

Whistleblowing to Ofsted about safeguarding in local authority children's services

Policy and guidance for whistleblowers

This document outlines Ofsted's processes and procedures for dealing with whistleblowing referrals about a local authority's safeguarding arrangements.

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About Ofsted

1. Ofsted inspects and regulates to achieve excellence in the care of children and young people, and in education and skills for learners of all ages, thereby raising standards and improving lives. We use our findings from inspection to raise aspirations, improve services, and deliver better outcomes for children, young people and adult learners. Through our inspections we gather valuable and unique data and evidence in all areas of care and learning. We share this information by publishing reports that focus on specific subjects (such as English) or aspects of learning (such as apprenticeships). You can find details about all the settings that Ofsted inspects or regulates in annex 1 of this guidance.
2. Ofsted's role in relation to **safeguarding in local authority children's services** is to evaluate their effectiveness through inspection, and report on the extent to which children's services improve the safeguarding and well-being of children and young people.
3. This document outlines Ofsted's processes and procedures for dealing with whistleblowing referrals about a **local authority's safeguarding arrangements**.
4. Please note there are different and separate arrangements for dealing with complaints to Ofsted. Ofsted has limited powers in relation to complaints. Details of these can be found at the following link: www.ofsted.gov.uk/contact-us/how-complain.

Introduction

5. Whistleblowing is the term used when **someone who works in or for an organisation** wishes to raise concerns about malpractice, wrongdoing, illegality or risk in the organisation (for example, crimes, civil offences, miscarriages of justice, dangers to health and safety), and/or the cover up of any of these. The malpractice has a public interest aspect to it, usually because it threatens others. It applies to raising a concern within the organisation as well as externally, such as to a regulator.
6. The Public Interest Disclosure Act 1998, known as the Whistleblowing Act, is intended to promote internal and regulatory disclosures and encourage workplace accountability and self-regulation.¹ The Act protects the public interest by providing a remedy for individuals who suffer workplace reprisal for raising a genuine concern, whether it is a concern about child safeguarding and welfare systems, financial malpractice, danger, illegality, or other wrongdoing. The concern may relate to something that is happening or has happened in the past or something that you fear may happen in the future.

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

What is whistleblowing?

7. In the case of **local authority safeguarding services**, whistleblowing allegations are likely to be about a dangerous or illegal activity, or **widespread or systemic failure** in the provision or management of services for children and young people. You can find some examples of the sort of concerns that Ofsted has dealt with under this policy in annex 2.
8. Whistleblowing is very different from a **complaint** or a **grievance**. The term 'whistleblowing' generally applies when you are acting as a witness to misconduct or malpractice that you have observed and which threatens other people.
9. A **grievance** is when an employee has a dispute about their own employment position. If you are an employee with a grievance, we recommend that you refer to your local procedures. Ofsted cannot take action over grievances as it does not have the powers to do so.
10. If you are making a **complaint**, you are saying that you, or someone close to you, has personally been poorly treated and you are seeking redress or justice for yourself or that person. In these circumstances, because you have a personal interest in the outcome of the complaint, you may be expected to be able to prove your case. Ofsted has limited powers to deal with complaints. We do, for example, have powers to deal with complaints about settings that Ofsted regulates, such as childcare providers and children's homes. You can find out more about this aspect of our work at: www.ofsted.gov.uk/contact-us/how-complain.
11. We also have powers to consider some complaints made in writing about maintained schools.² These may come from registered parents or carers of pupils at the school that the complaint is about.
12. We can consider complaints from people other than parents, or those who do not want to give their names. However, our powers to investigate these complaints are more limited.
13. We will not usually consider a complaint unless you have first followed the school's and, if necessary, the local authority's complaints procedure.
14. We can consider complaints about maintained schools if your concern affects the school as a whole. For example:
 - the school is not providing a good enough education

² Maintained schools are those controlled by local authorities. Please note that Ofsted has no powers in relation to complaints about independent schools except academies.

- the pupils are not achieving as much as they should, or their different needs are not being met
- the school is not well led and managed, or is wasting money, or
- the pupils' personal development and well-being are being neglected.

However, we will not normally investigate cases to do with individual pupils.

