

# Responding to possible criminal activity

Briefing for section 5 inspections and contact points

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This briefing is for inspectors conducting inspections and for staff at Ofsted contact points.

**Age group:** All

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## Introduction

1. On a very small number of occasions, inspectors and other staff from Ofsted have come across evidence or allegations of activities within a setting or provision that could be considered criminal. It is also possible that Ofsted receives information from members of the public about possible criminal activity. This briefing considers what to do when such matters arise during an inspection and then considers what to do when such information reaches Ofsted at times other than during an inspection.
2. The most common issues are to do with financial impropriety or child abuse, but inspectors and other staff may encounter or be told about other serious issues such as incitement to violence or hatred, for example in the case of potentially violent extremist activity or where weapons are involved. This briefing provides a framework for responding to these eventualities.
3. This briefing is used in conjunction with the Ofsted safeguarding policy and procedures.<sup>1</sup>

## Issues arising during the course of an inspection

4. Inspectors first make a decision as to whether the situation involves imminent risk – and possibly physical danger – or is of a non-urgent character.
5. It is **not** normally the duty of inspectors to investigate allegations or actual criminal conduct, nor are they expected to have any specialist knowledge in areas such as financial malpractice. To investigate an offence may compromise evidence in advance of a police investigation. The only cases where Ofsted staff would have a role in investigation would be where the information concerns a regulated setting (such as childminder, childcare or children's homes), where we do have powers and responsibilities to investigate possible breaches of regulations.
6. Where the setting offers registered provision, criminal activity may affect the registered person's suitability, and this is Ofsted's responsibility to investigate. Cases involving registered provision are referred to the Compliance, Investigation and Enforcement (CIE) team.

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<sup>1</sup> *Ofsted safeguarding policy and procedures* (100183), Ofsted, 2010; <http://www.ofsted.gov.uk/resources/results/20070046>. This policy is currently being revised to reflect changes in the requirements following the passage of the Protection of Freedoms Act (2012).

## **Cases of serious criminal activity (other than child protection offences) where there is imminent risk**

7. These eventualities will be exceptionally rare. Serious actual or potential criminal activity will include actual or threatened violence, including the presence of weapons on the premises.
8. The first priority is the safety of the children, young people and adults in the provision or setting concerned and of the members of the inspection team. Inspectors do not attempt to intervene in any ongoing incident or to start an investigation.
9. Normally, contact with the police is via the CIE team but, in cases of imminent risk, the lead inspector contacts the police directly at the first safe opportunity.
10. The lead inspector then contacts the Ofsted national helpdesk (0300 123 4666) to report the situation and confirm contact with the police. National helpdesk liaises with CIE in the case of registered provision.
11. The lead inspector informs the responsible person<sup>2</sup> (or registered person in registered provision) only that there has been a serious incident/allegation and the actions they have taken. Inspectors do not give details to responsible persons as this may prejudice the way in which the matter can be investigated.
12. The national helpdesk (or alternatively CIE in the case of registered provision) will contact the relevant regional director, or other senior manager in their absence, who checks the safety of the inspection team and notifies the inspection service provider (for education, learning and skills inspections).
13. The director or senior manager discusses further appropriate actions with the lead inspector according to circumstances at a suitable time. The Ofsted press office is notified at the first suitable opportunity and inspectors are directed not to discuss the matter.

## **Less urgent cases of criminal activity, including financial impropriety**

14. These situations may include allegations of financial impropriety or incitement to hatred,<sup>3</sup> with no imminent threat to any person's safety.

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<sup>2</sup> This phrase is used throughout to indicate the person deemed to be 'in charge'. This may include a headteacher or a college principal, but also the proprietor of a non-maintained school.

<sup>3</sup> For example, under the Racial and Religious Hatred Act of 2006 it is an offence for a person to use 'threatening words or behaviour, or display any written material which is threatening, [and] is guilty of an offence if he intends thereby to stir up religious hatred.' See <http://www.legislation.gov.uk/ukpga/2006/1/contents>. Note too that if managers have knowingly allowed such an offence to take place, then they may also be guilty of an offence.

15. Statutory provisions enable inspectors to inspect settings and take copies of records and documents kept by the provider. The precise nature of those statutory powers vary slightly according to the setting but, effectively, inspectors may use these powers where it appears that there is evidence of financial impropriety (where appropriate), including the improper appointment of staff. However, it is not their role to investigate individual cases of possible or alleged wrongdoing, and they concentrate on the implications such material has for the evaluation of leadership and management or their implications for regulations, and the suitability of the registered person in registered settings. The exception to this is in relation to secure training centres for which inspectors will only have the powers to inspect and take copies afforded to them under arrangements made between Her Majesty's Chief Inspector (HMCI) and the Secretary of State under section 146 of the Education and Inspections Act 2006.
16. The lead inspector first contacts the national helpline, or CIE in the case of registered settings, to alert the relevant director and record all evidence/allegations. The inspector may inform the responsible person (or registered person) that an allegation has been made and the actions they have taken, but give no further details as this may prejudice any further investigation. The director will contact the local authority or the Department for Education (DfE) for independent schools. The inspection continues as normal. Evidence of what the inspector has seen or heard is recorded with care as this may form part of a criminal enquiry. The evidence also informs the inspection findings. Although the actual nature of how it is reported is agreed with the relevant director.

