

DATED 3rd OF June 2020

**AGREEMENT FOR THE PROVISION OF INSPECTION SERVICES TO SECURE CHILDREN'S HOMES,
INCLUDING DATA PROTECTION AND INFORMATION SHARING**

between

HER MAJESTY'S CHIEF INSPECTOR OF EDUCATION, CHILDREN'S SERVICES AND SKILLS (1)

and

CARE QUALITY COMMISSION (2)

THIS AGREEMENT is dated 3rd June 2020

PARTIES

- (1) HER MAJESTY'S CHIEF INSPECTOR OF EDUCATION, CHILDREN'S SERVICES AND SKILLS of Clive House, 70 Petty Frances, London SW1H 9EX ("Chief Inspector" or "Ofsted")
and
- (2) CARE QUALITY COMMISSION of 151 Buckingham Palace Road, London, SW1W 9SZ 2HQ ("**CQC**").

(Together the "**Parties**")

1. Purpose

- 1.1 This document confirms the agreement reached between the Care Quality Commission (the "CQC") and Her Majesty's Chief Inspector of Education, Children's Services and Skills (the "Chief Inspector" or "Ofsted") on the inspection of secure children's homes (SCHs) in England (the "inspections").
- 1.2 This Agreement is intended to sit under the MoU on Joint-Working between the CQC and Ofsted, dated 16 May 2019.

2. Other definitions:

Controller, Data Protection Officer, Data Subject, Personal Data, Personal Data Breach, Processing, Processor, take the meaning given in the GDPR.

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable law about the processing of personal data and privacy;

DPA 2018: Data Protection Act 2018

Effectivity date: shall mean 01 April 2018

GDPR: the General Data Protection Regulation (*Regulation (EU) 2016/679*)

Methodology: The Social care common inspection framework: secure children's homes – CQC inspector to join the inspection for a period of time as agreed between the Parties and as may be varied by agreement from time to time.

MoU on Joint Working- shall mean the memorandum of understanding between the CQC and the Chief Inspector dated 16 May 2019 which can be accessed by following this link: [MoU on Joint Working](#).

OLI: Ofsted Lead Inspector

SCH: secure children's home

Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation in respect of their Personal Data.

Sub-processor: any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement.

The Act: Care Standards Act 2000

The 2008 Act: Health and Social Care Act 2008

3. Legal basis

- 3.1 Under section 31 of the Act the Chief Inspector is authorised to inspect premises which are used, or which she has reasonable cause to believe to be used, as a children's home.
- 3.2 In accordance with Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc) Regulations 2015 (the "Fees and Frequency Regulations"), the Chief Inspector must arrange for premises which are used for the purposes of a SCH, to be inspected, at least twice in every year.
- 3.3 For the purposes of this agreement, the Chief Inspector's interpretation of the frequency with which a home must be inspected under the Regulations is conclusive.
- 3.4 Under the Act, a children's home is defined as an establishment which provides care and accommodation wholly or mainly for children. In accordance with sub-paragraph 52(3) of the Children's Homes (England) Regulations 2015, and subject to the modifications for SCHs as set out in paragraphs 3 to 6 of Schedule 5 thereof, a SCH falls within the definition of a children's home.
- 3.5 In accordance with the 2008 Act the CQC is responsible for regulating the provision of health and social care services in England. The CQC's responsibilities do not involve providers which carry on any establishment or agency, within the meaning of the Act, for which the Chief Inspector is the registration authority under that Act.
- 3.6 By virtue of section 149 and Schedule 13 to the Education and Inspections Act 2006, the Chief Inspector may delegate any of her inspection functions (to such extent as she may determine) to another inspection authority and the CQC is a nominated inspection authority under the section.

- 3.7 Where the Chief Inspector has delegated any of her inspection functions in accordance with section 149, the functions are nevertheless to be regarded as conducted by the Chief Inspector.
- 3.8 By virtue of paragraph 9 of Schedule 4 of the 2008 Act, the CQC may provide advice or assistance to another public authority for the purpose of the exercise, by that authority, of that authority's function.
- 3.9 The Chief Inspector's inspection powers as prescribed by sections 31 and 32 of the Act are extended to the CQC only as are necessary for the inspections. The CQC will rely on the Chief Inspector's existing powers of inspection during such inspections.

4. Role of the CQC

- 4.1 The CQC will ensure the appropriate executive member is responsible for providing suitable inspection resources as necessary to support the inspections.
- 4.2 The Chief Inspector and the CQC are agreed that where the Chief Inspector is required to conduct inspections of what she deems to be a SCH, the CQC will assist the Chief Inspector when requested by inspecting activities involving, or connected with, the provision of healthcare in a SCH during inspections and by informing her lead inspector of its findings.
- 4.3 In order to enable the CQC to assist Ofsted in its inspection functions of secure children's homes, Ofsted will provide relevant information to the CQC and the CQC will provide relevant information to Ofsted.

