

TÚSLA

An Ghníomhaireacht um
Leanaí agus an Teaghlach
Child and Family Agency

EARLY YEARS INSPECTORATE

Escalation & Enforcement Activity



Our vision is for all services regulated by the Early Years Inspectorate to be safe and happy places for children to play, learn and develop.

2022

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Executive Summary

The Early Years Inspectorate, (part of Tulsa's Children's Services Regulation), is the independent statutory regulator of early years services in Ireland and has responsibility for registering and inspecting preschools, play groups, nurseries, crèches, day-care, and similar services that cater for children aged 0–15 years. The role of the Early Years Inspectorate is to promote and monitor the safety, quality of care and support of the child in early years provision in accordance with the Child Care Act 1991 (Early Years Services) Regulations 2016 and Child Care Act 1991 (Early Years Services) (Registration of School Age Services) Regulations 2018.

The Early Years Inspectorate's Enforcement and Escalation Team oversee enforcement activity initiated under legislation against services through two panels: the National Registration and Enforcement Panel and the Conditions Panel. In 2022, there was an additional enforcement stream for services who did not complete their 3 yearly registration renewal and required enforcement action to meet compliance with requirements.

Services are referred to the panels for a range of reasons including,

- Consistent and persistent non-compliance with regulation,
- Operation without or contrary to granted registration,
- Requirements for registration renewal not met,
- High or critical concerns following inspection, that pose a risk of ongoing harm to children.

Each year, a small number of early years services are assessed as requiring escalation for consideration of enforcement. This report presents an analysis of services escalated for enforcement actions and the outcomes of those actions in 2022. This report follows the [2021 report](#) which was the first of its kind in Early Years Regulation.

Many services who engaged with the National Registration Enforcement Panel avoided enforcement sanctions. 16 services remained at this panel from the 2021 period, 18 additional services were referred in 2022, with 17 of these services accepted to the panel in 2022. Provider engagement with the different escalation and enforcement actions in the majority of cases resolved the concerns and non-compliance highlighted on inspection.

24 services were referred and accepted at the National Conditions Panel in 2022. All 24 services engaged with the process. 13 services with conditions attached in 2021 were brought forward from 2021 to 2022. 3 services had conditions proposed but not attached following successful receipt of representations and 21 services had conditions attached to their registration. 7 services with conditions attached, were de-escalated and conditions not reconsidered, and 6 services were re-inspected to assess compliance with the attached conditions and general compliance with the early years regulation. 3 services in 2022 were escalated for further enforcement action at the National Registration Enforcement Panel.

The previous trend of positive and proactive engagement between services and the Early Years Inspectorate has continued in 2022. There remains a good level of engagement from services considered for enforcement actions and this has consistently resulted in lower levels of sanctions. While no service met the threshold of removal from the register in 2022 through

traditional enforcement action, one service was removed from the register in December 2022 for failing to meet requirements of their registration renewal. A large percentage of services improved compliance so that no sanctions were necessary. Other services had conditions attached to their registration which were then removed following inspection when compliance was achieved by the service.

These positive outcomes continue to reinforce the key message that continuous engagement and communication is essential between providers and the Early Years Inspectorate.

This report was prepared by the Enforcement and Escalation Team which is part of the Early Years Inspectorate's Registration and Enforcement Office. Its development was overseen by Denise Collins, National Registration Manager (Escalation and Enforcement) and Mike Corcoran, Head of Registration and Regulatory Enforcement, with support of Cian Davis, Regulation Support Officer, Caroline Lenihan, Regulatory Support Officer and Marina Rankin, interim National Registration Manager.

The Inspectorate would like to acknowledge the support of colleagues from the following organisations in the execution of its functions.

- The Association of Chief Fire Officers of Ireland
- The Office of Legal Services, Child & Family Agency
- The National, Regional; & Urban Planning Policy Unit, Dept. of Housing, Local Government & Heritage.

1.0 Introduction

Tusla – The Child and Family Agency was established in 2014 and is responsible for improving wellbeing and outcomes for children in Ireland. Under the Child and Family Agency Act 2013, Tusla is charged with supporting and promoting the development, welfare and protection of children and the effective functioning of families. Children’s Services Regulation (CSR) is located within the Quality and Regulation Directorate of Tusla and has responsibility for the effective operation and performance of the agency’s statutory regulation functions.

Children’s Services Regulation has a vision for all regulated services to be safe and happy places for children and young people to live, play, learn and develop.

A defined strategy has been developed to help achieve this vision. The strategy sets out four goals, one of which is effective regulation. We aim to regulate services and enforce the relevant legislation, through a world-class regulatory system using the full range of our enforcement powers. Where a service is below standard, we take actions in proportionate, effective, and dissuasive ways to protect children.

As part of business planning, this review of the operation and outcomes of the regulatory escalation and enforcement activity undertaken during 2022 was undertaken. The outcome of the review will inform our enforcement strategy and in turn assist providers in their ongoing efforts to achieve compliance with the regulations.

The Early Years Inspectorate’s Enforcement and Escalation team oversee required enforcement activity initiated under legislation against services. This report presents an analysis of those services escalated for enforcement actions and the outcomes of escalation.

The Inspectorate’s regulatory enforcement processes are informed by legislation and by relevant policy. Non-compliance with regulation identified on inspection is in the main, addressed through the preparation by the registered providers of corrective and preventive actions (CAPA) following inspection. This early-stage intervention is usually sufficient to address shortfalls in the attainment of compliance with regulations. There are a range of escalation and enforcement actions embedded into the different processes across the inspection and registration departments. The Inspectorate has the powers to refuse to register services, to remove services from the register, to add conditions to their registration or to prosecute services for significant breaches of regulation and or other prescribed parts of the legislation. Consideration of these actions are undertaken by the Inspectorate’s National Registration Enforcement Panel and National Conditions Panel for early years services. In 2022, the additional services were considered for enforcement action due to their failure to meet requirements of registration renewal, these were addressed through a dedicated compliance process called Project 903.

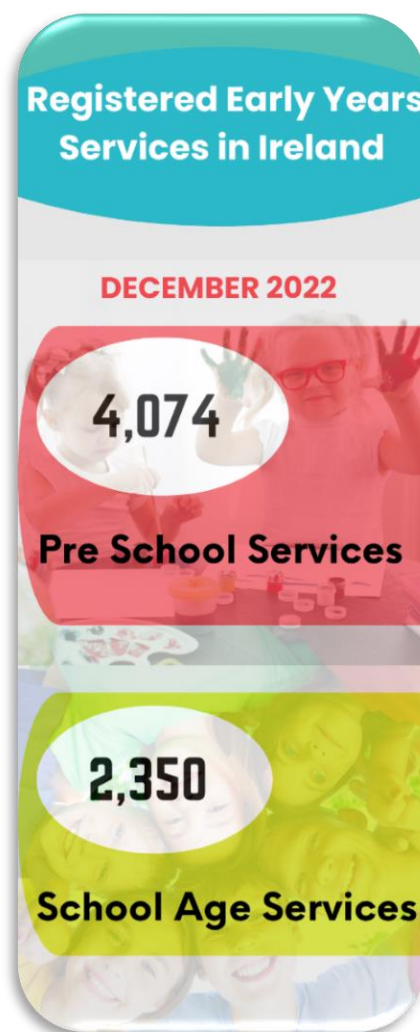
As of end of December 2022, there were 4,074 early years preschool services and 2,350 school age services on the national register. Each year, a small number of early years services are assessed as requiring escalation for consideration of enforcement. In 2022, a total of 27 services were referred to the Conditions Panel and 22 services were referred to the National Registration Enforcement Panel.

Early years services are escalated for a range of reasons, predominantly:

- Consistent and persistent non-compliance with regulation,
- Operation without or contrary to granted registration.
- High or critical concerns that pose a risk of ongoing harm to children.

The enforcement panels are responsible for consideration of appropriate enforcement actions. They ensure that any action proposed is effective in the mitigation or removal of any assessed risk to children. Their role is to apply the process of enforcement and ensure adherence to legislation and fair procedures.

