sup>
345. An Ofsted staff member trained in the conduct of PACE interviews must be present throughout the interview.

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<sup>57</sup> A witness statement form is a standard template we use to record evidence from a person who we have spoken to, which that person signs, to confirm that the contents of the statement are true. In general, the statement should only contain information on what the witness saw and not what others have said to her or him. It is important to record anything that may open a new line of enquiry or help corroborate other information. We must provide original witness statements in any court or Tribunal hearing.

<sup>58</sup> [www.gov.uk/police-and-criminal-evidence-act-1984-pace-codes-of-practice](http://www.gov.uk/police-and-criminal-evidence-act-1984-pace-codes-of-practice).



346. We do not interview witnesses together in the same room. This ensures that we do not compromise statements, and that the evidence of one witness does not taint the evidence of another.

### **Proceeding with a prosecution**

347. If we decide to proceed with a prosecution, our solicitor will advise on the necessary steps to take and procedures to follow. We provide a briefing for the clerk to the justice on our powers and statutory duties. 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.

## **Part 4. Other compliance and enforcement issues: making referrals to the Disclosure and Barring Service**

### **When to make a referral**

348. Section 35 of the Safeguarding Vulnerable Groups Act (SVGA) 2006, confirmed by the Protection of Freedoms Act 2012, places a duty on us to refer persons to the Disclosure and Barring Service (DBS) for inclusion on the list of people who are barred from working with children, when the following criteria are met:<sup>59</sup>
- we have cancelled a provider's registration, or would have done so if the registered person had not resigned before we issued a notice of our intention or proposal to cancel
  - as set out in schedule 3, paragraph 4(1) of the SVGA, we believe the person has engaged in relevant conduct and satisfied the harm test.
349. We may also refer any individual who is, or has been, employed in regulated activities for inclusion on the list. The legal definition of regulated activity is set out in schedule 4, part 2 of the SVGA and in section 64 of the Protection of Freedoms Act.
350. In practice, we may decide to refer any of the following for inclusion on the list:
- registered persons
  - people whose registration we have cancelled
  - people who have resigned or been dismissed from a regulated activity
  - people employed (even if unpaid) to work directly with children by a registered person
  - applicants for registration.
351. In some cases, we may decide to refer an individual for inclusion on the list before we have gathered all the evidence relating to misconduct. For example, we may do this if a childcare provider whose registration, generally or only in relation to particular premises, we have suspended due to allegations of child abuse resigns his or her registration before we have completed our regulatory activity.
352. Employers have a statutory duty to refer individuals previously employed by them to the barred list if they consider that person is guilty of misconduct which harmed a child or placed him or her at risk of harm. If we become aware that the registered person has not taken this step, we will make the referral ourselves.

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<sup>59</sup> Protection of Freedoms Act 2012; [www.legislation.gov.uk/ukpga/2012/9/section/64/enacted](http://www.legislation.gov.uk/ukpga/2012/9/section/64/enacted) and Safeguarding Vulnerable Groups Act 2006; [www.legislation.gov.uk/ukpga/2006/47/contents](http://www.legislation.gov.uk/ukpga/2006/47/contents).

353. When a provider refers an individual to the list, we can forward any additional evidence we hold that may assist the DBS in reaching its decision.
354. If the registered person fails to make a referral, we will look into why the registered person did not do so, and whether the failure impacts on the registered person's suitability to work with children.

## **Making a referral**

355. A referral to DBS can be made online or by downloading the referral form from: [www.gov.uk/guidance/making-barring-referrals-to-the-dbs#online-referral-form](http://www.gov.uk/guidance/making-barring-referrals-to-the-dbs#online-referral-form).
356. The DBS must form an opinion about whether the individual is unsuitable to work with children and young people in the future. Once listed, the individual must not work in a regulated activity.
357. If the person is included on the list, the DBS will confirm this in writing to us, and will inform the individual by letter. If the individual is placed on the 'barred with representation' list, they have the opportunity to make written representations to the DBS against their inclusion on the list. The DBS may pass representations made by the individual to us for comment. Similarly, the DBS will forward all responses we submit to the individual for comment.

## **Surveillance**

358. Ofsted is authorised under the Regulation of Investigatory Powers Act 2000<sup>60</sup> (RIPA) to carry out direct surveillance for the purpose of preventing or detecting a criminal offence. For full details, see Ofsted's surveillance policy.

## **Disqualification**

359. The law disqualifies some people from registering as a childminder or childcare provider.<sup>61</sup>

## **Waiving disqualification**

360. HMCI has the power to waive disqualification. However, the law does not allow us to consider granting consent to waive the disqualification if a person is:
- included on the list held by the DBS (the barred list)
  - has been found to have committed an offence against a child within the meaning of section 26(1) of the Criminal Justice and Courts Services Act

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

<sup>61</sup> Regulations made under the Childcare Act 2006, section 75; [www.legislation.gov.uk/ukpga/2006/21/contents#pt3-ch5-pb4-l1g75](http://www.legislation.gov.uk/ukpga/2006/21/contents#pt3-ch5-pb4-l1g75). The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendments) Regulations 2018; [www.legislation.gov.uk/uksi/2018/794/contents/made](http://www.legislation.gov.uk/uksi/2018/794/contents/made).

2000 and the court has ordered that she or he is disqualified from working with children – under section 28(4), 29A (2), or 29(4) of the same Act.

