

Responses to Ofsted consultation on the regulation of social work providers and the inspection of the statutory functions delegated to them by local authorities

Between 14 October and 25 October 2013, Ofsted consulted on its proposed arrangements for the regulation of independent social work providers (SWPs) and the inspection of the statutory functions delegated to them by local authorities.

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Introduction

1. Between 14 October and 25 October 2013, Ofsted consulted on its proposed arrangements for the regulation of independent social work providers (SWPs) and the inspection of the statutory functions delegated to them by local authorities.
2. The consultation sought to gather responses from those with an interest in, or expertise relating to, these areas. This report outlines those responses, how they have informed our arrangements for the regulation of social work providers, and how we manage the relationship between their registration and the inspection of the functions they have delegated to them by local authorities.

Background to the consultation

3. Part 1 of the Children and Young Persons Act 2008 (CYPA) when commenced in full will allow local authorities to delegate their statutory functions for looked after children and care leavers to private or voluntary providers. The Department for Education (DfE) will commence Part 1 of CYPA on 13 November 2013. The CYPA also sets out specific provisions about the arrangements for delegation, one of which is that the provider and any manager must be registered as an agency under the Care Standards Act 2000 (CSA).
4. Ofsted is the registration authority under the CSA, therefore providers and managers will be legally obligated to register with Ofsted. However, Ofsted's role as regulator of SWPs will be unlike Ofsted's role with any other agency registered under the CSA. In all other instances, Ofsted's operation under the CSA is that it registers and inspects the service and carries out enforcement action against very detailed conduct regulations and makes recommendations against the government's national minimum standards all under one Act. In the case of SWPs, there is no proposed inspection framework; neither are there supporting national minimum standards.
5. The CSA is underpinned by regulations that set out:
 - a fitness test, which covers registration of the responsible person, the registered manager and the necessary experience and qualifications of the staff. The DfE have consulted on these regulations, which were formally made on 16 October 2013 and laid before Parliament on 21 October 2013
 - Ofsted's powers of cancellation.
6. SWPs will be registered with Ofsted under the CSA, but as there will be no detailed conduct regulations, Ofsted will not carry out routine inspections under the CSA. Inspection of the way in which the delegated functions are performed will be carried out through the inspection of the local authority that has delegated their functions to a SWP. This inspection will be carried out under the Education and Inspections Act 2006 (EIA).

7. Ofsted has powers to inspect the exercise of local authority functions under s136 of the EIA. These powers extend to the inspection of any functions that a local authority delegates to a SWP.

The consultation

8. We consulted with the DfE, local authorities, children and young people, the public and interested parties about our plans for regulating independent social work providers.
9. We used two primary consultation methods. The first was an online survey open to interested parties from 14 October to 25 October 2013. It asked seven specific questions and also gave people the opportunity to comment more generally on the issues raised. The questions were:

Q1. To what extent do you agree or disagree that all applications to provide or manage a SWP should involve a registration visit by an Ofsted inspector?

Q2. To what extent do you agree or disagree that a provider and manager of a SWP that a local authority has already delegated their functions to under a pilot – and therefore automatically become registered with Ofsted from November 2013 – should be subject to the same fitness assessment as a new applicant?

Q3. To what extent do you agree or disagree that, when registering a SWP or a manager of a SWP, Ofsted should use conditions of registration to confirm and restrict the delegated function to the authority for which the delegation and application for registration apply, and that the condition of registration will also identify the specific local authority that has contracted the SWP to provide/manage these functions?

Q4. To what extent do you agree or disagree that a SWP's/manager's intention to provide additional delegated functions for different local authorities should require them to: submit an application to vary their conditions of registration; submit additional evidence to support their application; and be subject to a further registration visit from Ofsted?

Q5. To what extent do you agree or disagree that local authorities that have been judged good or better in their most recent inspection and that subsequently delegate functions will not be subject to any inspection prompted by the delegation of those functions, but rather that their single inspection framework cycle will remain unchanged?

Q6. To what extent do you agree or disagree that where local authorities that have been judged, in their most recent inspection, to be inadequate overall or adequate with areas for development in the function(s) that they are delegating, they may be subject to an earlier single inspection if they delegate function(s)?