We would like to acknowledge the work of early years services across the country for their commitment to providing safe and quality services to children and families. We thank them for their engagement with the inspection process. We would also like to acknowledge stakeholder organisations in the sector who support early years services and work closely with us to promote safety and quality.



2.0 Registration Renewal

2.1 Introduction

In 2019, early years pre-school services were required to renew the registration of their service. Approximately 4,062¹ services were required to complete this process.

As a result of the COVID-19 pandemic in early 2020 and the challenges faced by the sector, the period to complete their renewal of registration 2019 was extended to the end of 2021.

At the end of this period the number of services who had failed to meet the renewal of registration requirements totalled 903. This represented approximately 25% of services who were due to renew their registration in 2019. These services were still not fully registered due to issues relating to either their fire safety certification, approved planning (or both) and outstanding registration documentation.

In January 2022, the Registration Office undertook *Project 903* as the follow-on exercise from the 2019 renewal of registration to work with these services to help them achieve compliance with their registration in order to avoid service closures.

2.2 Objectives

The objective of *Project 903* was to engage with each non-compliant service using appropriate escalation pathways based on the risk posed to children by their continued operation and to maximise the number of services achieving full compliance. Registration ensures that state prescribed safeguards are attained in all regulated settings for children.

Cohorts of services were divided depending on the documents outstanding for the service. These documents consist of 3 types:

- 1) **Operational Documentation:** A collective term referencing policy documents, Garda vetting and floor plans.
- 2) **Fire Safety Documentation:** A fire safety certificate or, in the absence of a fire safety certificate, a fire risk assessment for the premises to provide assurance that the building or its operation does not pose a fire safety risk to children.
- 3) **Premises Suitability Documentation:** Planning permission from the local authority confirming that the premises is suitable for use as a preschool setting.

2.3 Regulatory context for Renewal of Registration

Services within the above cohorts had to meet the criteria for registration as prescribed under the Child Care Act 1991 (Early Years Services) Regulations 2016.

1. Operational Documentation:

Regulation 6: Registration of a Pre-School Service

Purpose - A proposed registered provider will be required to operate in accordance with the statutory requirements of the Childcare Act 1991 (Early Years Services) Regulations (2016) and Part 12 of the Child and Family Agency Act 2013 (Article 58G). It is an offence under Section 58K of Part 12 of the Child and Family Agency Act 2013 to be in operation without registration.

2. Fire Safety Documentation:

Regulation 23: Safeguarding Health, Safety and Welfare of Child & Regulation 29: Premises Purpose - The protection and welfare of the children in your service is paramount, and the children's safety and wellbeing is the priority. A registered provider must be committed to safeguarding the children attending the service and provide an environment where they can play, learn and develop. The scope of this regulation includes General Safety and Fire Safety.

3. Building Suitability Documentation:

Regulation 23: Safeguarding Health, Safety and Welfare of Child & Regulation 29: Premises Purpose - A registered provider must ensure the premises are safe, suitable for their purpose, and provide an appropriate environment for the children attending the service and the staff. The premises must comply with relevant statutory provisions and be clean and hygienic.

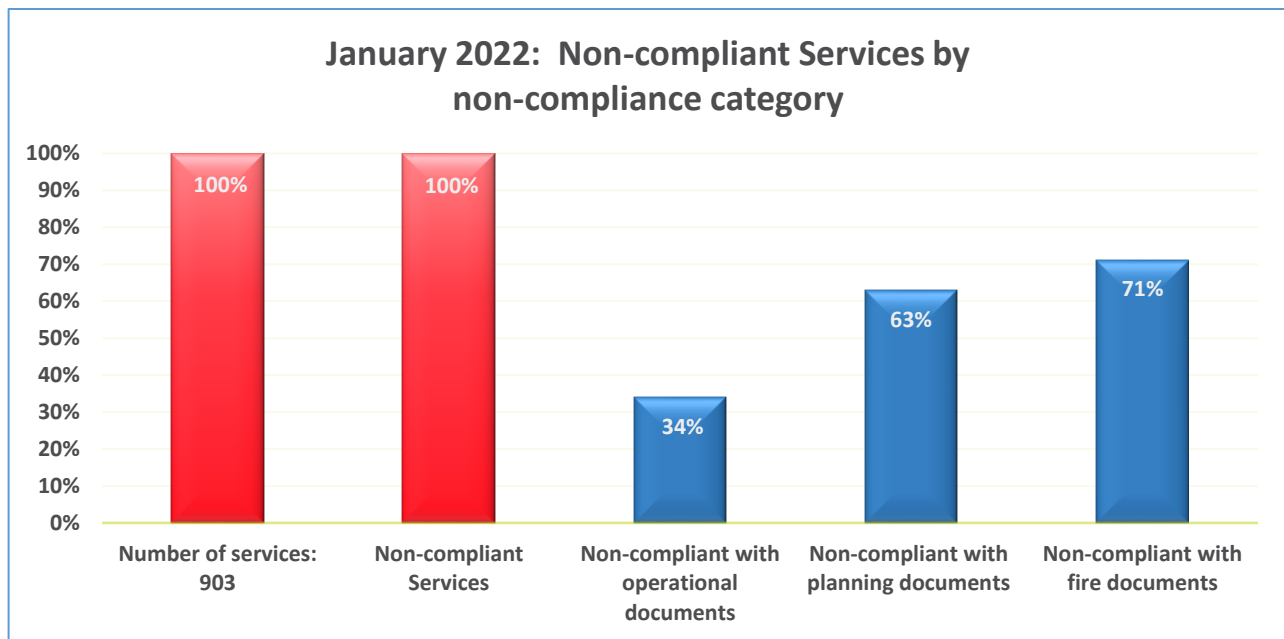


Figure 1: January 2022 non-compliant services by non-compliance category pre-escalation process

2.4 Escalation Process

The Early Years Inspectorate's Enforcement and Escalation Team oversaw the required enforcement activity initiated under legislation against services through two panels: the National Registration and Enforcement Panel and the Conditions Panel.

Panels are responsible for consideration of appropriate enforcement actions. They ensure that any enforcement that is taken is designed to mitigate or remove any assessed risk to children. Their role is to apply the process of enforcement and ensure adherence to legislation and fair procedures.

In January 2022 the remaining 903 non-compliant services were examined in relation to their outstanding requirements to renew their registration from 2019 under Regulations 6, 23 and 29.

¹ Closures between late 2019 and 2020 altered the figures slightly as the pandemic took hold.

The registration team along with the enforcement team reviewed each of the non-compliant applications and based on the level of risk identified, several escalation pathways were established.

1. Propose to add condition(s) to the service.

A service has 21 days from receipt of the proposal to add conditions to their registration to make representations in writing to the registration team or alternatively they may refer the matter to the District Court in their area for consideration. Please view Sections 58D (11-13) Part 12, Child Care Act 1991.

All representations were considered prior to any final determination by the Inspectorate. This was the first step in the escalation pathway.

2. Conditions attached to the service registration.

Services that failed to make representation or had inadequate representation had a condition attached to their registration until such time as the service reached compliance. The condition(s) were removed once the service reached compliance.

3. Propose to remove the service from the national register of services.

Proposal to remove a service from the National Register is initiated where the Early Years Inspectorate is not assured that a service is compliant with legislation in relation to fire safety. This decision is reached when all avenues of communication are exhausted, and the service has continually failed to supply assurances that their building is safe.

In September 2022 the Inspectorate proposed to remove several services from the register of early years settings. The Inspectorate managed the enforcement process under the legislation from the Child Care Act 1991, Section 92, subject to section 58 D (11) (12) and (13).