361. If this is the case we write to the individual to inform them that we cannot waive their disqualification or grant their application to register. We send a notice of intention to refuse registration as we cannot grant an application to register from a disqualified person or if a person connected to the application is disqualified.
362. Disqualified persons must apply to us to waive their disqualification before they can:
- register as a childminder or childcare provider
  - register as part of an organisation set up to provide childcare
  - be employed in the provision of childminding or childcare.
363. When a disqualified person applies to register with us, we must decide whether to waive their disqualification before we decide whether they are suitable to be registered.
364. We may decide to waive disqualification, but subsequently refuse to grant the person's application for registration taking into account all the other information available to us.
365. The disqualified person must apply to us, in writing, to have her or his disqualification waived. They cannot do this through their employer or as a corporate body request.
366. People who provide early years or childcare provision are **disqualified by association** if they live on premises where a disqualified person lives or works, under regulation 9 of the 2018 Regulations. This regulation only applies if childcare is provided in domestic settings, or under a domestic premises registration.<sup>62, 63</sup>
367. In these cases, the registered person, applicant for registration or person wishing to work in childcare that is provided in domestic settings or under a domestic premises registration must apply to us to waive their disqualification, rather than the disqualified individual. This is because the applicant/registered person is disqualified by virtue of living with a disqualified person or in a household where a disqualified person works. This is known as disqualification by association and the other person is called the 'associate'.

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<sup>62</sup> Domestic premises is defined in section 98 of the Act as 'premises which are used wholly or mainly as a private dwelling'.

<sup>63</sup> Including non-domestic premises up to 50% of the time.

## Local authorities and organisations whose prime purpose is not the provision of childcare

368. If we take action to cancel the registration of a provision operated by a local authority or any other organisation whose prime purpose is not childcare, the local authority or other organisation is disqualified from registration and not the named contact/nominated individual.<sup>64</sup> In these cases, the local authority or other organisation must apply to HMCI to waive their disqualification. However, the named contact/nominated individual can apply to us to waive their disqualification on behalf of the local authority or organisation.

## Responding to information indicating a person is disqualified

369. Ofsted may receive information that indicates a person is disqualified from registration from the:

- inspector during a registration or inspection visit
- disqualified individual contacting or writing directly to us
- registered person, if they are employing a person who becomes disqualified or thinking of employing someone who is disqualified
- application team, who check the application, declaration and consent forms
- results of any checks carried out to establish the suitability of an individual to work or be in regular contact with children.

370. If we receive information that an existing registered person or staff member is disqualified from registration, we must inform the registered person immediately and confirm in writing that we have received information indicating they are, or a staff member is, disqualified. We do this to allow the registered provider to take action before we do.

371. For those registered on the Early Years Register and the Childcare Register, the law requires us to cancel the registration of a registered person who becomes disqualified. It does not give us any discretion not to do so.<sup>65</sup> We must write to the registered person and tell them that the law requires us to cancel their registration, which will include all settings within the registration, but they can apply to us to waive their disqualification. We must receive their application within 10 working days.

372. If we decide **not** to waive disqualification we write to the registered person refusing to waive their disqualification. We send a notice of intention to cancel

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<sup>64</sup> A local authority consisting of a chairperson and councillors (Section 2 of the Local Government Act 1972).

<sup>65</sup> The Childcare Act 2006, section 68(1) states that: 'The Chief Inspector **must** cancel the registration of a person registered under Chapter 2, 3 or 4 if it appears to him that the person has become disqualified from registration by regulations under section 75'; ([www.legislation.gov.uk/ukpga/2006/21/contents#pt3-ch5-pb1-l1g68](http://www.legislation.gov.uk/ukpga/2006/21/contents#pt3-ch5-pb1-l1g68)).

at the same time. We must also arrange a case discussion, which will consider whether there is a risk of harm to children. The discussion should:

- assess what steps the provider has taken, and whether they are appropriate, to ensure that children are not at risk of harm
- decide on the most appropriate steps to take for example, the suspension of a childminder or childcare provider's registration generally or only in relation to particular premises.

373. The provider can object to other issues raised in the notice of intention to cancel, if we have also included points relating to the provider's non-compliance with regulations or others factors concerning their suitability. Even if we uphold the provider's objection to these other issues, we must still issue a notice of our decision to cancel the registration on the grounds the registered person is disqualified, unless they provide evidence that the information we have about the disqualification is inaccurate and they are not disqualified. The person can appeal to the tribunal.

374. If we refuse to waive disqualification and the disqualification relates to a member of staff at a childminding or childcare setting, the registered person commits an offence if they continue to employ the disqualified person. It is also an offence for a disqualified person to be directly involved in the management of the provision. We may prosecute a person who knowingly employs a disqualified person. (This does not apply to a person who is registered only on the voluntary part of the Childcare Register.)<sup>66</sup>

### **Handling requests to waive disqualification**

375. If we refuse to waive disqualification, we will write to the person informing her or him of the decision. The person then has a right of appeal to the tribunal against our decision.

### **If an application for registration indicates that a person is disqualified**

376. We cannot grant an application to register with Ofsted if the application indicates that any of the following individuals are disqualified from registration:

- the applicant for registration
- a person making up the registered organisation
- someone living or working on the premises where childminding or childcare on domestic premises is provided.

