

Whistleblowing to Ofsted about children's social care services

Policy and guidance for whistleblowers

This document outlines what Ofsted will do when it receives certain concerns about children's social care services from a whistleblower.

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Piccadilly Gate
Store Street
Manchester
M1 2WD

T: 0300 123 1231
Textphone: 0161 618 8524
E: enquiries@ofsted.gov.uk
W: www.gov.uk/government/organisations/ofsted

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Introduction

1. This policy outlines what Ofsted will do when it receives certain concerns about children's social care services from a whistleblower. In this policy, when we say children's social care services, we mean all the children's social care establishments, agencies, services and providers that we inspect and/or regulate. A list of these services is in Annex A.
2. This policy covers children's social care services because it is these services that Her Majesty's Chief Inspector (HMCI) is identified in legislation¹ as a named person to receive information from whistleblowers. It may also be appropriate for you to whistleblow to Ofsted about other matters within its remit, such as schools, and early years providers. For further information, please see:
 - Complain about a school, or childminder: www.gov.uk/complain-about-school/types
 - Early years compliance handbook (part two): www.gov.uk/government/publications/compliance-investigation-and-enforcement-handbook-childcare

Depending on the nature of the information received, whistleblowing information about colleges will be assessed and is usually referred to the appropriate funding body to consider and take action.

3. This policy will help you to whistleblow to us and understand the process to follow; this will help ensure that you receive the legal protections that are available to you as a whistleblower.
4. You may want to seek independent advice before contacting us (see paragraph 16).

What is whistleblowing?

5. Whistleblowing is when someone who works in or for an organisation passes on information, which they reasonably believe shows wrongdoing or a cover up by that organisation. For example, the information may be about activity that is illegal or that creates risks to the health and safety of others. The concern may relate to something that has happened, is happening or that a person may fear will happen in the future.

¹ Public Interest Disclosure Act 1998; www.legislation.gov.uk/ukpga/1998/23/contents.

6. The law provides legal protection to workers who have been victimised at work or lost their job because they have 'blown the whistle'.² A more detailed outline of what the law says is in Annex B of this document.
7. To receive the legal protection, a whistleblower must:
 - be a 'worker' for the organisation about which they are whistleblowing. See paragraph 8 below for more information about the meaning of 'worker'³
 - reasonably believe they are acting in the public interest
 - whistleblow to either the appropriate people within their organisation or to a relevant third party, such as one that inspects or regulates the activity of that organisation.
8. The definition of 'worker' for whistleblowing purposes includes employees, temporary agency staff, home workers, trainees on vocational schemes, and those whose employment has ceased. It does not cover the self-employed, volunteers or foster carers. While these groups are not covered by the legislation that protects whistleblowers, we will listen to their concerns seriously and will raise them with the appropriate person responsible for the children's social care service/agency.

Concerns about immediate risks to individual children

9. If you believe that a child is or children are at immediate risk of harm, you should refer your concern to the children's social care department of the local authority area where the child lives or report this to the police. This includes children living in or supported by agencies that are run independently of the local authority. Further information on the safeguarding of children can be found in 'Working together to safeguard children'.⁴ If you tell Ofsted, we will always tell the relevant local authority. Ofsted cannot directly investigate or intervene in individual cases, so reporting the concern directly to local agencies could help to keep these children safe.
10. Advice on reporting child protection risks can be found in 'What to do if you're worried a child is being abused': www.gov.uk/government/publications/what-to-do-if-youre-worried-a-child-is-being-abused--2.
11. You can also contact the NSPCC, which is a prescribed body for issues about child welfare and protection.

² Public Interest Disclosure Act 1998; www.legislation.gov.uk/ukpga/1998/23/contents.

³ See Section 43K of the Employment Rights Act 1996 (1996 c.18) which, for whistleblowing purposes, extends the meaning of 'worker'.

⁴ *Working together to safeguard children*, Department for Education, March 2015; www.gov.uk/government/publications/working-together-to-safeguard-children--2.

