



Supported Accommodation: Understanding Ofsted Refusals and Their Impact

AUTHOR / KEY CONTACT



Alice Thursfield
Senior Associate

✉ Alice.Thursfield@LA-Law.com
☎ 01202 786353

As many providers will already be aware, supported accommodation is a type of provision that provides accommodation with support for 16, and 17-year-old, looked-after children and care leavers to enable them to live semi-independently in their journey to adulthood and onwards to independent living.

Historically, providers of this type of service have not been required to register with [Ofsted](#) and have, until 2023, been operating without any regulatory oversight. Widespread concern about the vulnerability of young people often placed in these settings, led to government intervention to regulate these settings and bring supported accommodation into regulatory oversight.

Since April 2023, providers have been required to register with Ofsted following the enactment of [The Supported Accommodation \(England\) Regulations 2023](#).

Registration recap

As part of the transitional arrangements, those providers who were providing supported accommodation services already were required to have submitted and had their application for registration either “granted” or “accepted” by Ofsted by 27 October 2023.

Providers could continue to operate beyond 27 October 2023 if their application had been either “granted” or “accepted” by Ofsted (accepted meaning that the application had been submitted, accepted, and the registration payment successfully received).

Where a provider of supported accommodation services has been continuing to operate after 27 October 2023, without an accepted or granted application, it is committing an offence and is operating illegally.

Increase in Ofsted notice of proposals and decisions of refusals to

register

As Ofsted works through the large volume of supported accommodation applications to register, the last 12 months has, somewhat expectedly, seen a marked increase in the number of providers and proposed registered service managers receiving Notices of Proposal to refuse registration. This perhaps is understandable given the infancy of the framework.

Providers familiar with the registration process will be aware that stages 1 and 2 of the application process require the submission of application forms, and thereafter, checks and references take place. Stage 3 includes a site visit and interviews of proposed registered persons such as the proposed registered service manager (sometimes referred to as the “RSM”) and proposed nominated individual.

Where Ofsted is not satisfied that a provider can meet the regulatory requirements for registration, it will issue a Notice of Proposal to refuse the registration at provider level and/ or registered service manager level. In our experience, it is likely that where a registered service manager receives a Notice of Proposal to refuse registration, the proposed registered provider will also receive a Notice of Proposal to refuse registration, usually on the grounds of concerns about leadership and management.

Both the proposed registered service manager and providers have the opportunity to explain why Ofsted should not refuse the registration. To do this, providers and RSMs can write to Ofsted separately with their reasons via a mechanism known as “Representations” within 28 days of the date on which the Notice of Proposal was served and deemed received. The time period for submitting Representations cannot be extended, so it is important to act quickly.

If Ofsted does not receive a response within 28 days, it will send a Notice of Decision to refuse the application – this is a significant step. This decision can be appealed to the First-Tier Tribunal but can have significant implications.

Representations

Submitting Representations is one of the options available to providers and/ or RSM’s after receipt of a Notice of Proposal to refuse registration.

In some cases, it is appropriate for Representations to be lodged. This can be in circumstances where the Notice of Proposal is factually inaccurate, for example, or where further steps have been taken to comply with the Regulations.

The effectiveness of the Representations is paramount. We therefore encourage anyone in receipt of a Notice of Proposal (or Notice of Decision) to seek specialist legal advice as soon as possible.

Implications of an Ofsted Notice of Decision to refuse registration and the importance of tailored legal advice and early intervention

Beyond a Notice of Proposal, if Ofsted is not satisfied with the contents of Representations, or if no Representations are submitted, it will proceed to issuing a Notice of Decision which is a significant step. Action should therefore be taken by the proposed provider/ RSM promptly.

If Ofsted makes a decision to refuse a provider or RSM's registration, it can negatively impact any application in the future. One of the ways it can have impact for some applicants, is for example, if Ofsted refuses an application from individual providers, partnerships or the proposed service manager, those individuals, the partners and the manager will be disqualified from fostering a child privately and become known as "disqualified people".

Unless they have written consent from Ofsted, disqualified people cannot:

- Run a [children's home](#) or be employed in one;
- Manage a children's home;
- Have a financial interest in a children's home or
- Work at a children's home.

If a person undertakes any of the above whilst disqualified and without the written consent of Ofsted, they will be committing an offence.

These disqualification provisions are understandably of concern and so legal advice should be sought at the earliest opportunity, ideally at the Notice of Proposal stage, for the appropriate commercial advice to be obtained to protect a provider/ proposed RSM's position in a way that is suitable and appropriate for them and their unique circumstances.

An important point to note here is that the circumstances of each supported accommodation provider can differ. For example, at the time of receipt of a Notice of Proposal, providers may be:

- Already operating and providing support to young people under the application "accepted" exemption;
- Not yet operating or currently supporting young people, but have staff on board and financial commitments to accommodation such as a long-term lease or purchase of a property/ properties;

- Operating other services, including children’s homes or fostering agencies, or
- Have lending arrangements and liabilities already in place.

Given that circumstances can vary, and the implications of disqualification can be wide, it is essential that providers seek legal advice as soon as possible so that consideration can be given to their situation and tailored specialist legal advice can be provided on the options available. It is not always in a provider’s or RSM’s best interest to immediately appeal a Notice of Proposal. This is because merits may not be strong, the disqualification implications could be problematic, or the legal costs may outweigh the intended outcome.

It may, in some cases, be more appropriate for a provider or proposed RSM to consider withdrawing its application at the Notice of Proposal stage, to avoid the risk of receiving a Notice of Decision and the requirement to appeal to the First Tier Tribunal at that stage. There are certain circumstances when a withdrawal of an application may be rejected, and these depend on the reasons outlined in the Notice of Proposal.

In summary, this is a complex area for providers and proposed RSMs to navigate. Tailored and specialist legal advice should be sought as soon as possible to protect your position. It can pay dividends in the long run.

We are an experienced team of regulatory lawyers representing providers across the health and social care sector for both children and adults. We act for a range of Ofsted regulated providers and can assist in dealing with Ofsted requirements. Please do not hesitate to get in touch with [Alice Thursfield](#), Associate Solicitor, on Alice.Thursfield@LA-Law.com or 01202 786353 so that we can discuss your specific circumstances.