377. We cannot consider the application to register unless:

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<sup>66</sup> The Childcare Act 2006, section 76(5) ([www.legislation.gov.uk/ukpga/2006/21/contents#pt3-ch5-pb1-l1g68](http://www.legislation.gov.uk/ukpga/2006/21/contents#pt3-ch5-pb1-l1g68)).

- we have waived the disqualification
- the disqualified person is removed from the application to register
- the person has provided evidence that they are not disqualified.

378. In such cases, we must inform the applicant of the reasons why we cannot grant the application to register. In refusing we must be clear that the reason for refusal is because of the disqualification.

### **Making the decision on whether to waive disqualification**

379. If, after receiving the application to waive a disqualification, we confirm that a person is disqualified from registration, we follow our decision-making process (see the section on 'Decision-making').

380. Before making a decision we consider a range of factors including:

- the risk to children
- the nature and severity of any offences, cautions or orders. The following Crown Prosecution Service information may assist:
  - the sentencing manual ([http://webarchive.nationalarchives.gov.uk/20080612095338/http://www.cps.gov.uk/legal/section15/chapter\\_p\\_index.html](http://webarchive.nationalarchives.gov.uk/20080612095338/http://www.cps.gov.uk/legal/section15/chapter_p_index.html))
  - legal guidance (<http://webarchive.nationalarchives.gov.uk/20080612095338/http://www.cps.gov.uk/legal/index.html>), which provides a menu of various offences linking to a description of each offence and the sentencing range available to the courts
- the age of any offences or orders
- repetition of any offences or orders or any particular pattern of offending
- the notes of any interviews with the disqualified person, applicant for registration or registered person, including their explanation of and attitude to the disqualifying event
- any other information available from other authorities, such as the police or local authority children's services department in relation to the offences
- any mitigating circumstances given.

381. To consider an application to waive disqualification, we must not require that either the person making the application or the associate makes a subject access request (SAR) under section 7 of the Data Protection Act 2018. Also, we must not require the applicant for the waiver to supply all or part of any record or a copy of the record of any such SAR that they have or obtain with the

application. Any actual or perceived pressure to supply such a record is likely to give rise to a criminal offence by Ofsted.<sup>67</sup>

382. We may ask the applicant or their associate to obtain a criminal conviction certificate, or a standard or enhanced criminal record certificate in certain circumstances from the DBS.<sup>68</sup>
383. We may ask the applicant for the waiver to apply to the DBS for an enhanced criminal conviction certificate if the applicant for the waiver is engaged in 'regulated activity'. The definition of regulated activity includes those who are providing childcare, such as registered childcare providers and childminders. It also includes associates where the childcare is taking place on domestic premises. However, it does not include household members for non-domestic settings, such as people who live in the same household as a nursery worker. In these cases, we may only ask the associate to obtain a criminal conviction certificate.
384. In all cases, we only have the ability to ask the applicant or their associate to apply to the DBS for the appropriate check and it is up to them to decide whether to do so. However, we can only make our decision to waive on the basis of the information available and the applicant should be made aware of this if they are minded not to make the requested application.
385. When we agree to waive disqualification, we are confirming that, despite the person being disqualified and having taken into account the information, we are allowing the person to apply to register to provide care, or look after or be in regular contact with children.
386. We:
- record the decision and the reasons for that decision appropriately on the application to waive disqualification and on our database
  - ensure that the applicant receives a letter explaining the reasons for that outcome
  - carry out any action necessary resulting from the decision.

### **Extent of consent to waive disqualification**

387. We may specify the extent to which we agree to waive a disqualification. For example, we may limit it to a particular setting or job. Limiting the decision to waive disqualification in this way requires the individual to reapply if the circumstances change or the risk to children increases. We must clearly record

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<sup>67</sup> Section 184 of the Data Protection Act 2018.

<sup>68</sup> Under Part V of the Police Act 1997.



on our database the reasons why we have decided to limit the disqualification in this way.

### **Duty to disclose**

388. All registered persons, and applicants for registration, must tell us about any information that disqualifies them, or disqualifies them by virtue of living with a disqualified person where childcare is provided in domestic settings, or under a domestic premises registration.<sup>69, 70</sup>

389. They must provide:

- details of the precise order, determination, conviction or other ground for disqualification
- the date when the order, determination, conviction or other ground for disqualification arose
- the name of the body or court
- the sentence imposed (if any)
- a copy of the relevant order.

390. If a registered childminder or childcare provider fails to notify us of this information within 14 days of the time when they became aware, without reasonable excuse, this is an offence. The offence does not apply to those registered only on the voluntary part of the Childcare Register.

391. All registered persons, and applicants for registration, must provide details of any criminal convictions on the appropriate declaration and consent form.

392. Providers must inform us if they want to employ, or discover they have employed, a disqualified person, including any person who was not previously disqualified but is now disqualified under any new or amended regulations, or through any new offences or disqualifying events that happen after the registration is granted.

393. When a registered person or an employee discovers they are disqualified under regulations, then they must apply to us to waive the disqualification.

### **Becoming aware of a disqualification during an inspection or visit**

394. If, in the process of carrying out an inspection or other visit, the inspector becomes aware that a registered person is or may be disqualified, or has employed a person who is disqualified, they must:

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<sup>69</sup> Domestic premises is defined in section 98 of the Act as 'premises which are used wholly or mainly as a private dwelling'.

<sup>70</sup> Including non-domestic premises up to 50% of the time.

