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Baroness Barran

House of Lords

24 June 2025

Dear Diana

I promised to write during the Committee Stage of the Children's Wellbeing and Schools Bill on 17 June 2025, regarding Groups 5 and 6, where you had tabled amendments and asked a number of questions during debate.

Thank you for your questions and considered thoughts on these Bill measures (Clauses 12 and 13) that seek to strengthen Ofsted's regulatory powers. I hope this response is useful.

For ease and clarity, I have set out your questions and comments as recorded and my responses under each.

Group 5

1. *[Provider oversight] ... is a similar approach to independent schools that do not meet the independent school standards, frequently in relation to the teaching of RSHE. These schools face sanctions, and they are required to improve and present a plan for meeting the standards. But during my time in the department, despite the best efforts of officials, the names on the fairly long list barely changed. I appreciate that the context and the reasons for non-compliance are different, but I hope the Minister can convince me that this regime will be more effective.*

- I hope I can reassure you that these provider oversight powers will supplement Ofsted's existing powers of inspection and regulation to allow them to take the best and fastest approach in the interests of children staying safe and having the highest quality care.
- Independent schools are inspected by the Independent Schools Inspectorate once every three years, whereas children's homes are inspected at a minimum once a year. Combined with intelligence Ofsted get from a variety of sources (e.g. local authorities, police, whistleblowing, children, parents etc.), this gives Ofsted a detailed picture of arising problems across a group of children's homes. If those issues are systemic to a single provider group, and Ofsted feel

best resolved by the provider group then these powers will allow Ofsted to require the group to action improvement in a number of homes simultaneously – which current legislation does not allow for.

- The new requirements that Clause 12 introduces are backed by enforcement powers, amended powers to make regulations as regards fit and proper persons to carry on children's homes and Ofsted's existing powers:
 - Clause 13 will allow Ofsted to fine provider groups an unlimited amount if they don't comply with requirements which should act as a significant deterrent to inaction.
 - We intend to use the power amended by the Bill to set out in regulations requirements as to fit and proper persons to carry on a children's home by reference to whether a relevant provider group has failed to comply with requirements. The effect of this would be to enable Ofsted, in certain cases and where appropriate, to refuse registration for new provision that is owned/controlled by a provider group that has not complied with relevant provider oversight requirements. Again, this will act as a significant deterrent.
 - Ofsted of course still have powers to cancel/suspend individual registrations of homes where that is appropriate (and Ofsted would have reasonable suspicion that grounds for cancellation in individual settings exist for these provisions to apply).

2. *The policy note talks about required standards not being met. Surely there is a spectrum of standards breaches: some that will require the cancellation of the registration, as the Bill is drafted, and some that will require an improvement plan. While I understand that Clause 12 is intended to sit alongside the existing regulatory regime for individual homes, it is unclear how they will mesh together. I would be grateful if the Minister could explain that.*

I understood that to mean, given the severity—that Ofsted suspects that there are grounds for cancelling the undertakings registration—there could within that be concerns about the safety of children in those homes.

- It is important to firstly state that Ofsted's power to cancel registration is broad, and that it is right that Ofsted is only able to take action at parent undertaking (provider group) level where they have reasonable grounds to suspect grounds for cancellation of registration.
- We expect these new powers to be used by Ofsted where there are concerns about the quality of provision/care across multiple settings, not where there are immediate safeguarding concerns. If there are safeguarding concerns, we would expect Ofsted to take action using their existing enforcement powers at individual setting level e.g. to serve compliance notices (under s.22A of the Care Standards Act 2000 (CSA)), restrict accommodation in children's homes/residential family centres (under s.22B CSA) or in more serious cases suspend/cancel registration. This means that where necessary, children can be protected very quickly. Further, Ofsted already have powers to undertake inspections and those can include unannounced inspections. There may be other cases where Ofsted identify improvements that are best made working with individual settings directly as they currently do, as opposed to working with the provider group – they will continue to have this flexibility in their approach.