- (11) Where the Agency proposes to refuse to register an applicant, to remove a registered provider from the register, to attach a condition to, or amend or revoke a condition attached to, a registration, it shall notify in writing the applicant or the registered provider, as the case may be, of its proposal and of the reasons for it.
- (12) A notification under subsection (11) shall include a statement that the person concerned may, within 21 days of the receipt by him of the notification (a) make representations to the Agency, or (b) appeal to the District Court under section 58F against the decision.
- (13) A person who has been notified of a proposal under subsection (11) may, within 21 days of the receipt of the notification, make representations in writing to the Agency and the Agency shall— (a) before deciding the matter, take into consideration any representations duly made to it by that person, and (b) notify the person in writing of its decision within 21 days of the receipt of any representations made to it and of the reasons for it.

The Inspectorate, before making a final determination, considered the content of representations. Where the service could identify and evidence any actions, works and associated timeframes that were currently underway to secure the required fire safety documentation and evidence the premises was safe for children under the fire safety legislation, the service was registered with condition(s).

2.5 Outcome

- At the end of 2022, the number of services that did not complete renewal of registration was 99.

Region	Jan-22	Region	Dec-22
Mid Leinster	124	Mid Leinster	10
South West	106	South West	10
South East	142	South East	12
Dublin South	91	Dublin South	14
Mid West	144	Mid West	12
North West	59	North West	8
Dublin North East	105	Dublin North East	12
Dublin North	132	Dublin North	21
Total	903	Total	99

Figure 3: Number of starting and closing figures by county

- 1 service could not reach compliance and was removed from the Register of Services after extensive engagement.
- 63 services of the 903 non-compliant services in January 2022 had ceased operating by December 2022.

We will continue to work with the remaining 99 services in assisting them reaching full compliance in 2023. It should be noted that these services for the most part had commenced processes to achieve compliance with fire safety and premises suitability. Where necessary the providers were required to put in place suitable mitigating actions to any risk to children posed by premises safety.

3.0 National Registration Enforcement Panel

3.1 Context

It is the policy of inspection teams to refer services who meet a prescribed threshold of non-compliance, to the National Registration Enforcement Panel for intervention.

The purpose of the panel is to consider appropriate and proportionate enforcement pathways for any early years services that are escalated from inspection area teams or the registration department. The work of the panel is coordinated and actioned by the National Registration Manager for escalation and overseen by the Head of Registration and Regulatory enforcement.

Generally, the panel convenes at least once a month and under certain circumstances more frequently. In 2022, a total of 15 meetings were held.

3.2 Referrals to National Registration Enforcement Panel

16 services were under the supervision of the National Registration Enforcement Panel at the end of 2021. These services were brought forward into 2022.

An additional 18 services were escalated during the year, of which 17 were accepted. The regional breakdown is as follows:

3.2.1 New Referrals to National Registration Enforcement Panel by service region

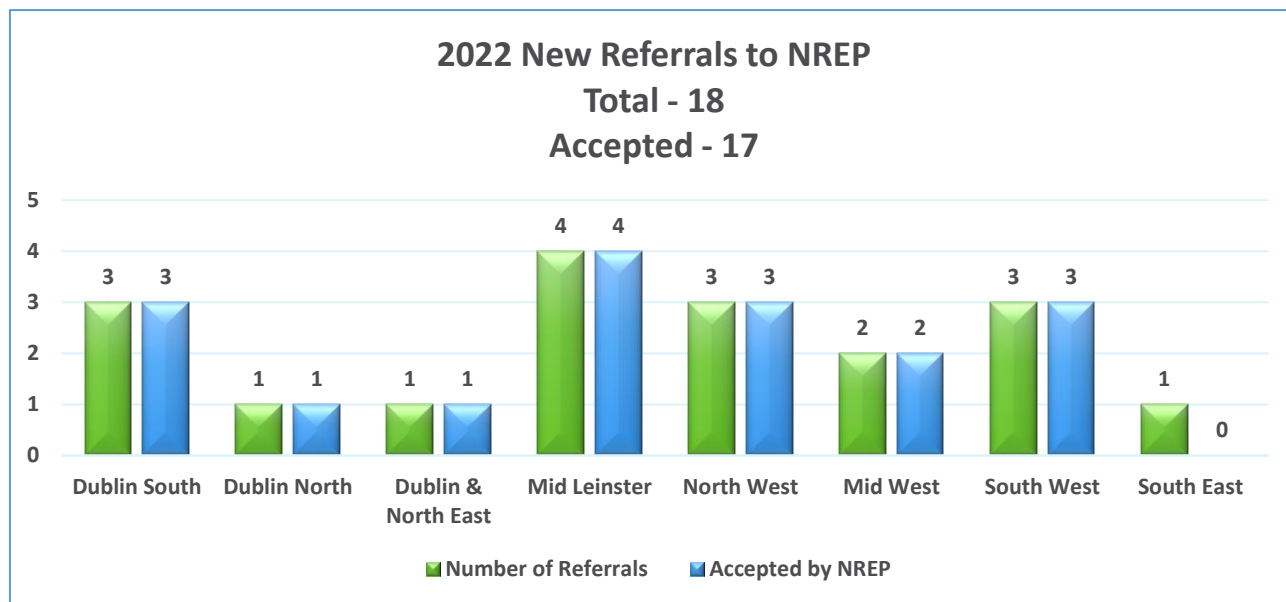


Figure 4 - Referrals to NREP by Service Region

Each service referred to the National Registration Enforcement Panel is assessed against the level of non-compliance remaining following the conclusion of the inspection process and the risk this non-compliance is posing to the well-being of children. Referrals must also meet the prescribed thresholds for escalation.

The service not accepted for consideration at this panel did not meet the threshold for enforcement following immediate corrective actions taken by the owner.

3.3 Accepted Referrals to National Registration Enforcement Panel

Of the 17 referrals accepted the National Registration Enforcement Panel, the services were based in a range of locations and were of differing service types. The breakdown can be seen below.

3.3.1 Accepted Referrals to National Registration Enforcement Panel by location type

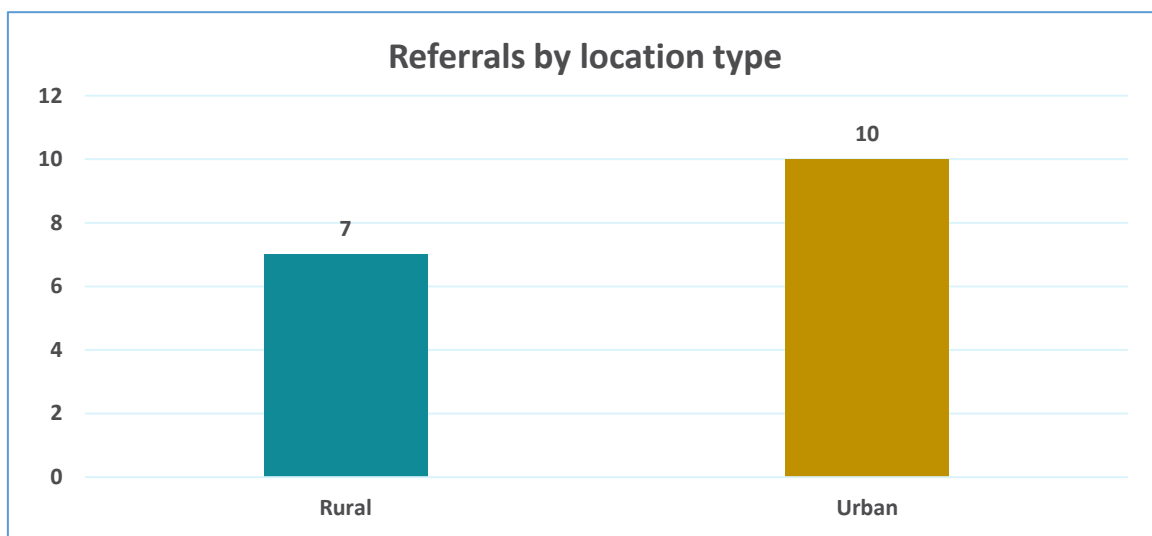


Figure 5 – Accepted referrals to NREP by location type

Services operating in urban locations featured slightly more prominently in accepted referrals to the National Registration Enforcement Panel during 2022. These settings tended to be larger and had increased turnover of staff in comparison with rural settings. Larger settings can prove more challenging to supervise and shortfalls of governance was a recurring factor in these settings.