- assess the level of risk of serious harm; if the inspector feels that children are at risk of harm they must speak to their usual contact point or line manager to discuss and agree further action
- explain to the individual that she or he may be disqualified
- if applicable, ask the individual to discuss the issue with her or his employer and to confirm this to us and explain that we will tell the employer if the individual does not
- if applicable, check the registered person's compliance with the regulations for assessing suitability, including asking questions about the information they had about the individual before offering employment
- tell the registered person or member of staff that, if disqualified, they must apply to us to waive their disqualification and give details about how to do this
- if the inspector assesses that children are safe, tell the registered person, or manager about the concerns.

395. The inspector should tell the registered person that:

- a member of their staff may be a disqualified person – the inspector should tell the registered person the name of the staff member
- we cannot discuss the circumstances surrounding the disqualification; the registered person should discuss this with the staff member
- it is an offence to employ a disqualified person, unless Ofsted has agreed to consent to waive the disqualification
- they must inform us of the action they have taken to safeguard children.

### Disqualified persons

396. The disqualification provisions are set out in section 75 and 76 of the Childcare Act 2006, in the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018.

397. The disqualifying offences include<sup>71</sup> (although not an exhaustive list):

- those listed in the above legislation
- the relevant offences listed in the Criminal Justice and Court Service Act 2000, schedule 4, paragraphs 1 and 2  
<sup>72</sup>([www.legislation.gov.uk/ukpga/2000/43/contents#sch4](http://www.legislation.gov.uk/ukpga/2000/43/contents#sch4))

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<sup>71</sup> A detailed but **not** comprehensive list is available within the 'Disqualification under the Childcare Act 2006' DfE guidance, under 'Table A – Relevant Offences'; [www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006](http://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006).

<sup>72</sup> If the person is found to have committed any of the offences committed against a child as set out in paragraphs 1, 2 or 3 of schedule 4 to the Criminal Justice and Court Service Act 2000 (CJCS Act), or

- an offence related to an offence under the Criminal Justice and Court Service Act 2000
- any other offence involving bodily injury to or death of a child.<sup>73</sup>

398. In considering whether or not a person is disqualified, we must also consider the provisions in the Rehabilitation of Offenders Act 1974, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, which set out when convictions and cautions become spent. Under these statutory provisions, the normal rule is that only disclosure of unspent convictions and cautions can be required. However, the convictions and cautions of a person will not be considered to be spent for the purposes of considering the suitability of such a person if they are directly providing, involved in the management of, or employed in connection with, childcare.<sup>74</sup>

399. The same applies in relation to considering the suitability of a person who lives on the premises where their work with children normally takes place and consideration is being given to the offences of a person who lives with the person being assessed or who normally works in the household at the time the work with children takes place. If this is the case, the effect of the 1975 Order is that, at the time we ask questions about previous convictions and cautions, the person who is the subject of the disqualification and any person who lives where the care takes place must be told that spent (as well as unspent) convictions and cautions are to be disclosed.

400. For other cases, the rehabilitation provisions do apply in relation to those who are disqualified by association. When a person (for example someone working in a nursery) is disqualified only because of a conviction or caution of someone they live with, then the person they live with may have a conviction or caution which is 'spent'. If this is the case, then that person does not need to disclose the matter to Ofsted and they will not be disqualified.

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found to have committed any of the offences committed against a person aged 18 or over, as set out in paragraph 2 of schedule 4 of the Criminal Justice and Court Service Act 2000 or an offence related to it; if they have been charged with any offence, committed against a person aged 18 or over, provided for in paragraph 2 of schedule 4 to the Criminal Justice and Court Service Act 2000, or an offence related to such an offence in respect of which a relevant order has been imposed by a senior court. (A senior court means the Crown Court, the Court of Appeal, a court-martial or the Courts-Martial Appeal Court).

<sup>73</sup> The definition of 'bodily injury' is quite broad. Case law has established that 'bodily injury' need not be permanent but should not be 'so trivial or trifling as to be effectively without significance'. In general terms, something like bruising, a cut or swelling could constitute 'bodily injury'. It is vital that Ofsted has evidence of the 'bodily injury', ideally in the form of photographs, medical evidence, police statements or statements from those involved. Whether something constitutes 'bodily injury' will need to be established on a case-by-case basis. If you are in doubt, contact Ofsted's legal advisers who will be able to advise you.

<sup>74</sup> This does not include protected convictions and protected cautions by virtue of Article 3(2) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

401. Further guidance on the provisions for rehabilitation of offenders can be found at: [www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974](http://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974).
402. A person who is disqualified from registration is therefore disqualified from being employed in connection with childminding or childcare if:
- she or he is included on the lists of people deemed unsuitable to work with children
  - she or he has been subject to any order relating to the care of children a specified regulatory body has cancelled a registration, refused registration or refused approval for that person to care, foster or look after children or has taken specified regulatory action<sup>75</sup>
  - in relation to childminding or childcare, she or he has been found to have committed<sup>76</sup> any of the offences found in the [Appendices for disqualification under the Childcare Act 2006 guidance](#).

## Objections

403. In some cases, the law allows registered providers and applicants for registration to object against a proposed course of action we intend to take.