5. Process for an inspection of a secure children's home

- 5.1 There are currently 13 SCHs in England that Ofsted regulate and inspect. Ofsted will liaise with the relevant manager in CQC in planning the annual inspection schedule, which remains confidential and restricted as all inspections of SCHs are unannounced. One CQC inspector will join each full inspection which currently takes place over three days. The timeframe for inspection may be subject to amendment from time to time: the period of time for which the CQC will join is 2 days save as where any change to that is agreed, in accordance with the Methodology. Ofsted may request that CQC join interim or monitoring inspections that usually last one day, where there is a judgement of inadequate for the health of children or a matter that is serious requiring CQCs expertise. For example, where enforcement action is taken against a provider.
- 5.2 The process for an inspection of a SCH referred to under this clause shall be undertaken in accordance with the Methodology.
- 5.3 Prior to the inspection of an SCH, where the Youth Custody Service (YCS) commissions places, the Ofsted lead inspector (OLI) will contact the YCS to request that any relevant information or reports are provided.

- 5.4 The OLI will contact the CQC inspector allocated to the inspection of the SCH to request the provision of any relevant information about the SCH's health provider or commissioner of services provider.

6. Information collected by the CQC during inspection

- 6.1 The OLI reviews relevant information about a SCH held on Ofsted's electronic systems. Based on this information, the OLI prepares a pre-inspection briefing including lines of enquiry to be followed on inspection. The OLI shares the pre-inspection briefing with the Ofsted inspection team and the allocated CQC inspector by encrypted government email.
- 6.2 During on-site inspection at the SCH, the CQC inspector accesses and reviews relevant information relating to the healthcare of children at the SCH, including sensitive healthcare records, and makes notes of interviews with the SCH's staff, managers, children and commissioners. With this information, the CQC inspector prepares an evidence file which is stored on the CQC inspector's laptop and/or the CQC's cloud-based storage system during the inspection.
- 6.3 After the inspection, the CQC inspector retains this information on his/her laptop/cloud-based storage for reference purposes while writing a report. He/she sends the evidence file (including any notes of records and/or notes of interviews as per paragraph 6.2) and the report to the OLI via TLS protected email (i.e. using @CQC.org.uk and @ofsted.gov.uk email addresses only) in the timeframe set out in the pre-inspection briefing.
- 6.4 In the event of any delay or intervening public holiday, the OLI in communication with the CQC inspector arrange an alternative deadline for the delivery of the evidence file and report referred to in paragraph 6.3.
- 6.5 As soon as possible after the inspection report has been published by Ofsted, the CQC inspector will permanently delete all versions and drafts of records, notes, pre-inspection briefing, evidence file and report relating to the inspection of the SCH from his/her laptop and any cloud-based storage system unless there is a legal requirement to preserve that type of data.
- 6.6 The OLI uploads all information from the inspection of the SCH including that from the CQC inspector to Ofsted's electronic systems from which the final inspection report is produced.
- 6.7 Subject to clause 6.5, should a complaint be received in relation to the CQC inspector's role/conduct, Ofsted will ensure that the relevant information is provided to the CQC to enable it to respond to the complaint.

7. Complaints

- 7.1 Ofsted is responsible for the quality assurance of inspection reports and factual accuracy queries. Complaints received about report content or judgements are

managed by Ofsted. If any elements relate to the CQC, Ofsted will contact the CQC in the timeframes and by the processes set out in Ofsted's complaints procedure.

- 7.2 Complaints about an inspector's conduct will be managed by the responsible organisation. If there is a complaint about a CQC inspector's conduct, the necessary and relevant information will be shared confidentially by Ofsted (where there is a lawful basis to permit disclosure), with the appropriate senior CQC manager who will deal with the complaint under CQC's procedures.

8. Compliance with the General Data Protection Regulation 2018 and the Data Protection Act 2018

- 8.1 Both parties will comply fully with their respective obligations under the GDPR and DPA 2018. The CQC will be a Processor for any information it obtains by virtue of working on Ofsted's behalf during each inspection. Ofsted is the Controller. The only processing that the CQC is authorised by Ofsted to do is listed in Annex 1 of this Agreement and may not be determined by CQC.

- 8.2 Article 6.1(e) of the GDPR provides the lawful basis for the parties to share Personal Data (public interest or exercise of official authority). In accordance with section 8(d) of DPA 2018, Personal Data will only be shared by the parties where it is necessary for the exercise of a function of a government department.