Complaints and grievances

12. Complaints and grievances are different to whistleblowing. They are not covered by this policy and there are different steps you should follow.
13. A **grievance** is when a worker has a dispute about their own employment position. This relates to the worker as an individual, not something that is in the public interest and may create risk or harm for others. You should refer to your organisation's policies as Ofsted cannot take action in any grievances.
14. A **complaint** is when a person or someone close to them believes they have been poorly treated as an individual in receipt of services. This is not whistleblowing, as the person is not a worker for the organisation they want to complain about. If you have a complaint about a service you have received, you should refer to the complaints procedures for that service.
 - Ofsted can consider some aspects of a **complaint about children's social care services that we regulate**. For information on how to make a complaint about a social care service we regulate, see: www.gov.uk/government/organisations/ofsted/about/complaints-procedure.
 - We cannot investigate individual **complaints about children's social care services that we do not regulate** as we do not have powers to do so. If you complain to us about these services, we will hold the information you provide and use it to inform our next inspection of that service and we may pass the information, or advise you to contact, another organisation that does have the power to investigate complaints.⁵

How should I whistleblow?

15. Ofsted can act on any relevant information you provide and can advise you on what action we may take. You may wish to contact us informally without revealing the identity of the children's social care service to see if we are the best option for you to whistleblow to. However, Ofsted cannot tell you whether you will receive legal protection in your specific case. You will need to seek independent advice for this.
16. You can seek independent advice at any time. This could be to check who is the best person to whistleblow to, or simply to talk the matter through in confidence and discuss how to raise your concern. You can do this with:
 - your union or professional body

⁵ If you have a complaint about a local authority service you may wish to contact the Local Government Ombudsman; www.lgo.org.uk. If you have a complaint about Cafcass you may wish to contact the Parliamentary and Health Service Ombudsman; www.ombudsman.org.uk.

- the independent whistleblowing charity Public Concern at Work: www.pcaw.org.uk/contact-us
 - an independent legal adviser.
17. Where you have a concern, you should consider whistleblowing to the children's social care service you work for. If your employer has a whistleblowing policy, refer to this. The Local Safeguarding Children Board for your area may also have a whistleblowing policy to which you can refer. Whistleblowing directly to the services you are concerned about can result in a quick response as they have the power to act immediately on your concern.
 18. You may also whistleblow to Ofsted. This may include if you feel that you cannot raise your concern to your employer because they will cover up your concern, treat you badly, or because you have already told them and you believe they have failed to act.
 19. We encourage you to share your identity with us, even if you want your identity kept confidential from the children's social care service you are contacting us about. If we know who you are, it is easier for us to determine how we can best keep your identity confidential when we look in to your concerns. We may also wish to contact you for more information or to clarify something.
 20. You should be aware that whistleblowing to us anonymously may mean it is more difficult to receive the legal protections available to whistleblowers. You may not be able to prove that any reprisal you may suffer is the result of being a whistleblower as there would be no evidence linking you to the information you provided to us.

What to expect if I whistleblow to Ofsted?

What will I be asked?

21. **We will ask whether you believe that a child is at an immediate risk of harm.** If you do, we will advise you to make immediate contact with the children's services department in the local authority or the police force for the area in which the child is living. Ofsted will also contact the local authority, but if you take this action yourself it could save time and help keep a child safe.
22. **We will need to identify that the matter falls within the services that Ofsted inspects and regulates** (as itemised in Annex A) and that you reasonably believe the information disclosed and any allegations show wrongdoing. This means telling us the facts as you see them and without exaggeration.
23. **We will ask whether you have raised the issue with your employer or any other organisation.** We may advise you to seek independent advice (see paragraphs 16). If you have raised the concern with your employer or another organisation, or you have a good reason why you could not raise it with them,

we will ask for further information. This will include how you raised the concern, how your employer handled it and whether you have received a formal response.

24. If you believe your employer failed to act appropriately **we will ask you what you think should be done.** We ask this so that we can be clear and honest with you about what Ofsted has the power to do.

What action will Ofsted take?