## Notices of intention

404. Registered providers or applicants for registration can object to our intention to:
- cancel registration
  - refuse registration
  - refuse approval to add additional or different premises to an existing registration
  - refuse approval to operate childminding on non-domestic premises for up to 50% of the time under an existing childminding registration
  - refuse approval to operate childcare on non-domestic premises for up to 50% of the time under an existing childcare on domestic premises registration
  - impose new conditions of registration (registered providers only)

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<sup>75</sup> A person is not disqualified if he or she has had their registration cancelled as a childminder or childcare provider in England due to non-payment of the fee, charged annually, if the cancellation is after 1 September 2008 (6 April 2007 for those registered only on the voluntary part of the Childcare Register).

<sup>76</sup> 'Found to have committed' means having been convicted of an offence, given a caution on or after 6 April 2007, having been found not guilty by reasons of insanity to be found to be under a disability and to have the act charged against them in respect of such an offence. The Crime and Disorder Act 1998, section 65 ([www.legislation.gov.uk/ukpga/1998/37/contents#pt4-ch1-pb3-l1g65](http://www.legislation.gov.uk/ukpga/1998/37/contents#pt4-ch1-pb3-l1g65)) determines that a caution includes reprimands and warnings issued by the police under that section.

- vary or remove conditions of registration
  - refuse a request to vary or remove conditions of registration (but it is not possible for a registered provider to make a request to us that we impose a condition and then object if we refuse to do so).
405. If possible, the senior officer who made the original decision considers the information provided in the objection to the notice of intention. If that senior officer is unable to, then another senior officer within the region can do it. If the notice of intention was issued by a senior regulatory professional for an administrative matter, such as failure to make contact, a senior officer in the relevant region will consider the objection. The senior officer makes the decision whether to continue with the proposed action. They may seek advice from other colleagues, for example their senior HMI, but ultimately the senior officer makes the final decision (see 'Decision-making').
406. Childminders and childcare providers must inform us if they intend to object to the actions proposed in our notice of intention. They can object orally or in writing. Oral objections can be made over the telephone or by video call; they do not have to be made through a meeting in person. However, we will grant any reasonable request to make the objection in person, subject to the impact of any delay to our decision-making. There is no provision in law for an applicant for registration as a childminder or childcare provider to object to any conditions we impose at the point of registration. In these cases, the provider, once registered, can apply for a variation to the conditions of registration and, if necessary, may object at that point.
407. In some cases, childminders and childcare providers registered on the Early Years Register may make representation to us against our letter of intention to prosecute. Providers must do this within one month of the date of the letter of intention to prosecute (see the section on 'Prosecution').
408. We do not serve a notice of decision until at least 14 calendar days from service of the notice of intention. Providers have until we serve the notice of decision to tell us they intend to object. The law does not state a maximum period we must allow for a provider to make their objection. Therefore, we may delay making our decision if the person informs us, within the 14-day period, that she or he intends to object.

### **Objection against a notice of intention**

409. We review the objection process and must demonstrate that we have done this if challenged.
410. A childminder, childcare provider or applicant to register can object to a notice of intention to take steps by:
- sending us their reasons in writing
  - making the objection orally, either by telephone or by meeting with us

- arranging for a representative to make the objection on their behalf, either by telephone or by meeting with us.
411. We cannot delay making our decision if: we do not receive written information; the person's availability is severely restricted; or the person, having notified us that they wish to attend or make their objection by telephone, fails to attend the objection or is not available when we telephone. In these cases, we will issue the notice of decision. It is not our role to chase the person for information to support their objection and if they fail to do so, we will proceed to the decision.
412. The purpose of attendance in person is to present the objection. It is not a forum for cross-examining evidence, nor is it meant to be an 'independent hearing'. If the provider wishes to have the decision reviewed independently, they must appeal to the Tribunal once we have issued the notice of decision.
413. At the objection meeting, we ask the applicant/provider or their representative to set out their objection. They will provide any further evidence that they wish the senior officer to take into account that might change the intended decision. The senior officer only asks questions if they require clarification on any information provided. The senior officer does not challenge the information given. Similarly, the person making the objection is not permitted to challenge the senior officer.
414. When the registered person attends an objection meeting with a representative or a representative makes the objection on their behalf, the representative's role is to support the registered person or present the objection on their behalf. If representatives are solicitors, they can advise their client on legal points that may affect the decision but there will be no legal debate. If necessary, we advise solicitors that they can include legal arguments in a submission. We may then seek legal advice after the objection but before we make the decision.
415. We record the decision with the reasons on our database. We may share these notes with the tribunal during any appeal process. In most cases, we destroy the hard-copy notes when the time for any objection and appeal has expired.

### **After the objection**

416. We confirm the decision following an objection in writing.
417. If we do not uphold the objection, we set out the reasons in the outcome letter. We then confirm our intention to take the action by writing a notice of decision. Where possible, we send the notice of decision at the same time as the outcome letter. We include information about the right to appeal against our decision to the tribunal and how the person can contact the tribunal.
418. A decision that relates to an existing registered provider does not come into effect, and is not enforceable, until 28 days after we serve the notice of decision on that provider, or after the outcome of any appeal made to the

tribunal by that provider. However, if the provider or person informs us in writing that she or he does not intend to appeal against the decision, it takes immediate effect.

419. If we believe that children are at risk of significant harm, we consider taking any other action to secure their safety (see section on 'the legal basis of our work and options for ensuring compliance').