3.3.2 Referrals to National Registration Enforcement Panel by service type

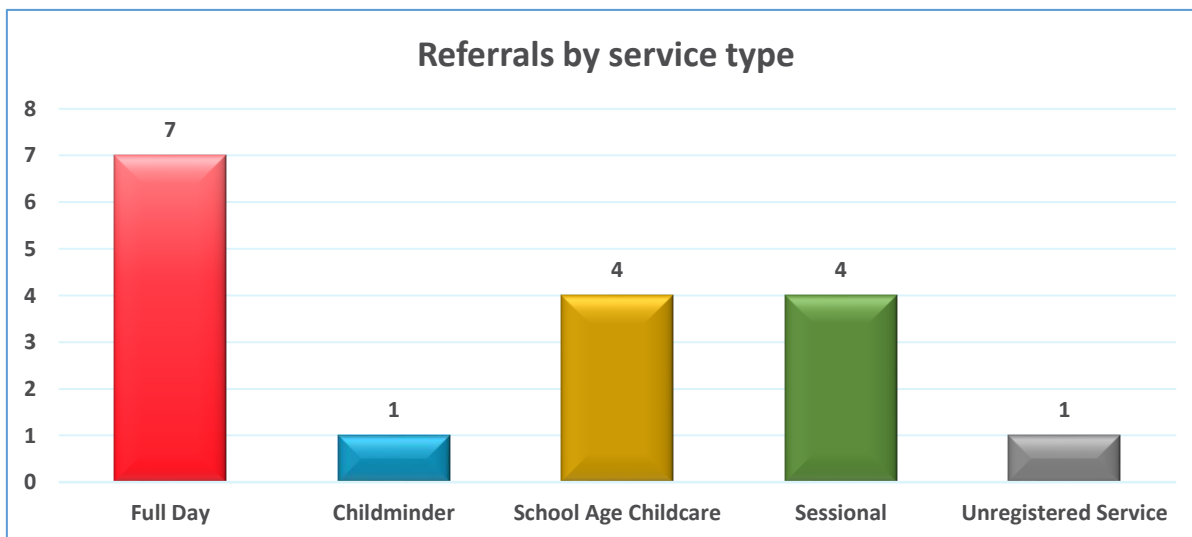


Figure 6 – Accepted referrals to NREP by service type

1 childminding service (5.8%), 4 (23.5%) sessional services and 7 (41%) full day care services who also offer sessional and part time services were escalated to National Registration Enforcement Panel in 2022. 4 (23.2%) school age care services were also escalated.

1 (5.8%) service found to be operating without registration was escalated along with

Full day care services formed the highest cohort of referrals and accepted services at National Registration Enforcement Panel at 41%. These services by their nature offer the most extensive childcare, including longer opening hours and a variety of service types operating concurrently. As a result, they have a wider age profile of children and multiple transitions over a longer day. This increases the supervisory burden and responsibility for persons in charge and registered providers and can lead to shortfalls in governance and oversight. This is more likely to occur where those appointed to this role are also acting as part of the adult to child ratio.

3.3.3 Referrals to National Registration Enforcement Panel by number of children attending in services

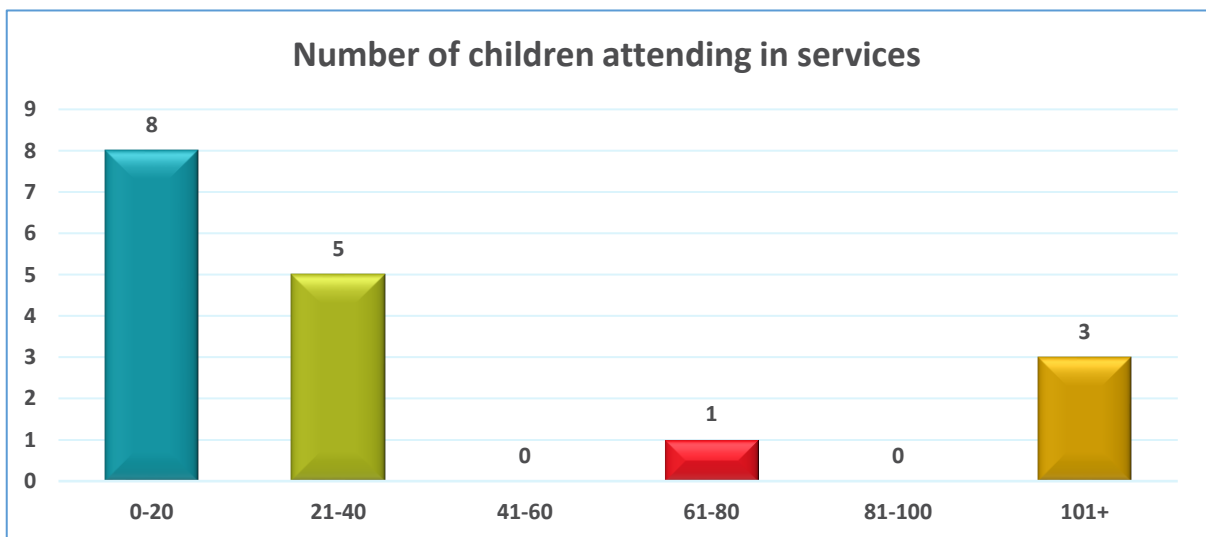


Figure 7 – Accepted referrals to NREP by number of children

Note - This table excludes the services escalated due to the operation of an early years service without registration.

The majority of services escalated in 2022 catered for up to 40 children (81%) at any one time, 1 service catered for between 61-80 children (6%) and 3 services escalated catered for over 100 children at any one time (17%).

3.3.4 Number of services at National Registration Enforcement Panel at end of 2022 by region

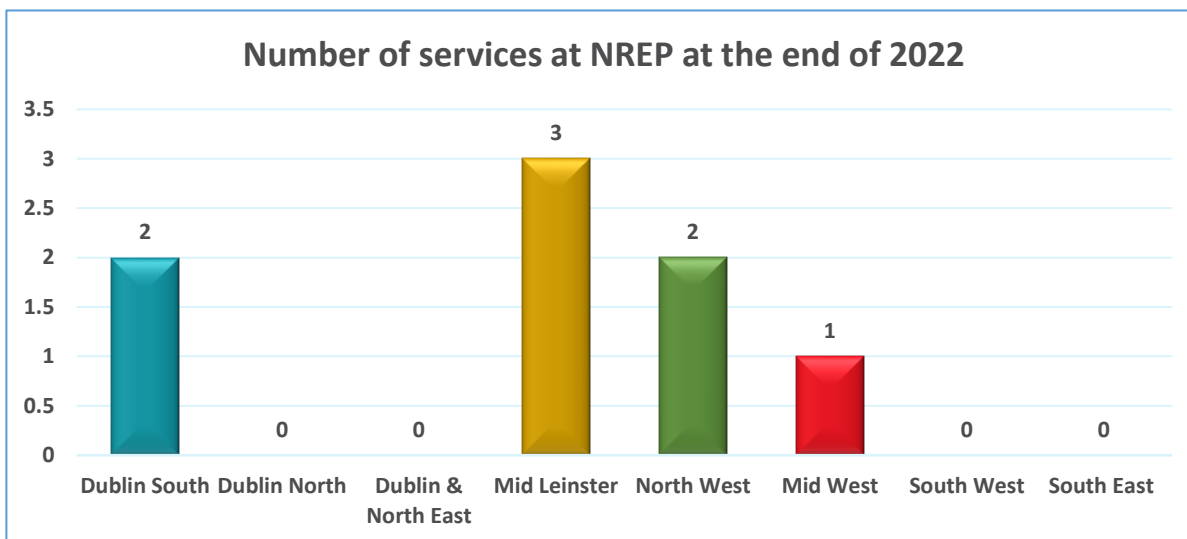


Figure 8 – Number of services at NREP at the end of 2022 by region

At year end there were 8 (23.5 %) services whose enforcement has commenced in 2022 and was ongoing into January 2023.