15. You can find full details about making a complaint at:
www.ofsted.gov.uk/contact-us/how-complain.
16. You can make a complaint online at:
<http://live.ofsted.gov.uk/onlinecomplaints/>.
17. Our responsibilities in relation to local authorities are more general. **Ofsted does not have the authority to investigate or follow up whistleblowing concerns relating to individual cases** except where they provide evidence of more 'systemic' failures. Although we will respond to individual complainants, explaining the best route through which to pursue your concerns and suggesting other organisations that may be able to help you,³ Ofsted cannot investigate or take action on individual users' dissatisfaction with local authority services or the work of individual professionals in the local authority.

What to do if you have a concern about safeguarding or child protection wrongdoing in your workplace

18. Normally, you should **first raise your concern internally**, for example with your line manager. If you feel unable to do this (perhaps because your concern relates to them), you should raise your concern with the internal person nominated in your organisation's whistleblowing policy. The policy should provide options for you to raise your concern outside the management line and/or to escalate a concern that has been raised through your immediate superior or nominated person.
19. If you are worried at any stage about how to raise your concern, you should **always seek independent advice** at the earliest opportunity. This may be to check who may be best placed to deal with your concern or simply to talk the matter through in confidence first and discuss how to raise your concern. You can do this **through your union or professional body or the independent whistleblowing charity Public Concern at Work** on 020 7404 6609, or by email at whistle@pcaw.org.uk. For further information please see their website at www.pcaw.co.uk. If you decide to seek advice from a legal adviser, then anything you say to them is automatically protected.

³ For example, the local authority itself, the Local Government Ombudsman, health authority agencies or the Office of the Children's Rights Director (in the case of children who are looked after).

20. If you have raised your concern internally but feel it has not been properly addressed, or if you feel unable to raise your concern at any level within your organisation, you may feel that you need to **raise your concern outside your place of work**. It is advisable, in terms of both addressing the concern and securing your own protection as a whistleblower, to do this first **with the body that has some oversight of the work of your employer**. This may be a governing body, the local authority, a funding agency or a national regulator.
21. If your concern is about an immediate or current risk to an individual child or children, it is important that you follow the child protection procedures that apply to the local authority.
22. If you approach Ofsted with a concern about child protection, we will always refer it to the appropriate authority, as **Ofsted does not have any statutory powers to directly investigate or intervene in individual cases**. You can find advice on reporting child protection risks at:
www.gov.uk/government/publications/keeping-children-safe-in-education.
23. This web link is intended to provide support for professionals who work within educational settings. However, it also offers valuable advice and links helpful to members of the general public. More general advice is also available from the NSPCC, via their Helpline (0808 800 5000) or website www.nspcc.org.uk/help-and-advice/worried-about-a-child/are-you-worried-hub_wdh72939.html

What does the law say

24. The Public Interest Disclosure Act 1998 (PIDA)⁴ amends the Employment Rights Act 1996⁵ and offers protections to workers from any detriment from their employer that arises from the worker making a protected disclosure ('a qualifying disclosure').
25. The 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 following factors:
 - a) that a criminal offence has been committed, is being committed or is likely to be committed
 - b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which she or he is subject
 - c) that a miscarriage of justice has occurred, is occurring or is likely to occur

⁴ www.legislation.gov.uk/ukpga/1998/23.

⁵ www.legislation.gov.uk/ukpga/1996/18/contents.

- d) that the health and safety of any individual has been, is being or is likely to be endangered
 - e) that the environment has been, is being or is likely to be damaged
 - f) that information tending to show any matter falling within any of the preceding paragraphs has been or is likely to be deliberately concealed.
26. A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.⁶
27. A worker must make the qualifying disclosure to one of a number of specified persons.
- Disclosure to employer or other responsible person⁷
- to the worker's employer or
 - to another responsible person, if the worker reasonably believes the information relates to that person's conduct or a matter for which they are responsible.
- Disclosure to prescribed person⁸
- to a prescribed person set out in the Public Interest Disclosure (Prescribed Persons) Order 1999.⁹
28. Her Majesty's Chief Inspector for Education, Children's Services and Skills (HMCI) is not currently a prescribed person. Subject to the approval of Ofsted's application and completion of the necessary legislative processes, we anticipate that HMCI will be identified as a prescribed person from October 2014. At that point, a revised whistleblowing policy and guidance will be published by Ofsted.
29. A qualifying disclosure may also be made in other cases:
- Disclosure in other cases (Section 43G of PIDA):
- if the worker reasonably believes that the information is substantially true
 - they do not make the disclosure for the purposes of personal gain
 - any of the conditions set out in section 43G (2) apply and
 - in all the circumstances of the case it is reasonable for the worker to make the disclosure. In determining whether it is reasonable for the worker to make the disclosure regard is to be had, in particular, to the matters set out in section 43G (3), which include the identity of the person to whom the

⁶ Public Interest Disclosure Act 1998; section 43B

⁷ Public Interest Disclosure Act 1998; section 43C

⁸ Public Interest Disclosure Act 1998; section 43F

⁹ www.legislation.gov.uk/uksi/1999/1549/contents/made.

disclosure is made, the seriousness of the failure and whether it is continuing.