## Appeals

### Timescales for people to appeal against our decision

Appeals against:	Timeframe for appeals:
Our decision to cancel registration	28 days after service of the notice of decision <sup>77</sup>
Our decision to impose, vary or remove conditions of registration	28 days after service of the notice of decision
Our decision to refuse a request to vary or remove conditions of registration	28 days after service of the notice of decision
An order made by a magistrate to cancel registration	28 days after order is made by magistrate
An order made by a magistrate to vary, impose or remove a condition of registration	28 days after order is made by magistrate
Our decision to refuse to grant consent to waive disqualification	28 days after service of the notice of decision
Our decision to refuse registration as a childminder or childcare provider	Three months after service of the notice of decision
Our decision to refuse approval to add additional or different premises to an existing registration	28 days after service of the notice of decision
Our decision to refuse approval to operate childcare on non-domestic premises under the 50% rule for childminders and childcare on domestic providers	28 days after service of the notice of decision
A notice of suspension of registration	10 working days after service

420. The tribunal counts the time limit in which to apply for an appeal from the first working day after we serve the notice.<sup>78</sup> This means that if the provider/applicant receives a notice on a Saturday, the period begins on the following Monday.

421. We may apply to the tribunal to speed up an appeal. In these cases, the principal judge may contact the provider before making a decision. The tribunal will notify us of their decision and the date they will hear the appeal.

<sup>77</sup> All references to 'days' are calendar days unless otherwise specified.

<sup>78</sup> The First-Tier Tribunal (Health, Education and Social Care Chamber) Rules 2008, rule 1, defines a working day as 'any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971.'



## Appeals to the tribunal

422. The tribunal hears all the appeals made against a decision we make, or a decision of a Magistrate made by emergency order – see 'Taking emergency action'. It is based in Darlington, but holds hearings around the country. Its 'rule of thumb' is that if the appellant has to travel for more than one and a half hours to reach the tribunal building, it will hold the hearing in a location nearer to the appellant. We must travel to wherever the hearing is taking place.
423. Applicants or registered providers must appeal by completing the relevant appeal form and by attaching a copy of the relevant Notice, which can then be sent in writing by letter or email to:
- HMCTS – Care Standards  
First floor  
Darlington Magistrates Court  
Parkgate  
DL1 1RU
- Telephone: 01325 289350 or fax 01325 289395  
Email: [cst@hmcts.gsi.gov.uk](mailto:cst@hmcts.gsi.gov.uk).
424. On receiving an appeal, the secretary of the tribunal will send the information from the appellant to us. We must respond to the tribunal within the timescales set out in the section below.
425. On receiving notice of an appeal we carry out a case discussion to determine whether to defend that appeal. We confirm our decision to the tribunal.

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

426. On receiving notice of an appeal, we must complete the form provided by the tribunal, return it to the secretary of the tribunal and prepare the necessary documents. We must consult as appropriate with the legal services team in Ofsted.
427. The draft response must include:
- an acknowledgement that we have received the copy of the application for appeal
  - confirmation that we oppose the application (see section below on strike outs) or the decision that we will not defend the appeal
  - the reasons for opposing the appeal
  - the name and address of the solicitor representing us
  - a copy of any order made by a magistrate and a copy of the statement.
428. If we do not respond to the information from the secretary of the tribunal within the appointed timescale, we run the risk of taking no further part in the

proceedings. This means that the tribunal can decide the outcome of the appeal without hearing our defence. The tribunal may also consider that we have acted unreasonably in carrying out our part of the proceedings and make an order for us to cover the appellant's costs.

### **Strike outs**

429. In certain circumstances, we may apply to the tribunal to strike out an appeal. This might include cases when the time allowed for an appeal has expired, or the basis of the appeal is outside our powers; for example, when we cannot consider an application to waive disqualification because the person is included on the list of people barred from working with children, which is held by the DBS. This is beyond our powers; the individual does not have a right of appeal against our duty to refuse or cancel registration in these circumstances. The grounds for applying for a strike out are set in rule 8(1) to (5) of The First-tier tribunal (Health, Education and Social Care Chamber) Rules 2008.<sup>79</sup>
430. We must not apply to the tribunal to strike out an appeal if we have evidence that we did not serve the notice in accordance with the Childcare Act 2006, section 93, and the Interpretation Act 1978 section 7.<sup>80</sup>
431. When we think there are grounds for seeking to have an appeal struck out, we obtain any necessary legal advice.

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

432. The Secretary to the tribunal writes to us once she or he has received our response, and asks us:
- for the name and address of any witnesses, the nature of their evidence and whether we wish the tribunal to consider additional witness evidence
  - whether we wish the tribunal to give directions, or whether we wish for a preliminary hearing for directions<sup>81</sup>
  - for a provisional estimate of the time we require to present our case
  - for the earliest date by which we consider we will be able to prepare our case. This is unlikely to be the date on which the hearing will begin.

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<sup>79</sup> [www.legislation.gov.uk/uksi/2008/2699/contents/made#pt2-11g8](http://www.legislation.gov.uk/uksi/2008/2699/contents/made#pt2-11g8).

<sup>80</sup> Counsel advice is that a notice is not deemed to have effect if there is evidence to prove that the registered person or applicant did not receive that notice, even when that notice is served correctly under the provisions of the Childcare Act 2006 ([www.legislation.gov.uk/ukpga/2006/21/contents](http://www.legislation.gov.uk/ukpga/2006/21/contents) and the Interpretations Act 1978, section 7 ([www.legislation.gov.uk/ukpga/1978/30](http://www.legislation.gov.uk/ukpga/1978/30))).