Q7. To what extent do you agree or disagree that where local authorities have been judged, in their single inspection¹, to be inadequate overall or to require improvement in areas they subsequently delegate, they will be subject to a re-inspection of the delegated function(s) within 12 weeks of the commencement of the SWP contract, but no sooner than six months after the most recent single inspection?

10. The second consultation method involved seeking children and young people's views through the 'BeHeard' Young People's Panel and through local authority children in care councils. We asked three particular questions of the panel and councils. These were:
 - What are your views on having a separate company to provide social workers to work with children?
 - What checks should be done on a company before it provides social workers for children?
 - Are checks at the start of setting up such a service enough?
11. We received 12 responses to our consultation. These were mainly from local authority staff and also included two responses from independent providers. We also received over 40 responses from children and young people expressing their views on their questions.

Summary of responses

12. Overall, the respondents supported our proposals regarding registration visits, fitness assessment, conditions of registration and variations. Views were mixed about the links between inspection judgements of local authorities and re-inspection.
13. The DfE have expressed their support for the arrangements we are proposing to put into place.
14. Children and young people were consistently concerned in their responses about how well they should be cared for and they were also worried about communication and consistency. However, they could see possible benefits in impartiality and specialism outside the local authority arrangement. They wanted thorough checks to be made on companies and applicants that planned to provide delegated functions. They also felt strongly that registration checks should be backed up by later inspection.

¹ This is the inspection of services for children in need of help and protection, children looked after and care leavers

Responses in full

Registration visits from an Ofsted inspector to all applications to provide or manage SWPs, including existing pilots

15. There were two questions in this area - Q1 and Q2 at paragraph 8 above.
16. One respondent was unsure, but 11 of the 12 online respondents supported the proposals that:
- all applications to provide or manage social work provision should involve a registration visit by Ofsted
 - where a local authority has already delegated their functions under a pilot scheme they should be subject to the same fitness test as a new applicant.
17. One respondent commented:
- ‘It will be important to ensure there is a proper, external to the local authority, registration process to enable a local authority to be confident in using the services provided by the SWP.’
18. Young people’s views on the issue of registration checks were united in wanting rigour. One young person replied:
- ‘(Check) that the social workers are qualified for working with children. After that they should be interviewed or checked to see that they are nice people and have good intentions to work well. They should be checked for criminal records to make sure they’re definitely not dodgy. Maybe also check their family relations are well, and references from other people to make sure they are happy so they can make children happy too.’

Conditions of registration to confirm and restrict the delegation function to a named local authority, and a further registration visit if extended delegation is sought

19. There were two questions in this area - Q3 and Q4 at paragraph 8 above.
20. Ten of the 12 online respondents thought that, when registering a SWP, Ofsted should use conditions of registration that confirm and restrict the delegated function to a specific, identifiable local authority.
21. One respondent was unsure and one disagreed, stating this was a matter for the local authority concerned. Generally, respondents thought that:
- ‘Conditions of registration need to be consistent throughout otherwise it will cause confusion with other agencies.’
22. Nine of the 12 agreed that if a SWP or manager of a SWP intended to provide additional delegated functions for different local authorities, they should submit

an application to vary their conditions including additional evidence and be subject to a further registration visit from Ofsted.

23. One respondent was unsure and two disagreed, stating that the local authority should take ownership of their decision to delegate. One respondent commented that:

‘Any extension of the delegated services must be appropriately managed to avoid drift and confusion regarding the purpose and mandate of the services. As such, services must be able to demonstrate they are able to take on additional responsibilities through further registration and inspection.’

The links between outcomes and timings of single inspection events and the scrutiny of any subsequent delegation of functions

24. There were three questions in this area, - Q5–Q7 at paragraph 8 above.

25. Eight of the 12 respondents disagreed or strongly disagreed with the first proposal that:

‘Local authorities that have been judged good or better in their most recent inspection and that subsequently delegate functions will not be subject to any inspection prompted by the delegation of those functions, but rather that their single inspection framework cycle will remain unchanged.’ *Regulation of social work providers and the inspection of the statutory functions delegated to them by local authorities: Consultation document, Ofsted, October 2013*

26. Four respondents agreed, seeing it as a ‘proportionate’ approach. However, most respondents were concerned that the delegation of functions would have a profound effect on overall local authority functioning and, as one respondent stated:

‘Local authorities may be judged good or outstanding in their own management of social care services, but may have a very poor approach to procuring, commissioning and monitoring of other provision.’