There were no services involved in court proceedings at the end of the year of 2022.

3.4 Reasons for referral to National Registration Enforcement Panel

3.4.1 Consistent and persistent non-compliance found on recurrent inspections

The largest number of referrals to the National Registration Enforcement Panel from the inspection teams related to consistent and persistent non-compliance with regulations, compounded by registered providers failing to implement required actions following inspection. In some of these cases, Immediate Action Notices had been issued to services and regulatory compliance meetings had been undertaken. An Immediate Action Notice is issued to a Registered Provider following an inspection where a significant breach of the legislation has been identified which resulted in an immediate concern about the safety, health and/or welfare of children. An Immediate Action Notice instructs a service to take a particular course of action which must be complied with in order to address risk immediately or within a defined time period.

3.4.2 Feedback and Concerns and notifiable incidents submitted to the Early Years Inspectorate

Previously, where concerns and notifiable incidents were risk rated by the Inspectorate as a critical concern to the welfare of children, these are referred to the National Registration Enforcement Panel. This practice was amended in 2022 and services were referred if, following a triggered inspection on receipt of feedback and concerns/notifiable incident, an unacceptable level of risk to children remained.

Engagement with services following receipt of a concern or a notifiable incident includes inspection of the service, review of the incident reports, related risk assessments, and recommendations following same. The Inspectorate seeks assurance that such incidents are effectively managed, and causative factors are identified and addressed to prevent recurrence.

In 2022, following inspections of critical concern, no preschool service required further escalation to NREP. However, a school age care service was escalated following an inspection to consider concerns/notifiable incident received.

3.4.3 Persons confirmed as operating an Early Years Service without registration.

These services are considered to pose a high risk, as to operate a service without registration is to deprive children of their right to state supervision and safeguarding.

A total of 3 referrals made to the National Registration Enforcement Panel regarding unregistered services were progressed, two of which necessitated the seeking of warrants of entry from the district court. This number is lower than 2021, where 7 services required escalation. The reduction in services requiring escalation was a result of better engagement by unregistered services to action immediately, recommendations from the Early Years Inspectorate to either cease operation, reduce numbers of children to a level that does not require registration or to register the service.

While the process of registration is ongoing, services must cease operation until confirmation of registration is obtained. Continued operation without registration will result in the initiation of prosecution.

3.4.4 School Age Services

In 2022, 4 school age care services were referred for escalation, for risks identified on inspection and the continued operation of a school age care service without registration.

3.4.5 Services operating outside of the terms of their registration.

The Early Years Inspectorate introduced new procedures to manage instances of services found to be operating outside of the terms of their registration. An emphasis was placed on the assessment of risk posed to children by the operation of the unauthorised change. These were characterised by some registered providers proceeding to make changes to their services without the required submission of proposals and subsequent approval. In some cases, this was a persistent action by providers.

3.5 Issues which contributed to escalation

In addition to the reasons identified above, there are number of themes emerging from the referrals to NREP which reflect shortfalls in the actions of service providers and their managers. These are summarised under the following headings.

3.5.1 Effective Management, Governance and Oversight

Inadequate management and governance practices were found to have contributed to escalation. This is characterised by unclear and inconsistent management structures, lack of awareness and failure of implementation of agreed policies and procedures, and failures to sustain and maintain CAPAs over a period of time. Also identified were shortfalls by managers to both supervise and support staff in their work practices.

In some services, providers have not ensured their staff have been appropriately vetted prior to commencement of their role or meet all the requirements for employment. We have seen an increased number of incidences where pre-employment checks have been insufficient.

As mentioned earlier regarding full day care services, we have seen a trend for registered providers and persons in charge to act as part of the staffing ratio and be part of front-line care teams. Whilst this is understandable, it can sometimes result in these persons being diverted from the key functions of oversight and supervision of the service.

The growing sector staffing crisis where retention has been a significant concern and distraction for employers, has been cited for as a rationale for these types of lapses. Whilst it has certainly played a role, the inspectorate have observed that the steady increase in service size has stretched in some cases the capacity of providers to effectively oversee their services. It is recommended that providers who also act as the Person In Charge (PIC) should seriously consider delegating this role to a second person rather than attempting to carry an increasingly growing burden of simultaneous operational, administrative and oversight functions.

3.5.2 Health, Welfare and Development of children

A number of themes have continued from our analysis in 2021 to 2022 including ongoing neglect or underdevelopment of care rooms suitable for the age profile of children, failure to provide sufficient outdoor activities and/or limited time outdoors and failures to introduce programs to support the development of relationships between children and staff members. A clear theme that emerged in 2022 was a failure to recognise change in staff or constant staff movement and this has negatively impacted the developments of relationships.

3.5.3 Safeguarding Health, Safety and Welfare of children

Issues include ongoing shortfalls, such as infection control, fire safety management, storage of equipment, inappropriate use of sleep mats and inadequate management of known risks.

3.5.4 Records and Policies in relation to an early years service

Despite the increase in the quality of policy and procedural documents and associated recording systems, we are encountering a growing number of incidences where service staff are failing to implement policy and maintain records as required. The staffing shortage has resulted in some employers failing to thoroughly induct their staff and instead hope to train them after hours. This is not sustainable nor advisable.

3.5.5 Facilities for rest and play

Services with concerns in this area were found to be failing to provide suitable space for children to sleep, inadequate sleep facilities available for the numbers of children attending and/or the age profile of the children. Ongoing insufficient numbers of cots for the children present and ventilation issues were also identified.

3.5.6 Overreach by providers or prioritisation of business concerns

There was a continuation of such practices observed from 2021 into 2022 where in some circumstances, providers are overextending their services to accommodate requests from parents. Whilst this may be understandable, there are examples where this has resulted in poor governance,

and a resultant harm to children. Providers have advised the inspectorate that rather than turn away parents, they may proceed to operate outside their authorised registration. In some instances, providers have taken deposits from parents or have made commitments that they subsequently feel cannot be reneged upon. Incidences of operation outside of registration whilst not significant in terms of number did however pose unacceptable risk to the wellbeing of children.

The current enforcement policy to respond to this practice is under review and in 2023 the Inspectorate will increase its monitoring and intervention with providers who engage in these behaviours. Retrospective regularisation of registration where there is an assessed risk to children is not permitted.

3.5.7 Services escalated from National Conditions Panel

Some services have been escalated from the National Conditions Panel to the National Registration Enforcement Panel where the provider has failed to comply with the terms of an attached condition. This is most serious as failure to comply with the terms of a condition is a prescribed offence and shall lead to removal from the register pursuant to Part 12 the Child and Family Agency Act 2013.

We observed a small but growing number of providers who failed to ensure that a condition of registration had been adhered too. Failure to do so invalidates the registration status of a setting.

3.5.8 Failures to manage parental concerns or respond adequately to complaints.

Complaints can be an emotive issue in early years practice and can be seen as a nuisance or vexatious, however they can also be an opportunity for early warning and intervention with emergent non-compliant areas of practice. They are an opportunity for service improvement and several services at NREP had shared a clear pattern and history of failure to respond to received feedback adequately when issues were first brought to their attention by either staff or parents.

3.5.9 Multiple Services

Increasingly, multiple settings (chains) owed by a provider or company are being escalated for consideration of enforcement as persistent and consistent non compliances with the regulations across their services have been found on inspection. The Inspectorate in 2022 had begun to adapt and amend its inspection and escalation methodology in response to this new growth area in the sector. This includes the examination of patterns of compliance across companies and provider settings. Challenges with recruitment and retention of staff and rising costs are cited as contributing factors.

3.6 Support for services at escalation or enforcement

3.6.1 Support Agencies

There are several support agencies available to early years providers who may need assistance with service improvement and/or development, such as the county childcare committees or Better Start. There are others who provide mentoring support services.