## **Cases of actual or alleged child abuse or bullying of children and young people by staff**

17. Actions taken if a member of Ofsted staff observes abuse while it is taking place in an institution or setting<sup>4</sup> are set out below.
  - In all circumstances, inspectors respond in accordance with Ofsted's procedures to every case of: alleged or suspected failure to safeguard; or abuse or neglect in childcare, education or training settings, or the workplace, regardless of how they are received. Cases are referred immediately to the CIE team.
  - The inspector does all s/he can to stop the abuse immediately without putting themselves or the person being physically, sexually or emotionally abused at further risk. The inspector informs the perpetrator of their concerns and advises them to stop the action immediately.
  - The inspector asks the perpetrator to remove themselves from the area to one without contact with children and young people, and advises them that

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<sup>4</sup> Inspectors should note that this guidance links to Ofsted's wider safeguarding policy.

s/he will immediately be informing the appropriate authorities (in this case through the CIE team).

- If the perpetrator fails to desist, the inspector takes appropriate action to stop the abuse and call for assistance. If attempts to stop the abuse put anyone at further risk, the inspector rings the police. From this point, the inspector treats the case as a serious criminal incident as described above.
- If they do stop, the inspector accompanies the victim to a place of safety away from the perpetrator and leaves them in the care of a responsible adult.
- If an inspector is on an inspection, s/he reports the incident immediately to the lead inspector where appropriate. Either the inspector or the lead inspector contacts the CIE team immediately via the National Business Unit (NBU).
- The inspector informs the responsible person (headteacher, manager of childcare or registered person) immediately of the action s/he has taken and why, assuming this person is not directly involved. The inspector informs them of the actions s/he now needs to take in accordance with Ofsted's procedures, but does not inform them of details of the incident; this will be handled by the CIE team.

## **Responding to allegations of abuse**

18. Safeguarding issues are defined by Ofsted as the protection from 'abuse, neglect and maltreatment and impairment to... physical and mental health and personal and social development'. They are covered in detail in the full guidance (see link on last page).
19. In the case of allegations of child abuse, bullying or other failures to safeguard children or young people, the inspector listens to the allegations and then contacts the national CIE professional via the NBU on 0300 123 4666. All referrals to children's social care services or police will be made by the national CIE team. Referrals will be made within two hours of the CIE team having sufficient evidence and always as speedily as possible. Inspectors do not investigate any allegations but, through the lead inspector, inform the responsible person or proprietor/registered person that an allegation has been made and of the actions they are now required to take.

## **Criminal offences related to the Disclosure and Barring Service requirements**

20. From 12 October 2009, it is a criminal offence for employers:

- to take on an individual in an Disclosure and Barring Service (DBS)<sup>5</sup> regulated activity, such as a school or child care provision, whom they know to have been barred from such activity
  - not to refer to the DBS details of anyone who is removed from regulated activity, or who leaves while under investigation for allegedly causing harm or posing a risk of harm.
21. In practice this means that employers must refer information to the DBS when they have dismissed an individual or an individual resigns, because they harmed or may harm, a child or vulnerable adult.
  22. If, in the course of the normal inspection of safeguarding within any DBS regulated provision, an inspector suspects a provider of not complying with either of the above, they bring this to the provider's attention and ask them to take immediate action. Inspectors also contact the national CIE professional via the NBU on 0300 123 4666. This is followed up in writing and emailed to the national CIE team so that they can alert the delivery director.
  23. Inspectors record all the evidence on an evidence form or the appropriate recording mechanism for that inspection. Dependent on the circumstances of the case and the action taken by the provider, inspectors consider how this information will affect their judgements on safeguarding, the effectiveness of leadership and management and the overall effectiveness of the provision. Early years providers may be in breach of a requirement and could therefore be judged as inadequate. Inspectors may also consult the Ofsted helpdesk for further advice before coming to a final decision.

## Concluding the inspection

24. The vast majority of inspections will continue as normal.
25. For allegations and actual cases involving safeguarding issues, inspectors refer to the detailed policy and procedures on safeguarding. Once the case has been referred to the national CIE team, inspectors in schools and learning and skills inspections contact the HMI duty desk who will advise the lead inspector of any further actions required.
26. In the case of allegations or actual cases involving safeguarding, the delivery director will decide whether or not it is appropriate to continue the inspection, usually following consultation with the responsible senior manager. The senior manager will then take the appropriate action. In the case of safeguarding concerns in independent schools, the senior manager for independent schools will make the decision and also contact the DfE.

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<sup>5</sup> Independent Safeguarding Authority (ISA) merged with the Criminal Records Bureau (CRB) on 1 December 2012. The combined organisation is known as the Disclosure Barring Service (DBS).

