

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>	
6	<p>Details of any criminal convictions and cautions of the applicant and the nominated individual</p> <p>the date of the offence</p> <p>the nature of the offence</p> <p>the place at which the offence was committed and either the name of the court, the date of conviction and the penalty imposed</p> <p>or</p> <p>the date of the caution.</p>		√
7	Food poisoning affecting two or more children cared for on the premises.	√	√

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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.	√	√
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.		√

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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'.	√	√

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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

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.

88. 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.
89. 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.
90. 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.
91. 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.
92. 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.
93. 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:

- 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 assist¹⁹
- 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.

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

- who will take the lead
- whether they will work together during the visit or concentrate on separate areas of concern
- who will make notes

¹⁹ 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.

131. 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.
132. 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.
133. 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.
134. 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.
135. 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.
136. 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.
137. 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.

160. 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 us to refer to it.

Event or action type	Situation when we publish
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.

161. 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.

Action	Decision-maker	Forum
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 ²² : <ul style="list-style-type: none"> - no children on roll (childminding only) - failure to comply with request for new or additional suitability checks 	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
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

²² The fees team handles cancellation for non-payment.

188. 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.
189. 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.
190. 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.
191. 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.
192. 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.
193. 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.
194. 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.
195. 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

209. 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.

210. 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.

211. 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

246. 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.
247. 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.
248. 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.
249. 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

250. 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.
251. 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).³⁸ 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.
252. 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

³⁸ Childcare Act 2006, section 68; www.legislation.gov.uk/ukpga/2006/21/section/68.

responsible for considering cancelling a registration must be satisfied about the level of evidence before agreeing to serve any notice.

253. 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.
254. 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.
255. 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.
256. 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 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'.³⁹

The notice of intention to cancel

257. 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.
258. We serve notices of intention to cancel registration in writing under the Childcare Act 2006, section 73(2).⁴⁰ We give our reasons in the notice for

³⁹ Protection of Children Act 1999; www.legislation.gov.uk/ukpga/1999/14/contents.

⁴⁰ Childcare Act 2006, section 73(2); www.legislation.gov.uk/ukpga/2006/21/section/73.

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’.

259. The notice of intention includes:

- the reasons for the intention
- the relevant part of the ‘Statutory framework for the early years foundation stage’⁴¹ 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.

260. 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.

261. 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’.

Notice of decision to cancel

262. 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.

263. 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

264. 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

⁴¹ ‘Statutory framework for the early years foundation stage’, Department for Education, 2014; www.gov.uk/government/publications/early-years-foundation-stage-framework--2.

tribunal, the decision takes effect at that point, or at the point any appeal to the tribunal is determined.

265. 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.
266. 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.
267. 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.
268. 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

269. 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'.
270. 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.
271. 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.

272. 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

273. We make applications for emergency cancellation, imposition, variation or removal of conditions of registration under the Childcare Act 2006, section 72 for childminding and childcare⁴²
274. 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.
275. 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

276. 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. 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,⁴³ 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

⁴² Childcare Act 2006, section 72; www.legislation.gov.uk/ukpga/2006/21/section/72.

⁴³ 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.

that the writer understands and has complied with their duty of full and frank disclosure to the court.

277. 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.⁴⁴

Taking action with or without both parties present

278. 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.

279. 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

280. 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 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

281. 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.⁴⁵ 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.⁴⁶

⁴⁴ '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.

⁴⁵ The Childcare Act 2006, section 72(4)(b); www.legislation.gov.uk/ukpga/2006/21/section/72.

⁴⁶ '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.

282. 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

283. 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.

284. 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

285. 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

286. 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.

287. 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.

Timescales

313. We must bring a prosecution within six months from the date that evidence, sufficient to warrant the proceedings, comes to our knowledge.⁵⁰ In such cases, we involve lawyers as early as possible.
314. 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.⁵¹
315. In all cases, the proceedings start when we lodge the relevant documents with a court.

Decision to prosecute

316. 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.⁵²
317. 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.
318. 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 take alternative enforcement action, such as cancellation – see 'Our compliance and enforcement policy'.
319. 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

320. 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.
321. 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

⁵⁰ The Childcare Act 2006, section 86(1); (www.legislation.gov.uk/ukpga/2006/21/contents).

⁵¹ The Childcare Act 2006, section 86(2); (www.legislation.gov.uk/ukpga/2006/21/contents#pt3-ch5-pb7-l1g86).

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

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

322. 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.
323. 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

324. 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.
325. 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.
326. 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

327. 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

328. The Police and Criminal Evidence Act 1984 and the associated revised codes 2005⁵³ 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.⁵⁴

Giving a Police and Criminal Evidence Act codes of practice caution⁵⁵

329. 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.⁵⁶

330. 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.’

331. 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.

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

⁵³ www.gov.uk/police-and-criminal-evidence-act-1984-pace-codes-of-practice.

⁵⁴ 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’.

⁵⁵ This is different to the use of the word ‘caution’ as a disposal – see separate section on ‘Issuing a simple caution’.

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

- 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'.
333. 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.
334. 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.
335. 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.
336. 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.
337. 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.
338. 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.

339. 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.⁵⁷
340. 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.
341. 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

342. 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.
343. We follow Code E of the PACE revised codes 2010 when carrying out a recorded interview carried out under a PACE caution.⁵⁸
344. An Ofsted staff member trained in the conduct of PACE interviews must be present throughout the interview.
345. 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

346. 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.

⁵⁷ 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.

⁵⁸ www.gov.uk/police-and-criminal-evidence-act-1984-pace-codes-of-practice.