25. Initially, Senior Her Majesty's Inspectors or Social Care Compliance Inspectors will review your information to determine whether it suggests any of the following.
- **Concerns that a specific child or children may be at risk of harm.** For example, allegations that another worker is abusing a child in their care or allegations that there are high numbers of unallocated cases in a children's social care team.
 - **Concerns that there are wider or systemic failures in safeguarding practice.** For example, children who are looked after are not being visited by their social workers as caseloads are too high.
 - **Concerns that children are not receiving the right quality of care but that do not suggest a risk to their safety.** For example, lack of access to primary healthcare.
 - **Concerns that a social care service is not meeting regulatory requirements** but that do not suggest the safety or quality of care for children is at risk. For example, where the registered manager of a regulated service is misusing their services' resources.
26. The action we take depends on the type of children's social care service you are contacting us about and what your concern suggests is happening. Our action may include one or more of the following examples:
- refer the matter to the child protection team in the relevant local authority for urgent attention
 - contact an appropriate person at the children' social care service and ask them to investigate and respond to Ofsted with more information
 - review the timing of the next inspection and bring this forward if appropriate
 - hold the information for follow-up at the next planned inspection
 - undertake a compliance visit. (This action applies only to settings that Ofsted regulates).

27. Any inspection, regulation or compliance activity will be in accordance with the relevant guidance for that service on our website.⁶
28. There are some concerns that Ofsted will not deal with under this whistleblowing policy. The usual reasons for this are:
 - the issue you raised is a grievance or complaint, not whistleblowing. See paragraphs 12 to 14 for further information
 - the issue relates to services or practice in Wales, Northern Ireland or Scotland. We will advise you to contact the organisation that regulates these services in the relevant country
 - the issue relates to social care services regulated by the Care Quality Commission (CQC), for example adult social care. We will pass on the details to the CQC and advise you to contact them
 - the issue relates to services that Ofsted does not inspect or regulate. We will confirm this to you so you can consider what action to take.

Will I be kept informed about what happens?

29. If you provide us with an email or postal address we will write to you to confirm we have received your concern.
30. After we have assessed your information we will write to you again to confirm the action we have taken or will take.
31. In some cases, we may not be able to write to you until after we have acted. We may also need to refer your concerns to the relevant agency responsible, with the power to take action, for example where there is a risk of harm to a child.
32. We will give you as much information as we can about actions we may take. However, we have legal responsibilities, such as a duty to maintain the confidentiality of others we have spoken to, that may limit how much we can tell you.

⁶ *Social care compliance: guidance for Ofsted staff*; www.gov.uk/government/publications/social-care-compliance-handbook-from-september-2014.

Safeguarding children and young people and young vulnerable adults policy, Ofsted, 2015; www.gov.uk/government/publications/ofsted-safeguarding-policy

How Ofsted inspects; <https://www.gov.uk/topic/schools-colleges-childrens-services/inspections>

Can I provide information confidentially?

33. We will always do everything we can to help keep your identity confidential if you request this. However, depending on the nature of the information you provide, this may not be possible; for example:
- if your information indicates a specific child is at risk, we must pass this on to the authority responsible for protecting that child even if it risks identifying you. The protection of children may need to take priority over requests not to be identified. We will do everything we can to share the information in a way that protects your identity
 - if we contact a social care service for further information or we investigate the matter through inspection, others may guess that you have contacted us. This could happen if the information you provide could not have come from anyone else.
34. If your letter or email does not say whether you want us to keep your identity confidential, we will automatically try to keep it confidential until we have had chance to ask you using the contact details you have provided.
35. We know that there may be circumstances when you would like to contact us anonymously. If you do, we will treat your concerns just as seriously as if you had given us your personal details, but we think it is important to clarify why it helps both you and us to know who you are.

Data protection and freedom of information

36. We will handle any information you provide to us in accordance with the requirements of the Data Protection Act 1998⁷ and Freedom of Information Act 2000.⁸
37. Under the Freedom of Information Act, Ofsted has a legal obligation to provide information on request unless: it is available by other means; it is not reasonably practicable to supply it; or the information falls within exemptions outlined in the act.
38. If we receive a request under the Freedom of Information Act to provide information you have shared with us by whistleblowing, we will try to maintain your confidentiality, to the extent to which the Freedom of Information Act and

⁷ www.legislation.gov.uk/ukpga/1998/29/contents.

⁸ www.legislation.gov.uk/ukpga/2000/36/contents.

Data Protection Act empower us to do so. For further information see Ofsted's freedom of information guidance.⁹

Contacting us

39. Before whistleblowing to Ofsted, you should read this policy. It is important that you understand the process to follow as this will help ensure that you receive the legal protections that are available to whistleblowers.
40. If you do contact us, we will ask whether you have read the policy so that you can be clear about what actions we may take. If you have not read the policy, we will strongly advise you to do so.
41. You can whistleblow to Ofsted by:

Telephone: Whistleblowing Hotline (0300 1233155). It is staffed from 8am – 6pm, Monday – Friday.