27. In other cases of serious criminal activity or allegations, the appropriate regional director will decide whether or not it is appropriate to continue the inspection, in conjunction with the lead inspector. If the inspection is stopped, the director will decide how and when to make further contact with the school or college and whether the existing evidence base is a sound basis for publishing a report. It is the responsibility of the director to ensure the situation is reported to the local authority and/or DfE.
28. Where the team has clear evidence of impropriety or criminal acts, this is reflected in the report and its judgements, but subject to legal advice. When allegations have been made, the lead inspector reports their concerns using the following wording:

‘Concerns raised by (some children/pupils/a pupil/some parents/one parent) during the inspection are being examined by the appropriate bodies.’
29. This text is inserted as the last bullet point in the relevant section heading of the report, for example under care, guidance and support if related to safeguarding issues, or under leadership and management if concerned with financial impropriety. It is also appropriate to insert this under the overall effectiveness section.
30. The lead inspector records full details of what has occurred on an evidence form and forwards a written statement detailing the concerns and allegations to the delivery director. If the incident relates to a safeguarding issue, the lead inspector follows the relevant procedure (as set out in the link below): making an immediate note of the incident or allegation, their concern and actions taken, and any further details as advised by the CIE team. They follow this up in writing using the SC2 form, and send (by email) to the national CIE team within 24 hours.

## **Issues arising from contacts by members of the public to Ofsted offices**

31. Direct contact by members of the public can come to Ofsted in a variety of ways:
  - by telephone to the NBU enquiries number 0300 123 1231
  - by email to [enquiries@ofsted.gov.uk](mailto:enquiries@ofsted.gov.uk)
  - by email to [whistleblowing@ofsted.gov.uk](mailto:whistleblowing@ofsted.gov.uk)
  - by telephone or email directly to named individuals (usually as a result of previous correspondence or because the individual is named on an inspection report or letter)
  - in person with an Ofsted member of staff during a meeting not directly linked to an inspection (for example, with a link HMI).



32. It is important for all colleagues to direct information received in this way to the appropriate colleagues or teams in Ofsted.
33. Any member of staff receiving information through one of these routes decides whether the situation suggests an immediate risk – and possibly physical danger – to a child or children. Detailed notes are taken about the information but this does not extend to investigating allegations or actual incidents. Front line staff are not expected to have specialist knowledge in areas such as financial malpractice and investigating a possible offence that does not fall within any of our powers or remits may compromise evidence in advance of a police investigation. As noted above, the only cases where Ofsted staff would have a role in investigation would be where the information concerns a regulated setting (such as childminder, childcare or children’s homes), where we do have powers and responsibilities to investigate possible breaches of regulations.
34. Any information received that indicates that there is an imminent risk of harm is forwarded immediately to Ofsted’s national CIE team. The CIE team will categorise the information and alert the appropriate local services if necessary. In some cases, this may include the police. If the information concerns a regulated setting, CIE will also take direct action in line with our powers as the regulator. If in any doubt about the regulated status of the setting concerned or the nature of the risk, staff contact CIE for advice.
35. All information concerning a regulated setting is forwarded to CIE.
36. Where the information concerns a non-regulated setting (for example, a maintained school or an independent school, a college of further education or other post-16 setting inspected by Ofsted), CIE will refer any immediate child protection concerns to the local authority and then forward the information about the setting to the appropriate team in Ofsted – usually the National Complaints Team (NCT) (for schools) or the cross-remit safeguarding team (for further education colleges and other post-16 settings, local authorities and children’s centres) by emailing [whistleblowingcentral@ofsted.gov.uk](mailto:whistleblowingcentral@ofsted.gov.uk). Information about independent schools is shared with both the NCT and cross-remit team who will ensure that it is referred to the DfE.
37. Any information that suggests links to extremism, incitement to racial hatred or violence is forwarded to the appropriate regional director so that it can be shared with co-ordinating agencies where appropriate.

Legal guidance for childminding and day care settings:  
The Childcare (Supply and Disclosure of Information) (England) Regulations 2007  
[www.legislation.gov.uk/ukxi/2004/3136/contents/made](http://www.legislation.gov.uk/ukxi/2004/3136/contents/made).

Full Ofsted guidance on safeguarding and protection see Ofsted safeguarding policies and procedures: [www.ofsted.gov.uk/resources/100183](http://www.ofsted.gov.uk/resources/100183).

## **Annex A. Operational note about contacts from members of the public about settings that are not inspected or regulated by Ofsted**

In practice, almost all of such contacts will reach Ofsted via the NBU. The process for this is as follows.

- The NBU log these as complaints against unregistered providers and allocate to the NCT to review/consider as with all other complaints about schools.
- Where there is a safeguarding concern, NCT will ensure this is sent to CIE for liaison with the relevant local authority designated officer, copying in the cross-remit safeguarding (whistleblowing) team.
- NCT will formally refer the complaint to the relevant team at the DfE, similar to our independent schools complaints process, but consulting the regional director where there is any allegation of extremism.
- NCT maintain a record of these provisions and the concerns raised from which we can provide relevant data/statistics as required by DfE.