- The grounds of cancellation are as set out in s.14 CSA 2000. Ofsted may cancel registration:
 - a) on the ground that that person has been convicted of a relevant offence;
 - b) on the ground that any other person has been convicted of such an offence in relation to the establishment or agency;
 - c) on the ground that the establishment or agency is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements;
 - d) on any ground specified by regulations.
- Additional grounds set out in regulation 12 of the Care Standards Act 2000 (Registration) (England) Regulations 2010 are:
 - a) that the person has failed to pay, at the time prescribed under section 16(3) of the [Care Standards] Act, the annual fee payable by virtue of that subsection;
 - b) that the person has in relation to any application –
 - I. for registration; or
 - II. for the variation or removal of a condition in relation to the applicant's registration, made a statement which is false or misleading in any material respect or provided false information; or
 - c) that the establishment, agency, holiday scheme for disabled children or supported accommodation undertaking has ceased to be financially viable, or is likely to cease to be so within the next six months.
- I hope this makes it clear that the grounds for cancellation of registration are wide and can include any failure to comply with relevant requirements which could be more or less serious requirements, including compliance with any of the standards for that setting.
- These new powers as set out in Clause 12 are deliberately designed to complement existing legislation and practice and will allow Ofsted to act at scale and pace where they deem it necessary and appropriate.

3. On page 18, line 8, how is “reasonably suspects” defined? Is that from a recent inspection—and if so, how recent—or is it from wider intelligence?

- The use of “reasonable” is intended to ensure that the suspicion is based on some form of evidence and is not simply speculative.
- We would expect that Ofsted’s usual sources of intelligence such as information received from a child, parent, independent visitor corroborated/verified through other sources as necessary and/or via inspection would be sufficient to form a reasonable suspicion.
- Furthermore, having formed a reasonable suspicion in relation to two or more settings, if it appears to Ofsted that the problem arises from overall policy that is set by the provider group, that could itself, without further intelligence in relation to the specific setting, form the basis of a reasonable suspicion in relation to other settings under the ownership/control of the same parent undertaking.

4. *How is an individual with “a significant role in the management of the parent undertaking” defined? Is that a director? Do they have to be registered at Companies House? What happens if it is an offshore holding company?*

- It is the responsibility of the provider group to nominate the individual as described in Clause 12 (new s.23A(6) CSA 2000) which will require that:
 - (a) the individual has a significant role in the management of the parent undertaking, and
 - (b) the individual may reasonably be expected to be in a position to ensure that the parent undertaking complies with the requirement imposed by section 23B(5) (requirement to implement an improvement plan).
- This person may hold the title of Children’s Services Director or Head of Children’s Residential Care in the organisation for example, however it is important that we do not restrict the role based on having a specific title, rather, that they are able to oversee the implementation of improvement in settings owned by the provider group.
- Ofsted will be able to serve an improvement plan notice on the provider group no matter where they are based. It is in the interests of the provider group to comply with the requirements, given Ofsted will have reasonable suspicion that they could cancel the registration of their settings – and could use existing powers to cancel those registrations if improvement were not forthcoming.

5. *In new Section 23A(7) on page 19, line 3, can the Minister confirm that the Bill is correct where it says:*

“The period mentioned in subsection (4)(d) must not be less than ... 28 days”?

Should it not say that it must not be more than 28 days? I read this about eight times and am still not clear on what it means. The point is: do we not want to receive improvement plans as promptly as possible?

- Section 24A(7) is correct. This requires Ofsted to give the parent undertaking at least 28 days to prepare and submit an improvement plan – Ofsted will have the power to specify a longer period for a plan to be prepared and submitted if it is appropriate in the circumstances, but they will not be able to require a plan in less than 28 days from when the improvement plan notice is served. If a parent undertaking wished to submit an improvement plan within the 28 day window, this would, of course, be acceptable.
- It is right that the provider group has a reasonable, standard time to consider and produce a sufficient improvement plan that will meet the concerns set out by Ofsted.