As part of the escalation pathways, referrals can be made by the Early Years Inspectorate to such agencies to seek assistance for services by consent. Providers can and are encouraged to also refer their own service to the different support agencies for assistance and guidance. However, most who

are escalated to the National Registration Enforcement Panel do not proactively seek or avail of the support services or where they did, did not engage in a meaningful way.

Where services do engage with additional supports, it is a positive action and significantly aids registered providers in targeting the areas of improvement in their services. This is particularly helpful to target problematic areas such as how to develop and maintain corrective and preventive actions, policy and procedures, and staff supervision and support.

3.6.2 Regulatory Enforcement Meetings

A regulatory enforcement meeting is one of several interventions utilised by the National Registration Enforcement Panel. The purpose of these meetings is to offer a final opportunity for the service to address the concerns and non-compliance outstanding from all previous escalation actions and avert the need for further enforcement. The services can send written representations prior to and after these meetings. This meeting does not ordinarily highlight any new concerns as they would have been identified previously through correspondence and compliance meetings.

These meetings give clear guidance and clarity on why previous representations have not addressed non-compliances or what remains outstanding in relation to issues and concerns. The meeting seeks assurance from the registered provider regarding previous corrective and preventive actions that were either not put in place or not maintained from one inspection to another.

These meetings have proved to be very beneficial for the services and improved the quality of the representations received which resulted in successful registration and less enforcement actions and sanctions being placed on services.

3.7 National Registration Enforcement Panel Outcomes

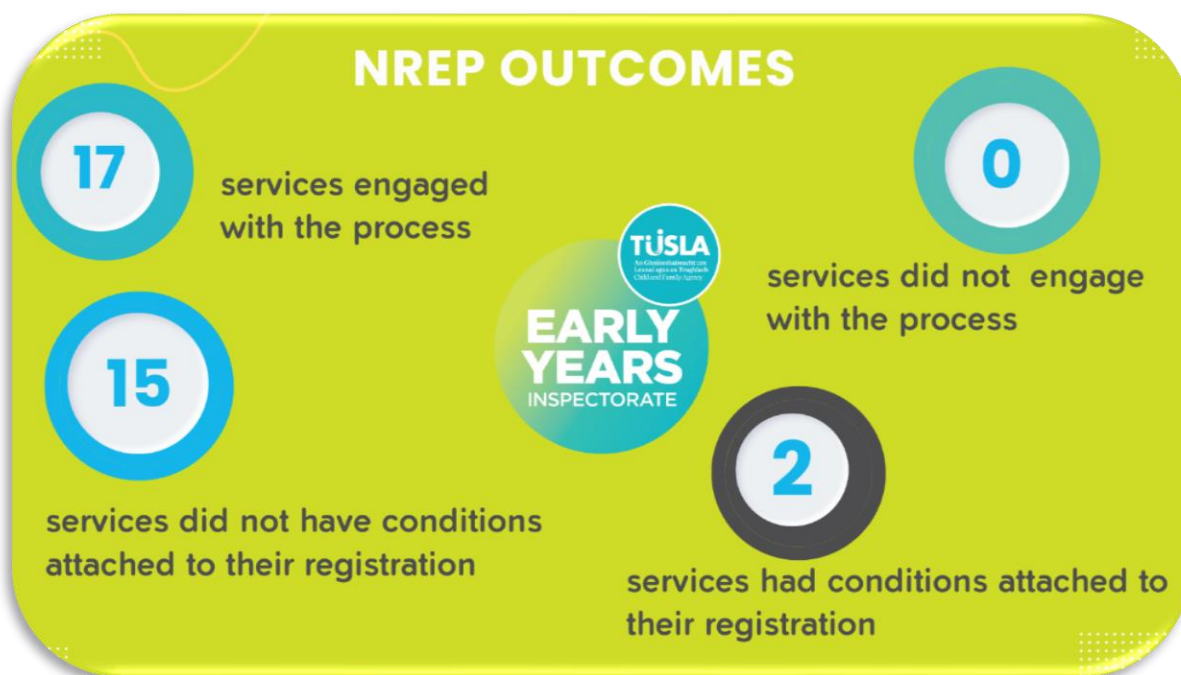


Figure 9 – NREP Outcomes

The 17 services referred to the National Registration Enforcement Panel in 2022 all engaged with the process and resulted in very positive outcomes including avoidance of enforcement sanctions. 2 services had conditions attached to their registration.

4.0 National Conditions Panel

4.1 Context

Section 58D of Child Care Act 1991 makes provision for a provider to be registered with a condition or conditions attached to that registration.

The purpose of conditions is to provide a pathway for the provider to address any outstanding non-compliance of concern. Adherence to the terms of an applied condition by a provider is mandatory. Conditions may impose limitations to how the service can operate, to allow the service some time to correct their shortfalls or to reconsider their capacity to deliver the service they wish to be registered for.

Alternatively, conditions may require the service to provide specific evidence of remedial actions taken to address non-compliance within a defined timeframe. Before conditions are attached, the provider will have an opportunity to demonstrate how the relevant issues/risks will be resolved. They have the right to make representations in relation to the proposal of a condition or to appeal the proposal through the District Court.

The conditions panel considers all proposals to make alterations to conditions and all directions for the provider to take specific actions to maintain their registration. The panel will track all proposals and attached conditions to completion. This panel meets every 4 to 6 weeks. In 2022, a total of 10 meetings were held.

4.2 Referrals to the Conditions Panel

Those escalated for consideration of proposal for the attachment of conditions are services that have not satisfactorily addressed non-compliances found on inspection. Services referred to this panel by inspectors will first have had non-compliance considered under other escalation actions such as immediate actions notices, review of corrective and preventive actions or a regulatory compliance meeting. There were 27 services referred and 24 services accepted at the National Conditions panel during 2022. All accepted services engaged with the process. 13 services with conditions attached in 2021 were brought forward from 2021 and placed under the supervision of this panel. 3 services had conditions proposed but were not attached following successful receipt of representations and 21 services had conditions attached from this panel. 7 services with conditions attached were de-escalated with further enforcement deemed unnecessary, and 6 services were re-inspected to assess compliance with the attached conditions. 3 services in 2022 were escalated for further enforcement action to the National Registration Enforcement Panel.

As at the National Registration Enforcement Panel, referrals are reviewed, assessed and considered in light of the risk of harm the non-compliance poses to children. The nature of the conditions applied are proportionate to its function in the protection and safeguarding of children who attend the service. Conditions are applied not just to simply address the non-compliance, but to address the root cause. The nature of the conditions applied vary greatly but share a common goal to assist registered providers to achieve ongoing compliance with regulations. They also present an

opportunity to providers to demonstrate their capacity to run a service in accordance with the regulations and to measure the effectiveness of their quality assurance systems.

As a result, conditions are commonly applied to services where the governance and management of a service are found to be unfit for purpose. Conditions by their nature are targeted, transient and sufficient if implemented to meet the regulation shortfall. Some conditions, however, are applied permanently, especially those related to limitations of premises capacity, identified by fire safety or planning permission or insurance. Adherence to same is examined during the inspection process as these limitations are usually imposed for reasons of safety and wellbeing.

4.2.1 Referrals to Conditions Panel by Service Region

A total of 27 services were referred to the Conditions Panel in 2022. 24 referrals were accepted.