- 8.3 The CQC will process Personal Data only on documented instructions from Ofsted, unless required to do otherwise by law. If it is so required, the CQC shall promptly notify Ofsted before processing the Personal Data unless prohibited by law.

- 8.3.1 The CQC will ensure that it has in place protective measures, which are appropriate to protect against a Personal Data Breach, which Ofsted may reasonably reject (but failure to reject shall not amount to approval by Ofsted of the adequacy of the protective measures), having taken account of the:

- a) nature of the data to be protected;
- b) harm that might result from a Personal Data Breach;
- c) state of technological development; and
- d) cost of implementing any measures;

- 8.4 Both Parties will only share special categories of personal data and criminal convictions for reasons of substantial public interest and where a condition in either Part 1 or Part 2 of Schedule 1 to the DPA 2018 is met.

- 8.5 The CQC will ensure that:

- a) it does not process Personal Data except in accordance with this Agreement
- b) it takes all reasonable steps to ensure the reliability and integrity of any persons who have access to the Personal Data and ensure that they:

- (i) are aware of and comply with the CQC's duties under this clause;

- (ii) are subject to appropriate confidentiality undertakings with the CQC;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by Ofsted or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 8.6 The CQC will refer without delay (the target being 1 working day) any Data Subject making a Subject Request in relation to information generated under this agreement (save if it is in respect of a complaint about CQC inspector conduct made directly to the CQC) to Ofsted for the Subject Request to be made directly to Ofsted.
- 8.7 The Parties shall liaise without delay regarding any Subject Request in relation to a complaint about the conduct of a CQC inspector acting pursuant to this agreement. CQC shall seek Ofsted's views on the Personal Data they intend to disclose to the Data Subject, prior to disclosure, to the extent permitted by law and the common law duty of confidentiality.
- 8.8 The CQC shall notify Ofsted without delay if it, in connection with Personal Data processed under this Agreement:
- a) receives a Subject Request (or purported Subject Request) in accordance with clause 8.6;
 - b) receives a request to rectify, block or erase any Personal Data;
 - c) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - d) receives any communication from the Information Commissioner or any other regulatory authority;
 - e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
 - f) and in any event within 24 hours of becoming aware of a Personal Data Breach.
- 8.9 The CQC's obligation to notify under clause 8.8 shall include the provision of further information to Ofsted in phases, as details become available.
- 8.10 The CQC shall provide Ofsted with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 8.8 (and insofar as possible within the timescales reasonably required by Ofsted) including by promptly providing:
- a) Ofsted with full details and copies of the complaint, communication or request;
 - b) such assistance as is reasonably requested by Ofsted to enable it to comply with a Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - c) Ofsted, at its request, with any Personal Data it holds in relation to a Data Subject;
 - d) assistance as requested by Ofsted following any Personal Data Breach;

e) assistance as requested by Ofsted with respect to any request from the Information Commissioner's Office, or any consultation by Ofsted with the Information Commissioner's Office.

- 8.11 Personal data will be shared on a case-by-case basis and where it is proportionate to the exercise of the parties' respective functions.
- 8.12 In the event of a Personal Data Breach, each party will comply fully with their obligations under the GDPR. Ofsted agrees that, where appropriate, they will promptly inform the CQC of any Personal Data Breach in relation to information generated for the purposes of inspection under this Agreement.
- 8.13 The data shared is classified as Official-Sensitive.
- 8.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. Ofsted may on not less than 30 Working Days' notice to the CQC amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 8.15 Each party shall maintain complete and accurate records and information to demonstrate its compliance with this Agreement and the Data Protection Legislation.
- 8.16 Each party shall provide the other full access to the other party's data security and privacy procedures relating to Personal Data, when and as required.
- 8.17 The parties both have appointed Data Protection Officers:

Ofsted

Information Rights and Access Team
2 Rivergate
Temple Quay
Bristol BS1 6EH

CQC

Nimali de Silva
Care Quality Commission
3rd Floor, Buckingham Palace Road
London
SW1W 9SZ

9. Requests under the Freedom of Information Act 2000 (FOIA)

- 9.1 Where Ofsted receives a FOIA request in relation to information that it has received from the CQC, it will liaise with the CQC, where appropriate, to ensure that the release of the information to the requester will not prejudice any ongoing investigation or inspection.
- 9.2 The CQC will not have a direct obligation to respond to FOIA requests in relation to the data gathered on inspection as this will be held on behalf of Ofsted and, in any

event, deleted once the inspection report is published. However, the CQC is required to assist Ofsted in handling any such request and to advise any person making an FOIA request relating to the inspection to refer this to Ofsted.