6. *Should new subsection (8) not clarify that the CIECSS—or Ofsted to its friends—can withdraw an improvement notice only if it has strong evidence that it is no longer needed? What evidence does the Minister expect Ofsted to require before it withdraws an improvement notice?*

- Ofsted may decide to withdraw the improvement plan notice if they receive further information, for example if improvement has already been implemented or if new information and intelligence has come to light.

- This element of the legislation ensures that processes are not over burdensome if they do not need to be (e.g. if things have already improved, or if there has been a change of ownership which means the original improvement plan notice is not effective).
- It will be a decision for Ofsted that they are satisfied that an improvement plan notice can be withdrawn. We do not believe a level of evidence is needed to be set out in legislation. It will be an operational decision based on factors determined in the particular case.

7. *In new Section 23B(2), on line 22, should it not be clear that Ofsted must inform the parent undertaking and any subsidiaries within 28 days, and should this not be mirrored for all the stages of the process?*

- It is not necessary to stipulate a time limit in the legislation as Ofsted will want to confirm to the provider group that the plan has been approved as soon as possible so that the provider group can start implementing the plan.
- The notice to the subsidiaries named in the plan is for information only and so would not need to be within a specific time period in any event given that actions will be for the provider group to take.

8. *Can the Minister confirm whether the timeline for the communications listed in Clause 12 will be set out in regulations? At the moment, it is not clear what the maximum time periods are for each stage of the improvement notice process, including for Ofsted to inform and respond to the provider. It would be useful for this to be as clear as possible.*

- For the reasons set out in response to question 7, there is no need for further specification of time limits for communications in regulations.
- Ofsted will publish detailed policy and guidance on provider oversight requirements and expectations of both provider groups and Ofsted.

9. *In new Section 23B(5), I wondered whether a step is missing from the processes set out in the Bill. Surely the parent undertaking needs to inform the chief inspector when the plan has been fully implemented within an agreed timescale, which is currently not stated, and then the chief inspector should arrange for an inspection or take whatever appropriate action to confirm that that is the case.*

- Section 24A(5)(b) states that the provider group must specify the date by which the action (to implement improvement) will be taken. This date may be considered by Ofsted when determining whether to approve the improvement plan or not.
- Section 23B(6) requires Ofsted to inform the provider group when they are satisfied that improvement has been implemented in full.

Group 6

10. What analysis has the department done of the financial investment in this area—by which I mean both capital investment and other relevant investment—by for-profit providers, local authorities and not-for-profit providers, in each of the last five years?

- Government do not collect data on investment in children's residential care. However, we do know that there was a 12% increase in children's homes registrations from 3,119 in 2023 to 3,491 in 2024.
- As at 31 March 2024, private-sector homes accounted for 89% of children's home registrations, voluntary homes for 5% and homes run by local authorities for 6%.
- Since 2014, the number of children's homes of all types has increased by 70%, from 2,057 to 3,491 which indicates sustained, significant investment in children's homes, particularly from the private sector.

11. Has the department looked at the impact of introducing fining provisions on other regulated activities, and what has that shown?

- We have not carried out formal assessment of the impacts of introducing fines on other regulated activities.
- We did not believe this to be necessary given Ofsted already have wide-ranging powers of enforcement including suspension, amendments to and cancellation of registrations. These powers have not deterred the significant increase in children's social care providers over time.
- Ofsted will use these powers proportionately, and of course only when there has been a breach of regulatory requirements.

12. Looking at the proposed fine set out in Clause 17—on page 32 of the Bill—these may be of any amount, so there could be an unlimited fine for non-compliance with an improvement plan; the noble Baroness will correct me if I have misunderstood that.