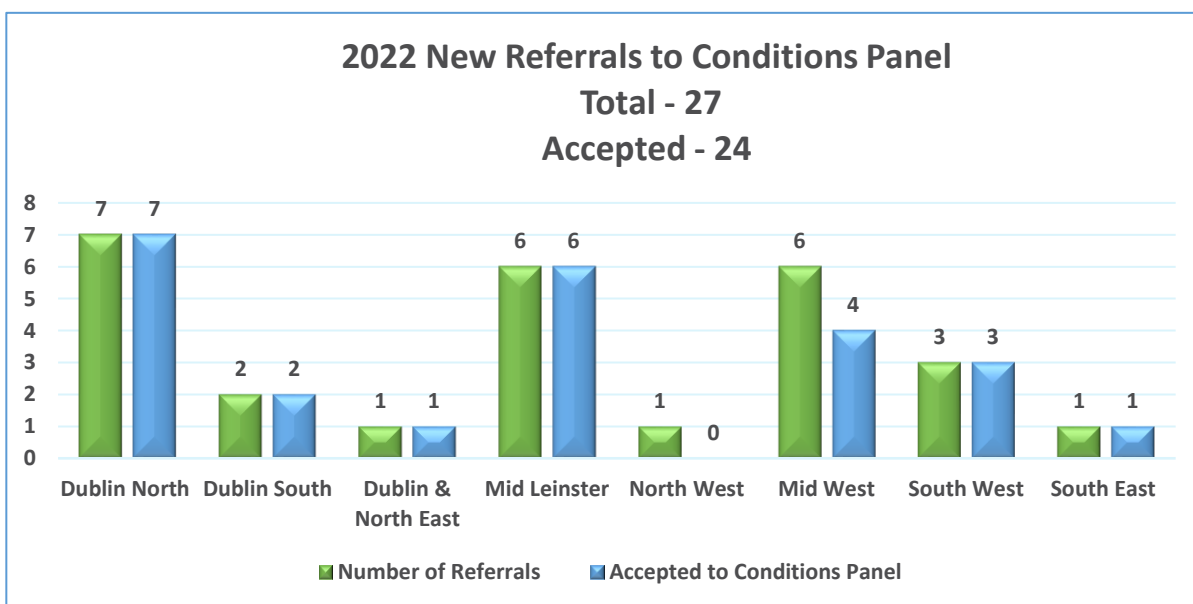


Figure 10 – Referrals to Conditions Panel by Service Region

4.2.2 Accepted referrals to Conditions Panel by Service Type

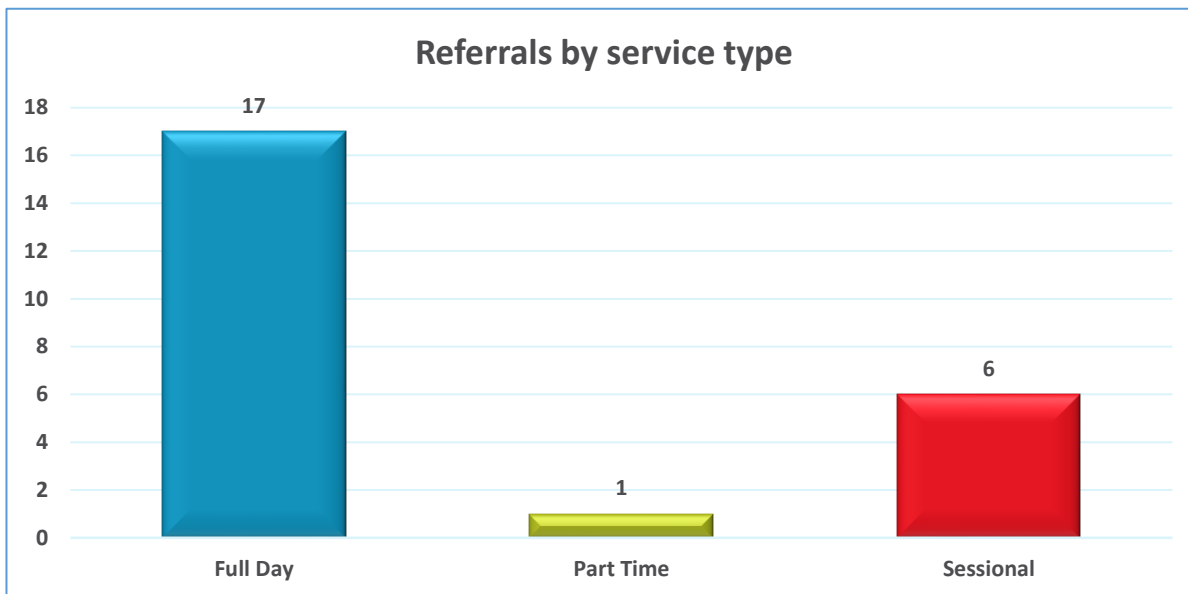


Figure 11 – Referrals to Conditions Panel by Service Region

In 2022, 27 early years services were escalated to the conditions panel, there was no escalation of a school age service in 2022. Early Years services escalated included sessional services and services offering full day care including part time and sessional services. 24 of the 27 services referred were accepted to this panel. The 3 services not accepted did not meet the threshold for escalation and other options were considered to address the non-compliance rather than enforcement actions. Actions included; re-inspection of the service with a focus on the corrective and preventive actions and previous outstanding non-compliance, a regulatory compliance meeting with the service and/or a final request for outstanding documentation on remaining non-compliant issues.

4.2.3 Accepted referrals to Conditions Panel by Number of children attending in services

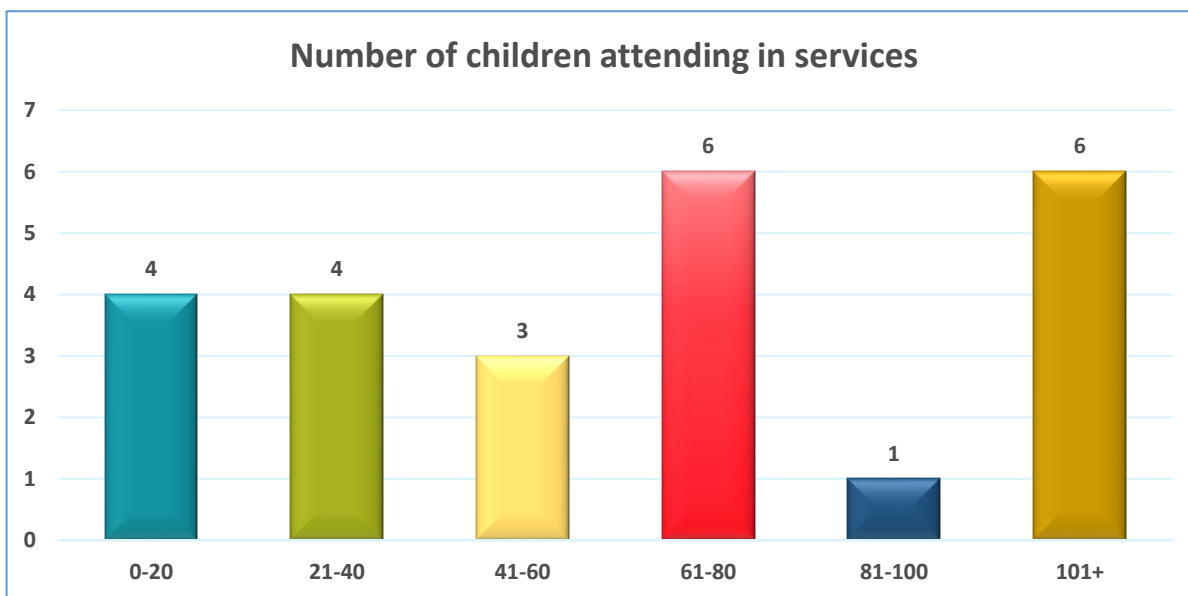


Figure 12 - Referrals to Conditions Panel by number of children

4.3 Conditions Panel Outcomes

All services escalated to the National Conditions Panel during 2022 engaged with the process. 13 services who had conditions attached in 2021 continued into this panel in 2022. 21 services received conditions attached to their registration from this panel in 2022. 4 services closed their services during the escalation process. 3 services had conditions proposed but following receipt of comprehensive representations, the conditions were not attached and the registration continued without sanction.

Any service that receives an attachment of one or more conditions is inspected during the timeframe of the condition(s). Following these inspections, no service was considered for the continuation of conditions. 7 services with conditions attached were subsequently de-escalated in 2022. 6 services who were inspected in 2022 were compliant at the end of the inspection process and had their condition(s) removed. However, following review after inspections 3 services were referred to the National Registration Enforcement Panel for further enforcement action.