We must send all documentation in accordance with the information assurance requirements.

<sup>81</sup> A directions hearing is where the court or Tribunal set the actions and timescales that both parties must adhere to, prior to the Tribunal hearing.

433. In consultation with our legal adviser, we prepare the response to a request and send it to the Secretary within:

- three working days of receipt of an appeal against:
  - suspension of registration as a childminder or childcare provider, generally or only in relation to particular premises
  - magistrate’s order for emergency cancellation of registration or variation of conditions of registration<sup>82</sup>
- 20 working days of receipt – in relation to all other appeals.

434. The secretary to the tribunal sends copies of the appellant’s information to us and ours to them. If, on viewing the information, we wish to amend or add to any of our information, we must send this to the secretary within five working days of receipt.

435. In the case of an appeal against a decision to suspend a registration, the tribunal judge may make directions before receiving any response from us, and may issue them with the initial notification of the appeal.

### **Before the tribunal hearing**

436. If either party has asked for a directions hearing, or if the Principal Judge or nominated chair considers it necessary to hold a telephone management hearing, then timescales will be agreed or imposed.

437. If there is not a telephone management hearing, the Principal Judge or nominated chair will direct when the tribunal should receive the documents, witness statements or other material relied on by both parties. The directions may also require the other party to receive these items by a set date. We must liaise with the appellant or their representative when asked to do so by the tribunal to agree directions as far as possible ahead of any telephone management hearing.

438. We must:

- advise all inspectors and other witnesses for our side of any set dates and timescales once the Principal Judge of the tribunal or nominated chair has made directions
- arrange for each inspector identified to prepare statements, setting completion dates (taking advice from legal advisers as necessary), and also arrange for non-Ofsted witnesses to prepare statements

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<sup>82</sup> [www.gov.uk/government/publications/memorandum-of-understanding-between-ofsted-and-hesc](http://www.gov.uk/government/publications/memorandum-of-understanding-between-ofsted-and-hesc).

- check all statements for consistency; the purpose is to achieve consistency in the evidence provided and identify any possible weaknesses in the evidence
- make sure that if one witness refers to another witness, the second witness has included a comparable point in her or his statement; for example, if two inspectors visit a provider and one refers to the other having a conversation with a provider, the person having the conversation needs to include evidence of it
- arrange for duplicate DBS disclosures when necessary – the DBS can provide an exact copy of any disclosure previously requested by us
- complete a cover sheet for the information going to the tribunal.

439. The inspector, often with the assistance of an administrative colleague, will compile a package of documents for our solicitor who will assist in making it into a bundle for submission to the tribunal. The solicitor arranges for the transfer of documents to the tribunal and other parties, in line with the guidance issued by the tribunal.

## **The hearing**

### *Burden of proof*

440. In the case of a registered provider, the burden of proof normally rests with us. It is our responsibility to demonstrate that a registered provider is no longer suitable for registration and, on the balance of probabilities, that our decision is appropriate in the circumstances. We must be able to provide sufficient evidence to support our decision, including evidence that the provider has not met the requirements or relevant regulations.
441. In the case of an applicant for registration appealing against a decision to refuse registration generally or only in relation to particular premises, the law places the burden of proof on the applicant to demonstrate her or his suitability.

### *Being available for the hearing*

442. The provisional timescale for presentation of evidence can change, depending on any cross-examination by the appellant or questioning by tribunal members. We must ensure that colleagues and witnesses are available to give evidence when called. The tribunal may call witnesses earlier or later than the anticipated time, possibly even on an earlier or subsequent day.

### *The evidence*

443. The hearing does not limit evidence to events that occurred up to the time we made the decision to take enforcement action. The tribunal will consider any evidence we gather following our decision. We normally carry out monitoring visits before the appeal hearing, as these allow us to provide recent evidence

about the setting or registered provider. Monitoring visits also enable us to maintain contact with the provider.

444. We may call all witnesses if necessary, including witnesses other than our employees when our case relies on, or refers to, their evidence. This might include for example, the police, a member of local authority children's services or the health and safety executive. Witness statements carry greater weight when the witness is available for cross-examination. However, the telephone management hearing usually decides whether a witness needs to appear. If the opposing party states that they do not wish to cross-examine that witness, based on their statement, then they do not need to be called personally.

#### *Giving evidence in person or in writing*

445. We may be required to attend as witness at an appeal hearing heard before the tribunal or at a court case when we are taking prosecution action. We may also need to provide written statements about the case and the actions taken for the court or tribunal using the witness statement template on our database.
446. The witness writes the statement as a record of what was seen by them, or how and what factors the witness took into account when making the decision. The witness must sign the statement and keep a copy. The court or tribunal will often refer back to the statement. The court or tribunal may require answers to questions about the statement.

#### **Acting as a witness for other agencies**

447. Occasionally, other authorities, agencies or individuals who are prosecuting or taking action before a court may ask an Ofsted employee to provide a statement and act as a witness. The agency may prepare the statement by writing down what we tell them, but the witness must sign the statement as a true record. The witness should ask for a copy of the statement in case they are called to give evidence later; this can be many months after the event. Usually, the other agency is legally represented, but the witness may not meet the legal representative of the agency until the day of the hearing. However, we do not use our own legal advisers. When we appear as a professional witness, we explain the remit of our role, the legislation that underpins our work and how an incident relates to this. We provide an account of what we saw or heard or did, but we do not speculate on the circumstances of the case.