- This is correct. However, Ofsted will need to consider the following, as set out in new section 30ZN and paragraph 4(4) of Schedule 1A to the CSA 2000, when determining the level of fine:
 - a) the nature and seriousness of the failure to comply, or the act or omission, for which the penalty is to be imposed;
 - b) whether there are any mitigating or aggravating factors;
 - c) whether the person has previously failed to comply with, or committed offences under, this Part or regulations made under it;
 - d) the likely impact of the monetary penalty on the person.
- The point of the fine being unlimited in legislation is due to the many different scenarios where Ofsted might issue a fine.
- I also thought worth clarifying that regarding Ofsted's power to fine – all of the detail is on the face of the Bill. Paragraph 4(2) of Schedule 1A to the CSA 2000 inserted by Clause 16 enables the maximum penalty to be set out in Regulations but the default power is that the

fine can be unlimited. It is imperative that the fine limit be unlimited to act as a deterrent to all providers (registered, unregistered, provider groups) (only a small number will be subject to finance oversight) and to have parity with any court penalty on conviction where Ofsted have prosecuted (more detail in response to question 14).

13. The Bill is not clear, in new paragraph (ba) inserted by Clause 13(3), whether the imposition of a monetary penalty would constitute automatic cancellation of registration. At what point would non-delivery or non-compliance with an improvement plan result in cancellation of registration of the relevant children's homes?

- The imposition of a monetary penalty will be included as one of the grounds for cancellation that Ofsted may use (clause 13(3) inserts sub-para (ba) into section 14(1) CSA 2000).
- This is not an automatic cancellation, but will allow Ofsted to cancel registration on this basis if appropriate.

14. Are there precedents for such a choice between a criminal and a civil sanction with such a serious breach of the law?

- There is parity in terms action the court may take of first time-offences in most cases where Ofsted could issue a civil sanction/monetary penalty. On conviction of an offence of carrying on or managing an establishment/agency without being registered, the maximum penalty the court can impose is an unlimited fine.
- The maximum penalty on conviction increases to a term of imprisonment of up to 6 months and/or an unlimited fine if the person's registration was cancelled before the offence was committed, or it is the second or subsequent conviction for the same offence and the earlier offence related to an establishment or agency of the same description.
- Further Part 3 of the Regulatory Enforcement and Sanctions Act 2008 allows Ministers to make an order providing that a particular regulatory authority has the power to impose monetary penalties and other civil sanctions as an alternative to criminal prosecution for the same conduct. This power has been exercised in the context of environmental protection (Environmental Civil Sanctions (England) Order 2010) and food marketing restrictions (Food (Promotion and Placement) (England) Regulations 2021).

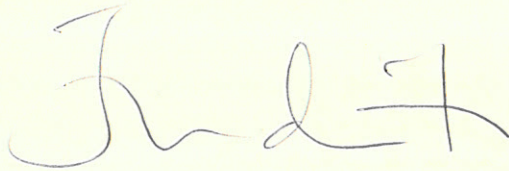
15. We have a situation in which local authorities are using unregistered children's homes for all the reasons that we have already rehearsed this afternoon, such as a lack of capacity and a lack of availability of suitable places for some children at very short notice. Yet nothing is done to address the responsibility of the local authorities themselves to provide sufficient registered places. Can the Minister comment on both these points.

- Local authorities have a duty to place looked after children in their care in registered children's homes. We are helping authorities meet this duty by introducing regional care co-operatives which will help harness the collective buying power of local authorities so they can plan and commission placements regionally. We are also investing £560 million between 2026 and 2030 to refurbish and expand children's homes and foster care placements.

- We understand that sometimes authorities need to place a child quickly, including when there are no suitable registered places immediately available. But Government is clear that all providers of accommodation for children should register with Ofsted.
- Further, Ofsted ask local authorities for information on their use of unregistered provision ahead of any inspections. If there are any concerns Ofsted may focus on unregistered provision in the local authorities next inspection. This could include the decision-making processes leading to the use of this provision and on their statutory duties to plan for sufficient places to meet their area's needs.

Thank you for taking the time to engage with these matters. I hope these further details have been useful and I will place a copy in the House libraries.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'J. Blake', with a stylized flourish at the end.

BARONESS BLAKE OF LEEDS, CBE