The feedback from inspectors following repeat inspections of services who had conditions proposed or attached was very positive with each service having improved across all regulations inspected.

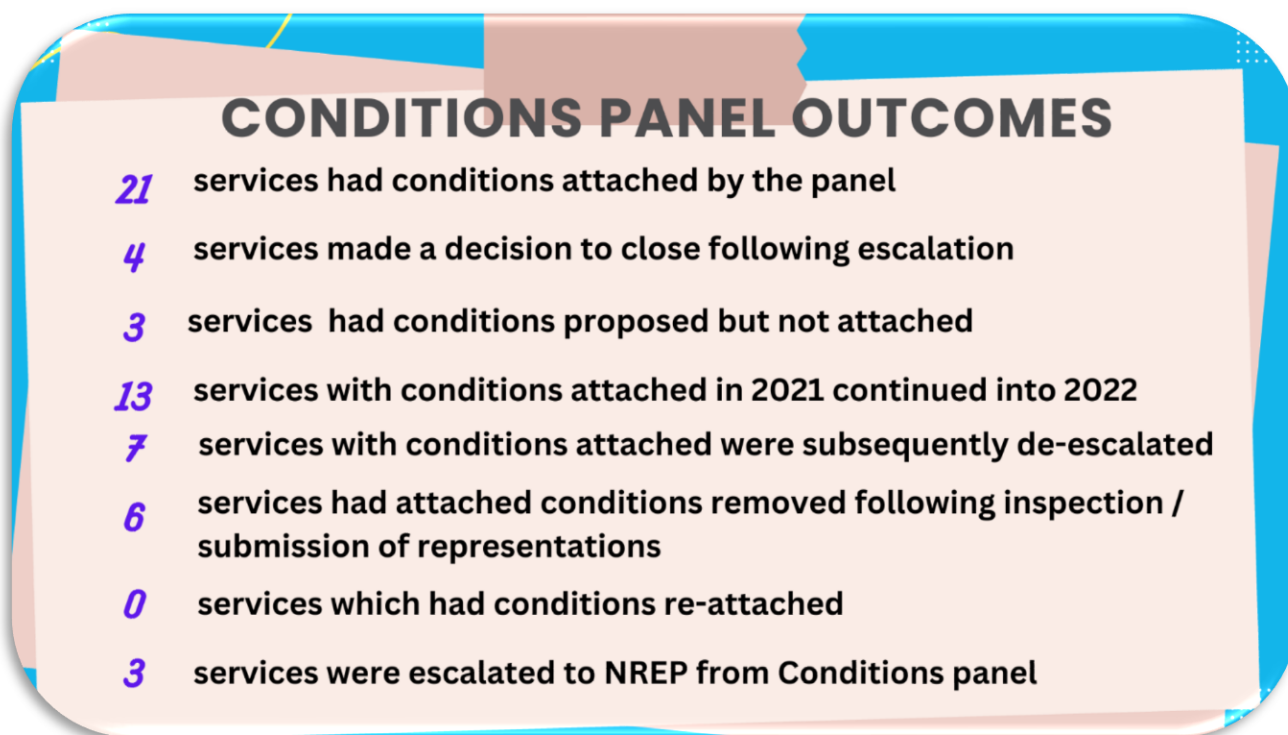


Figure 13 – Conditions Panel Outcomes

5.0 Key Messages

5.1 Registration Renewal

The renewal of registration of services following the end of the statutory transition period in 2019, despite the challenges imposed by Covid, was a considerable success. However, the renewal project was not without its challenges. Many services struggled to attain registration renewal requirements as they had failed to ensure that they were compliant with statutory requirements for building safety and suitability during the period prior to the introduction of registration in 2016. The renewal process provided an opportunity for many to regularise these legal requirements and sustain their viability into the future.

During 2022, the Government introduced new legislation to streamline the renewal of registration process for early years providers with a considerable reduction of administrative burden to the applicant. These provisions are available only to those who have completed full application for registration, those who have not are ineligible to avail of this process.

This year saw the first tranche of providers of both preschool, and school age settings that were required to renew their registration under the new legislation. The process requires that an application is accompanied by Garda Vetting Declarations for relevant persons dated within 36 months of the date of application submission. Regretfully, a small number of providers failed to achieve their renewal by their due date because of failure to renew their vetting declarations. Failures to renew registration will render a service unable to operate and will result in a cessation of state payments. Providers are encouraged to pay due attention to their registration expiry and comply with all reminders to submit their applications complete with all the required supporting documentations.

5.2 Services operating outside of registration status

Providers operating outside of their registration status will usually place children at risk, however well intentioned. The Inspectorate has increased its enforcement activity in this area as the risks posed to children have been found to be particularly significant. Where the Inspectorate is not satisfied that children are safe and secure, it will take measures to ensure the provider reverts to approved registration. This is not desirable and may result in a reduction of capacity, and anger from parents. It is incumbent upon providers where they make a change to their service to provide the Inspectorate with the required 60 days' notice of the proposed change. Unauthorised changes, where they cannot be readily regularised, are not permitted to remain operational pending retrospective registration approval. Toward the end of 2022, several providers who were found to have failed to comply with requests to revert to their registration status were pursued for enforcement by both the inspectorate and the state payment schemes.

5.3 School Age Services

There is a perception that school age services pose less regulatory challenges to providers in their operation, as a comprehensive set of regulations for the care and welfare of children in these settings has not yet been introduced. As the public has become more aware of their regulated status, the number of concerns being submitted to the inspectorate has increased. Providers are encouraged to ensure the same level of vigilance and operational quality to School Age services.

The incidents which led to enforcement have resulted from an insufficient number of staff present in the service to cater for the full needs of the children. This is not to suggest that providers were found to have failed to meet the minimum staff ratios, but that in these instances, the minimum

was not sufficient to supervise the needs and movements of the children who attend their service. Providers should be mindful that their staffing obligation is not confined to meeting the ratio alone but also to having enough staff to meet the needs of the children and to ensure that they are adequately supervised.

5.4 Support for services in the enforcement process

There are times where engagement is hampered by emotional reaction to the escalation process. Some providers may feel that escalations are unwarranted or unfair. This can understandably lead to providers becoming anxious or worried which can result in delayed engagement with the process. Providers who find themselves in this position should not hesitate to speak with the Early Years Inspectorate staff who will assist them.

Providers, especially those who may feel overwhelmed with the prospect of enforcement or potential removal from the register, may feel discouraged at being unable to meet the requirements. If this occurs, it is advised that an external support organisation is engaged to provide aid and support. If the provider is not in a position to seek assistance, the Early Years Inspectorate can make a referral on their behalf. Early, proactive engagement with support organisations does result in positive outcomes for those facing enforcement.

5.5 Engagement

The Inspectorate will not seek to remove services from the register where the appropriate degrees of improvement can be achieved and maintained by the provider. There are some instances where the providers fail to engage with requests for information or provide partial responses to identified shortfalls. This simply compounds the problem and hampers any effort to reach resolutions.

From our review of 2022, the theme of positive and proactive engagement with services shines through again. The level of engagement with services considered for enforcement actions has directly resulted in lower levels of sanctions being placed on services. The 54 services escalated to the enforcement panels (NREP and Conditions??) engaged with the process. 804 services escalated for requirements not met for registration renewal, received from the staged 2019 process, achieved full compliance by end of 2022.

5.6 Inspection of services provided by chain or multiple providers.

As mentioned earlier in this report, the inspectorate is encountering a steady increase in the registration of new settings by existing providers. The advent of multiples is not a new development and has posed a question as to the best approach to the oversight and inspection of these settings. Many jurisdictions have been posed with this challenge. 2022 has seen the introduction of thematic inspections arising from concerns or consistent findings across inspections of premises under the management of the same provider. This is a different principle to the concept that inspections occur in isolation of each other or that one inspection has no relationship to the next. Providers are encouraged to consider that the findings of an inspection of one of their settings should encourage and form the basis of quality assurance checks in their other operations. The Inspectorate's approach to multi-site inspections is currently under development.

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