Disclosure of exceptionally serious failure (section 43H of PIDA):

- if the worker reasonably believes that the information is substantially true
 - the matter falling within paragraph 25 above is of an exceptionally serious nature and
 - in all the circumstances it is reasonable for the worker to make the disclosure. In determining whether it is reasonable, regard is to be had in particular to the identity of the person to whom the disclosure is made.
30. Depending on the nature of the disclosure, it may be appropriate for disclosures to be made to HMCI under sections 43G and 43H. The person to whom information is disclosed under sections 43G and H does not have to be a prescribed person.
31. Ofsted cannot give legal advice to workers or employers about disclosing information to us – this document is provided as guidance only. Individuals will need to seek their own legal advice in relation to how the protection afforded by PIDA affects them.
32. The Public Interest Disclosure Act 1998 covers all workers, including temporary agency staff. It does not cover the self-employed or volunteers. For more information on the law visit: www.pcaw.co.uk/law/uklegislation.htm.

Confidentiality in whistleblowing allegations

33. It is best to raise your concerns openly with us, because that makes it easier for us to follow them up. However, we recognise there may be circumstances when you would like us to keep your identity confidential. If you ask, **we will do our best to ensure that your identity is not disclosed, unless legal constraints or obligations make this impossible** (for example if a child is at risk – see paragraph 36 below). We will do this whether you have written a letter, sent an email or telephoned us. You should also bear in mind that others may guess who has contacted us, or that we may not be able to fully investigate the issue you have raised without your identity being disclosed (for example if your evidence is essential to the matter, but could not have been provided by anyone else).
34. If a letter or email does not say whether or not you are happy for us to disclose the source of the information, we will check this with you using the contact details you have provided.
35. If you come to us anonymously – that is, when we do not know who you are and you have not provided any contact details – we will treat your allegations just as seriously as if you have given us your personal details; we recognise that many people are very worried about being identified when they report

concerns about their employers. However it will be harder for us to take up the matter or be sensitive to your position, for example in determining whether there is any information in your allegations that could tend to identify you to the local authority. We would encourage either open or confidential whistleblowing as the best means for you to be protected and for the concern to be properly addressed.

36. If you are disclosing information about a **child at risk then Ofsted must pass this information on to the local authority child protection service** in order to protect the child. This has to take priority over any request you may make not to be identified. As long as you have given us your contact details, we will let you know if we are taking this action.

What to expect if you decide to contact Ofsted

What will we ask you

37. If you call or email our national hotline, we will gather and record as much information as possible about your concerns. First, we will ask you whether you believe that a child is in imminent danger. If you do, we will advise that you should contact the local authority's Children's Services or the police straight away. Although we will also make this contact, it will save time if you do so directly.
38. We may then ask you whether you have raised the issue with your employer already and/or with any other organisation (for example another regulator). As it is important, in order to protect your own interests, that you follow the correct procedures, we may suggest that you seek some advice, for example from Public Concern at Work (see paragraph 19) or from an independent legal adviser, union or professional body.
39. If you have raised the issue already we will need to ask you about how you raised it (that is, did you do it openly, confidentially or anonymously), how it was handled, what you think should be done and whether you have had a formal response.
40. We will also ask you about how you think we may help and whether you want us to keep your identity confidential. Whether we can do this will depend on the issue you have raised. If it relates to a child at risk, then we must pass this information on to the local authority child protection service in order to protect the child, even if it risks identifying you – if this is the case, we will let you know. In cases where a child is at immediate risk, we may need to identify you in order that the issue can be fully investigated.

What action will we take?