#### **Disclosure**

448. We are required to disclose all relevant documents to the tribunal. This is likely to include case records and notes from inspection visits, as well as correspondence sent by us to the appellant, and other agencies involved in the case.

### **After the hearing**

449. The tribunal will tell both parties about its decision. In oral hearings, the tribunal may choose to tell both parties of its decision verbally, or reserve its decision while considering the facts and submissions. Both parties receive a copy of the recorded decision signed and dated by the chair. The decision takes effect on the date on which the tribunal makes it.
450. If the tribunal's decision is to vary or add conditions to the registration, we seek to make certain that the wording of any varied or new conditions means that we can regulate that condition effectively and excludes named individuals. We also seek to make sure that the context of any varied or new conditions also follows on from the existing text of the certificate. We raise this at the hearing if necessary. However, the final decision rests with the tribunal.
451. We must record the decision on our database. If the tribunal decides that a registration should continue, but with new or amended conditions, we must issue a new certificate of registration with the conditions as set out by the tribunal. We do not need to send a new notice of intention in these cases.

### **Appeals to the upper tribunal**

452. We only consider an appeal to the Upper tribunal in exceptional cases.
453. Our legal advisers will discuss with us whether there are grounds for appeal. If we wish to appeal against a decision of the tribunal, we must first ask the tribunal for permission.
454. We must make an application for permission to the Principal Judge no later than 28 working days after receiving the decision. We must take legal advice before making an application.
455. If we do apply for permission to appeal against the decision of the tribunal, we must identify the alleged error or errors of law in the original decision. Upon receipt of an application, the tribunal must firstly decide whether to 'review' the decision. If the tribunal decides not to review the decision or reviews the decision and decides to take no action in relation to the decision, the tribunal must then consider whether to give permission to appeal the decision.
456. If they give permission to appeal, the Upper tribunal will hear the appeal. If the tribunal does not give permission, we can appeal directly to the Upper tribunal. We must follow this process to appeal to the Upper tribunal.
457. We must make any appeal to the Upper tribunal within one month of the date on which the tribunal makes a decision to grant or refuse permission to

appeal.<sup>83</sup> The same applies in the case of a provider or applicant for registration who also have the same rights to make such an appeal.

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<sup>83</sup> The Tribunal Procedure (Upper Tribunal) Rules 2008, rule 21(3)(b); [www.legislation.gov.uk/uksi/2008/2698/contents/made](http://www.legislation.gov.uk/uksi/2008/2698/contents/made).

## Annex A. Offences

### The Childcare Act 2006

- Acting as a childminder, while not registered, while an enforcement notice is in effect, without reasonable excuse (offence under section 33(7), 52(7)).
- Providing, without reasonable excuse, early or later years provision (except childminding) while not registered, without reasonable excuse (offence under section 34(5) and 53(5)).
- Failing, without reasonable excuse, to comply with any condition imposed on registration (offence under section 38(5), 58(5), and 66(5)).
- Acting as a childminder or providing childcare, without reasonable excuse, while their registration is suspended (offence under section 69(9)). The offence does not apply to the voluntary part of the Childcare Register or to childminding/childcare activities, which are exempt from registration.
- Providing early or later years provision or being directly involved in the management of early years or later years provision while disqualified (offence under section 76(4)). This is not an offence if disqualification is only by virtue of the provider living in the same household as a disqualified person or if a disqualified person is employed and the provider can prove that they did not know and had no reasonable grounds for knowing that they were living in such a household (section 76(5)).
- Employing, in connection with the provision of early or later years provision, a person who is disqualified by regulations (offence under section 76(4)). This is not an offence if the provider can prove that they did not know and had no reasonable grounds for believing that the person was disqualified (Section 76(6)). Please note the two offences immediately above apply equally to provision run by schools which are otherwise exempt from regulation under section 34(2) and section 53(2).
- Intentionally obstructing a duly authorised person exercising any power under section 77 (rights of entry, rights to inspect documents, rights to interview, etc.) (offence under section 77(8)).
- Knowingly making a statement that is false or misleading in a material particular in an application for registration (offence under section 85(1)). This applies to all registers including the voluntary part of the Childcare Register.
- Providing childcare provision other than on approved premises (offence under section 85A).

### The Early Years Foundation Stage (Welfare Requirements) Regulations 2012

- Failure, without reasonable excuse to comply with the requirements of:
  - Regulation 7(1) – not to use corporal punishment and, so far as is reasonably practicable, to ensure that corporal punishment is not



used on the child by any person who cares for or is in regular contact with children or any person living or working on the premises

- Regulation 8 – requirement to notify of events specified in the schedule within prescribed time
- Regulation 10(2) – failure to comply with a welfare notice within specified period.

### **The Childcare (General Childcare Register) Regulations 2008<sup>84</sup>**

- Failure, without reasonable excuse, to comply with the requirements of regulation 5 of schedule 3, the requirements are that the registered person does not give corporal punishment, and ensures that no person who cares for the child, or who lives or works on the premises gives corporal punishment to the child (Regulation 9). This applies to those registered on Part A of the General Childcare Register only.
- Former offences under the Children Act 1989 may be subject to prosecution if the offence took place before 1 September 2008.

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<sup>84</sup> As amended by the Childcare (General Childcare Register)(Amendment) Regulations 2012.



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