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

When to make a referral

347. 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:⁵⁹
- 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.
348. 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.
349. 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.
350. 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.
351. 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.

⁵⁹ Protection of Freedoms Act 2012; www.legislation.gov.uk/ukpga/2012/9/section/64/enacted and Safeguarding Vulnerable Groups Act 2006; www.legislation.gov.uk/ukpga/2006/47/contents.

352. 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.
353. 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

354. 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.
355. 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.
356. 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

357. Ofsted is authorised under the Regulation of Investigatory Powers Act 2000⁶⁰ (RIPA) to carry out direct surveillance for the purpose of preventing or detecting a criminal offence. For full details, see Ofsted's surveillance policy⁶¹.

Disqualification

358. The law disqualifies some people from registering as a childminder or childcare provider.⁶²

Waiving disqualification

359. 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

⁶⁰ Regulation of Investigatory Powers Act 2000; www.legislation.gov.uk/ukpga/2000/23/contents.

⁶¹ Ofsted surveillance policy: www.gov.uk/government/publications/ofsteds-directed-surveillance-policy.

⁶² Regulations made under the Childcare Act 2006, section 75; 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.

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.

360. 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.
361. 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.
362. 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.
363. 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.
364. 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.
365. 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.^{63, 64}
366. 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'.

⁶³ Domestic premises is defined in section 98 of the Act as 'premises which are used wholly or mainly as a private dwelling'.

⁶⁴ Including non-domestic premises up to 50% of the time.

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

367. 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.⁶⁵ 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

368. 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.

369. 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.

370. 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.⁶⁶ 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.

371. 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

⁶⁵ A local authority consisting of a chairperson and councillors (Section 2 of the Local Government Act 1972).

⁶⁶ 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).

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.

372. 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.

373. 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.)⁶⁷

Handling requests to waive disqualification

374. 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

375. 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.

376. We cannot consider the application to register unless:

- we have waived the disqualification

⁶⁷ The Childcare Act 2006, section 76(5) (www.legislation.gov.uk/ukpga/2006/21/contents#pt3-ch5-pb1-l1g68).

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

377. 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

378. 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').

379. 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)
 - 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.

380. 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.⁶⁸

381. 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.⁶⁹
382. 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.
383. 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.
384. 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.
385. 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

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

⁶⁸ Section 184 of the Data Protection Act 2018.

⁶⁹ Under Part V of the Police Act 1997.

Duty to disclose

387. 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.^{70, 71}

388. 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.

389. 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.

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

391. 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.

392. 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

393. 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:

- 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

⁷⁰ Domestic premises is defined in section 98 of the Act as 'premises which are used wholly or mainly as a private dwelling'.

⁷¹ Including non-domestic premises up to 50% of the time.

- 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.

394. 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

395. 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.

396. The disqualifying offences include⁷² (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
⁷³(www.legislation.gov.uk/ukpga/2000/43/contents#sch4)

⁷² 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.

⁷³ 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 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

- 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.⁷⁴

397. 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.⁷⁵

398. 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.

399. 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.

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).

⁷⁴ 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.

⁷⁵ 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.

400. 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.
401. 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 action⁷⁶
 - in relation to childminding or childcare, she or he has been found to have committed⁷⁷ any of the offences found in the [Appendices for disqualification under the Childcare Act 2006 guidance](#).

Objections

402. 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

403. 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)

⁷⁶ 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).

⁷⁷ '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) 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).
404. 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').
405. 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.
406. 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').
407. 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

408. We review the objection process and must demonstrate that we have done this if challenged.
409. 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.
410. 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.
411. 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.
412. 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.
413. 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.
414. 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

415. We confirm the decision following an objection in writing.
416. 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.
417. 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.

418. 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 ⁷⁸
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

419. The tribunal counts the time limit in which to apply for an appeal from the first working day after we serve the notice.⁷⁹ This means that if the provider/applicant receives a notice on a Saturday, the period begins on the following Monday.

420. 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.

⁷⁸ All references to 'days' are calendar days unless otherwise specified.

⁷⁹ 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

421. 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.
422. 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.
423. 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.
424. 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

425. 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.
426. 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.
427. 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

428. 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 2008.⁸⁰
429. 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 7.⁸¹
430. 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

431. 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 directions⁸²
 - 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.

⁸⁰ www.legislation.gov.uk/uksi/2008/2699/contents/made#pt2-l1g8.

⁸¹ 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 and the Interpretations Act 1978, section 7 (www.legislation.gov.uk/ukpga/1978/30)).

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

⁸² 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.

432. 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 registration⁸³
 - 20 working days of receipt – in relation to all other appeals.
433. 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.
434. 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

435. 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.
436. 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.
437. 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
 - check all statements for consistency; the purpose is to achieve consistency in the evidence provided and identify any possible weaknesses in the evidence

⁸³ www.gov.uk/government/publications/memorandum-of-understanding-between-ofsted-and-hesc.

- 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.

438. 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

439. 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.
440. 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

441. 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

442. 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.

443. 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

444. 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.
445. 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

446. 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

447. 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

448. 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.

449. 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.
450. 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

451. We only consider an appeal to the Upper tribunal in exceptional cases.
452. 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.
453. 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.
454. 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.
455. 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.
456. 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.⁸⁴ The same applies in the case of a provider or applicant for registration who also have the same rights to make such an appeal.

⁸⁴ The Tribunal Procedure (Upper Tribunal) Rules 2008, rule 21(3)(b); 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 2008⁸⁵

- 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.

⁸⁵ As amended by the Childcare (General Childcare Register)(Amendment) Regulations 2012.



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