Email: whistleblowing@ofsted.gov.uk

Post: WBHL, Ofsted, Piccadilly Gate, Store Street, Manchester, M1 2WD.
42. You can contact the NSPCC National Whistleblowing Advice Line by telephone or email, see www.nspcc.org.uk/preventing-abuse/child-protection-system/england/reporting-your-concerns/

⁹ Freedom of information: Publication scheme;
<https://www.gov.uk/government/organisations/ofsted/about/publication-scheme>

Annex A. The children’s social care services you can whistleblow to Ofsted about.

Ofsted will review the information from any whistleblower about any service it inspects or regulates. However, whether a whistleblower receives legal protections depends on several conditions. One of these factors is whether HMCI is named as a **prescribed person** for the matters you want to whistleblow to us about. Details are set out in the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 2014¹⁰.

HMCI is prescribed for matters relating to the regulation and inspection of children’s social care services.

If you work in or for any of the services listed in this annex, you can whistleblow about them to Ofsted and receive legal protections against any reprisal from your employer. However, to receive these protections:

- you must reasonably believe that the information you are providing shows wrongdoing
- the concern must be relevant to Ofsted’s inspection and/or regulation of these services
- you should follow the procedures outlined in the guidance.

The services covered by this whistleblowing policy are:

| Children’s social care service |
|---|
| Adoption support agencies |
| Cafcass |
| Children’s homes |
| Independent fostering agencies |
| Local authority functions as outlined in the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 2014 |
| Local Safeguarding Children Boards (LSCBs) |
| Residential family centres |
| Residential holiday schemes for disabled children |
| Welfare of children provided with accommodation by boarding schools and further education colleges |
| Welfare of children provided with accommodation by residential special schools |

¹⁰ SI 2014/2418.

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| Children's social care service |
| A third party provider to which a local authority has delegated functions |
| Voluntary adoption agencies |
| Secure training centres and youth offending teams – please note HMCI is not named as a prescribed person. It maybe appropriate to share information under section 43G (disclosure in other cases), or section 43H (disclosure of exceptionally serious failure) of the Public Interest Disclosure (Prescribed Persons) Order 2014. If you do, we will listen to your concerns and may share the information received with the Youth Justice Board, which commissions Ofsted to inspect these services. |

Annex B: what does the law say

43. The Public Interest Disclosure Act 1998 (PIDA)¹¹ amends the Employment Rights Act 1996 (ERA)¹² by inserting Part IVA (protected disclosures) into the ERA. It offers protections to workers from any detriment from their employer that arises from the worker making a protected disclosure (‘a qualifying disclosure’). Disclosure is another word for whistleblowing.
44. To receive these protections, a worker must make a qualifying disclosure. This is any disclosure of information that:
 - in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the factors outlined in section 43B of the PIDA www.legislation.gov.uk/ukpga/1998/23
 - the worker makes to one of a number of specified persons outlined in sections 43C to 43F of the PIDA www.legislation.gov.uk/ukpga/1998/23.
45. It may also be appropriate for a worker to make a disclosure under section 43G (disclosure in other cases), or section 43H (disclosure of exceptionally serious failure) of the PIDA.
46. Section 43F refers to disclosures to a *prescribed person*.¹³ Ofsted’s Chief Inspector (Her Majesty’s Chief Inspector for Education, Children’s Services and Skills – HMCI) is a prescribed person for disclosures about matters relating to the regulation and inspection of establishment and agencies for children’s social care services (see Annex A).
47. Ofsted cannot give legal advice to workers about disclosing information to us and whether whistleblowers will receive the legal protections offered by PIDA. Individuals will need to seek their own legal advice in relation to how the protection afforded by PIDA affects them.
48. The self-employed, volunteers and foster carers do not meet the definition of a ‘worker’ as defined by legislation¹⁴.

¹¹ www.legislation.gov.uk/ukpga/1998/23.

¹² www.legislation.gov.uk/ukpga/1996/18/contents.

¹³ *Whistleblowing: list of prescribed people and bodies*; Department for Business, Innovation and Skills; www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies-2

¹⁴ see Section 43K of the Employment Rights Act 1996 (1996 c.18) which, for whistleblowing purposes, extends the meaning of ‘worker’.