10. Responsibilities

- 10.1 The Chief Inspector bears responsibility for having authority and showing due authorisation if so required to conduct inspections and the CQC shall be entitled to rely on that authority. The CQC is indemnified by the Chief Inspector in the event it receives any complaint or claim or fine or is held liable for any claim as a result of its involvement in inspections unless it fails to show it was acting within its or the Chief Inspector's powers.
- 10.2 All other responsibilities associated with inspections, including the preparation of necessary reports, fall to the Chief Inspector.
- 10.3 In the event, the Chief Inspector decides to take any of the steps listed under section 30A of the Act, only she can take those steps and she is responsible for notifying each local authority in England and Wales of those steps.
- 10.4 Where a registration, annual or other fee is payable in accordance with the Fees and Frequency Regulations by a SCH, such payment is due to the Chief Inspector only.

11. Costs of Inspection and Review

- 11.1 Ofsted will bear the costs for the work completed by Ofsted.
- 11.2 Subject to clause 11.3, the CQC will bear the costs for the work completed by CQC inspectors from the Effectivity Date to 31 March 2021. Thereafter, CQC's costs will be reviewed in accordance with clause 12.2.
- 11.3 Any variation in the agreement with regard to costs will not take effect unless agreed by the parties in writing in accordance with clause 13.

12. Term and Notice

- 12.1 This agreement will survive, and incorporate to the extent possible, future amendments to the above legislation and regulations.
- 12.2 This agreement will commence on the Effectivity Date and will be reviewed as required or requested by either party. It will continue to remain in force until such time as it is revoked by the parties.
- 12.3 In order that the Chief Inspector can ensure that all SCH are inspected consistently under the same framework and methodology in a social care inspection year which runs from 1 April to 31 March each year, the CQC must provide the Chief Inspector with at least six months' written notice to be made in the month of September, of any decision to withdraw from this agreement.

13. Variation

13.1 This Agreement may be varied by written agreement of the parties.

14. Resolution of disagreement

The CQC and Ofsted will nominate leads for day-to-day management of our joint work and will aim to resolve disputes in line with the MoU on joint-working between the CQC and Ofsted, dated 16 May 2019, under which this Agreement sits.

15. Legal status of this Agreement

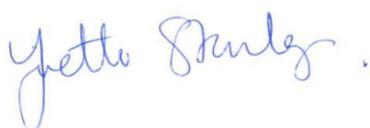
15.1 The parties enter into the Agreement intending to honour all their obligations. This Agreement is intended to comply with GDPR Article 28 and/or DPA 2018 section 59.

15.2 The Parties may incorporate this Agreement into other MoUs and this Agreement will sit under the MoU on Joint-Working between CQC and Ofsted, dated 16 May 2019.

Signed for and on behalf of

Her Majesty's Chief Inspector of Education, Children's Services and Skills

Signature:



Name: Yvette Stanley

Position: National Director Regulation and Social Care

Date: 3rd June 2020

Signed for and on behalf of

The Care Quality Commission

Signature:



Name: Ian Trenholm

Position: Chief Executive

Date: 27th May 2020

ANNEX 1 – Data Processing Schedule

- 1.The CQC shall comply with any further written instructions with respect to processing by Ofsted.
2. Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of the Controller and Processor	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, Ofsted is the Controller and the CQC is the Processor in accordance with clause 8.1.</p> <p>For purposes of information in relation to a complaint that is made against a CQC Inspector as per clause 7.2 of this Agreement, CQC is the Controller.</p>
Subject matter of the processing	Information obtained during inspection work carried out by the CQC in secure children's homes under this Agreement.
Duration of the processing	From the Effectivity Date until such time as the Agreement is terminated following notice to withdraw in accordance with clause 12.2 or other written agreement between the Parties.
Nature and purposes of the processing	During on-site inspection at an SCH, the CQC inspector accesses and reviews relevant information relating to the healthcare of children at the SCH, including sensitive healthcare records and makes notes of interviews with the SCH's staff, managers, children and commissioners as per clause 6.2. The CQC may store this information in accordance with clauses 6.2 and 6.3 and use it to prepare an evidence file in relation to its inspection of healthcare provision at the SCH to be provided to Ofsted for inclusion in the inspection report.

<p>Type of personal data</p>	<p>For children accommodated at an SCH: name, address, date of birth, NI number, telephone number, images, family/relative information, healthcare information, details of reason for placement including social care records. In relation to staff/other professionals: information regarding professional experience, current role and professional contact details.</p>
<p>Categories of Data Subject</p>	<p>SCH Staff and children accommodated at the SCH (including some family/relative details) and other professionals involved in the child/ren's care (generally limited to professional contact details).</p>
<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p>As per clause 6.5 upon publication of the inspection report, the CQC will permanently delete all inspection records from laptops/cloud-based storage system, having transferred the evidence file to Ofsted unless there is a legal requirement for CQC to retain that type of data.</p>