27. However, eight respondents agreed or strongly agreed with the second proposal that:

‘Local authorities that have previously been judged inadequate overall or adequate with areas for development in the function(s) that they are delegating may be subject to an earlier single inspection if they delegate function(s).’ *Regulation of social work providers and the inspection of the statutory functions delegated to them by local authorities: Consultation document, Ofsted, October 2013*

28. Two respondents disagreed or strongly disagreed, and two were unsure. Generally, this group did not feel that 'delegation of services' alone should trigger an early inspection. Conversely, the majority were in agreement with the proposal. An example of that agreement was expressed by one respondent who stated that:

'there is little in the way of a good practice model and as such any delegated service irrespective of the commissioning local authority, will inevitably carry a degree of risk...as such it is therefore vital they are all rigorously assessed and evaluated.'

29. Seven respondents agreed with the third and final proposal in this section, four disagreed or strongly disagreed and one was unsure that:

'where local authorities have been judged, in their single inspection, to be inadequate overall or to require improvement in areas they subsequently delegate, they will be subject to a re-inspection of the delegated function(s) within 12 weeks of the commencement of the SWP contract, but no sooner than six months after the most recent single inspection.'
Regulation of social work providers and the inspection of the statutory functions delegated to them by local authorities: Consultation document, Ofsted, October 2013

30. One respondent agreed with the principle but disagreed with the timescale for re-inspection, because they felt that 12 weeks was too short. Other views varied from those stating that the outcome of the single inspection should not be a factor, to those stating that any inadequate judgement should provoke an earlier inspection.

31. Children and young people were not asked these specific questions, but generally felt that regular inspection was an important safeguard to help ensure quality. One young person stated:

'I feel they need to have an inspection after they have been checked, they should be inspected just to make sure they keep to the high quality standard otherwise things could go badly wrong and if that happened nobody could give evidence why.'

The way forward

32. We are grateful to all respondents who took part in our consultation and appreciate the thoughtful and valuable suggestions. Most respondents agreed with our proposals regarding registration and the use of conditions and our approach will remain as set out in the consultation proposals.

33. A number of respondents expressed concern about how we propose to programme the inspections of local authorities who delegate functions to a SWP. Having carefully considered the views of those who expressed concern

about the timing of local authority inspections, we remain convinced that a differential approach to inspection (as set out in the consultation proposals), taking into account previous inspection outcomes, is appropriate and proportionate to risk. The proposal to re-inspect (within 12 weeks of the commencement of the contract but no sooner than six months after the most recent inspection) only those local authorities judged to be inadequate or to require improvement in service areas that they subsequently delegate, will remain as we proposed.

34. The number of respondents to this consultation was low, but the concerns raised are real and ones that we recognise. One respondent noted “The time frame and information available does not make it easily accessible for key stakeholders like parents, children and young people to participate and give their views”. This consultation was conducted over a short period (two weeks) because of the timing of the commencement of the legislation. Until very recently DfE had planned to remove the requirement for Ofsted to be the registration authority, but this proved to be against the will of Parliament. Ofsted is clear that decisions on the timing of each local authority inspection are made on a case by case basis, taking into account all known risks, performance information, complaints and whistleblowing. We want to reassure respondents that in the case of any local authority delegating functions to a SWP and where there are existing or emerging concerns about the safety or welfare of children and young people, the inspection will be brought forward so that those concerns can be properly investigated and reported. This approach is also reflected in our existing approach to the scheduling of inspections.
35. We will be applying a registration and fitness process to all existing and new SWPs, with effect from 12 November 2013. The relevant materials will be available on our website from 8 November 2013 at www.ofsted.gov.uk/resources/130234.