41. People contacting Ofsted using the Whistleblowing Hotline, email or postal address generally have concerns that fall into two categories:

- concerns about a specific child/children or
 - concerns/allegations about wider or systemic failure in safeguarding practice in a local authority or in a care or educational setting.
42. Once they have gathered as much information as possible about your concerns, our call centre staff will forward this record on to specially trained staff to determine if Ofsted is able to take action on your disclosure.
43. Ofsted will categorise all disclosures into one of the following:
- **Category 1:** child protection concerns about a 'risk of harm' to a specific child or children. Ofsted's Compliance, Investigation and Enforcement (CIE) team will immediately refer the matter to the local authority's child protection team for urgent attention.
 - **Category 2:** specific concerns or allegations about wider or systemic failure in safeguarding practice in the local authority. These will be referred to the Ofsted whistleblowing team.
44. If your concerns do not fit into these categories, because they are about an individual concern or complaint, we will treat them in line with Ofsted's published complaints procedures (see page 7). If the whistleblowing concern relates to services or practice in Wales, Northern Ireland or Scotland then we will pass the details on to the regulatory body in each country and you will be encouraged to do the same. If the whistleblowing concern is regarding health or social care services regulated by the Care Quality Commission (CQC), we will pass on the details to CQC, and we will tell you that we have done this.
45. If we have categorised your concerns as category 2, using the above criteria, the whistleblowing team will usually write to the local authority to ask them to investigate your concerns and tell us what they find (see paragraph 46 below for further information about confidentiality). The local authority's responses will enable us to decide if we are able to or need to take any further action. This action is likely to be one of the following:
- Using the whistleblowing information and the local authority response to plan a line of investigation in a current or forthcoming inspection; this is the most likely action and follows our assessment of the response of the local authority to the concerns raised.
 - Bringing forward a planned inspection of the local authority's safeguarding arrangements or the care or educational setting in question; we would do this if the allegations and the local authority response suggested that the concerns were long running, or if we had concerns about the quality of the investigation by the local authority or its response.
 - Triggering an immediate inspection of the local authority's safeguarding arrangements, if the concerns are particularly serious or the local authority does not appear to be able to respond to our enquiry. This is likely to be a rare occurrence triggered by very serious and on-going concerns.

There may be times when a whistleblowing allegation is made by an employee because an Ofsted team is currently in the authority carrying out an inspection. In these cases, the information will be sent directly to the lead inspector so that they can discuss it with the local authority, and where appropriate take the information into consideration during the inspection.

46. When we do write to the local authority, if you have asked us not to reveal your identity, we will not attach your letter or email to any correspondence we have with them without your express permission, as this could identify you. We will use the information from your telephone call, letter or email in our discussions with them and/or other external parties, but in doing so we will take care to remove any specific references or details that might tend to identify you.
47. If an employer asks us to provide the identity of a caller to our Whistleblowing Hotline we will:
 - refuse to be drawn into any discussion/exchange about this with the employer
 - seek advice from our legal advisers if the employer pursues this through legal channels
 - tell them to take their own independent advice if they believe someone has acted maliciously or untruthfully
 - remind them of the employment protection that the Public Interest Disclosure Act 1998 gives to workers.

How will we keep you informed?

48. If you have provided an email or postal address, we will send you an initial acknowledgement as soon as you raise your concerns with us.
49. If your concern is dealt with by the Ofsted whistleblowing team, they will write to you to tell you what action they are taking. This is likely to include writing to the local authority.
50. If we have asked the local authority to investigate your concerns and let us know the outcome, we will try and give you as much feedback on the matter as we properly can. However due to the legal duties we may owe to others (for example duties of confidentiality we may owe to those at risk or to someone accused of malpractice), what we can tell you may be limited.

Data Protection and Freedom of Information

51. Ofsted will ensure that our work in the handling of all concerns, complaints and safeguarding issues complies with the requirements of the Data Protection Act

1998 and the Freedom of Information Act 2000.¹⁰ Under the Freedom of Information Act, Ofsted has the legal obligation to provide information in response to a request unless: the information is available by other means; it would not be reasonably practicable to supply it; or the information falls within the exemptions of the Act. If we receive requests for disclosure of information obtained under the whistleblowing procedure, we will always seek to maintain confidentiality where this has been requested. However, Ofsted cannot guarantee confidentiality in every case.

Using the Ofsted Whistleblowing Hotline

52. Ofsted's dedicated Whistleblowing Hotline (0300 1233155) was launched in April 2009. It is staffed from 8am to 6pm, Monday to Friday.

53. Whistleblowing disclosures can also be submitted to Ofsted by email to the Ofsted whistleblowing team (whistleblowing@ofsted.gov.uk) or by post to:

WBHL
Ofsted
Piccadilly Gate
Store Street
Manchester
M1 2WD

54. Anybody who has a whistleblowing concern about **services or practice in any local authority** can use Ofsted's Whistleblowing Hotline or email address, including:

- employees and former employees of local authorities
- agency staff currently and formerly working within a local authority
- current and former employees of local authority or independently run children's homes
- volunteers and workers from the voluntary sector in local authority educational or care settings
- foster carers or adopters
- employees within secure provision for children and young people
- workers in non local authority services that are regulated and inspected by Ofsted
- Ofsted employees in receipt of whistleblowing disclosures from any of the above.

¹⁰ www.legislation.gov.uk/ukpga/1998/29/contents and www.legislation.gov.uk/ukpga/2000/36/contents

Annex 1. Care and educational settings that Ofsted regulates or inspects

- Childminders
- Childcare on domestic premises
- Childcare on non-domestic premises
- Adoption and fostering agencies
- Residential schools, family centres and homes for children
- All state-maintained schools
- Some independent schools
- Pupil referral units
- The Children and Family Courts Advisory and Support Service (Cafcass)
- The quality of services and outcomes for children and young people in each local authority
- Further education
- Initial teacher training
- Publicly funded adult skills and employment-based training
- Learning in prisons, the secure estate and probation

Annex 2. Examples of allegations that Ofsted has dealt with under the whistleblowing policy

Whistleblowing case one

The National Business Unit received a call from a whistleblower that raised several issues. The first concerned an individual but historic case – no current risk to the child concerned was implied. The whistleblower used this case as an example of how child protection concerns in a named authority were not adequately recorded, reviews were not held within required timescales and regular core group meetings did not take place. It was also alleged that cases were left without a qualified social worker reviewing them, cases involving domestic violence and child protection issues were overlooked and case files were not accurate or up to date.

It was further alleged that a colleague had 'changed' a negative report written by the whistleblower without permission. These were judged to be potential systemic failures.

This case fitted the whistleblowing criteria. The team's national whistleblowing advisor took action and drafted a letter outlining the allegations to the Director of Children's Services asking for an immediate response. This letter was copied to the relevant Government Office's Director of Children and Learners, the body responsible at that time for the oversight of local authorities.

After an investigation, a full and detailed response was received from the Director of Children's Services detailing the actions taken and the revised processes now in place. The response was evaluated as a thorough and sufficient explanation of the allegations and an open acknowledgement of the remaining weaknesses. Given the actions taken, it was not thought necessary to bring forward an inspection which was already planned for the near future. The safeguarding team retained the details of this concern and the response to inform a trail at the forthcoming inspection.

Whistleblowing case two

The National Business Unit received a call from a whistleblower who alleged the staff within a local authority were concealing information and that there was a lack of openness and transparency with the local authority's processes and procedures.

The whistleblower alleged that, prior to an unannounced inspection of the local authority, senior managers had instructed administration staff to remove negative action plans from files. These actions plans were drawn up following a previous inspection of the authority.

The staff that relayed this information to the whistleblower believed that this was intended to mislead the inspection team and conceal the lack of progress on issues raised during previous inspections.

As in the previous case, a letter outlining the allegations was sent to the Director of Children's Services copied to the relevant Director of Children and Learners.

However, the allegations were also passed onto the allocated lead inspector (HMI) for the authority's Safeguarding and Looked After Children Inspection which was brought forward as a result of these allegations. After this inspection, the HMI reported back stating that despite a rigorous examination of all files and detailed discussions with practitioners, the inspection team found no evidence of the alleged malpractice by the authority.

Whistleblowing case three

An email was received by the National Business Unit raising concerns about how a city council was not sufficiently supporting a young person placed at a children's home within another local authority area.

The whistleblower believed that the care plans instigated by the authority were not robust enough to safeguard or protect the young person. Despite raising the issue with the placing authority, the whistleblower felt that it was not taking suitable action to address serious concerns about the young person's safety – and that this was a more general concern in many other cases also.

The individual case was first referred to Ofsted's Compliance, Investigation and Enforcement team to take action on any immediate danger to the young person but the more general concerns were deemed to fit the whistleblowing criteria. A letter was sent to the Director of Children's Services of the local authority who replied outlining the actions that were taken to support and protect the young person following the investigation and giving details of the support available to all looked after children within this authority.

Despite a generally satisfactory response, the details of the case were retained to inform the next Safeguarding and Looked After Children inspection.

Annex 3. Frequently asked questions

1. Why does Ofsted have a Whistleblowing Hotline?

Ofsted's hotline is regarded as a vital part of our work in ensuring the effective safety of all vulnerable children and young people. It has proved to be an invaluable source of additional information on the effectiveness of local authority safeguarding arrangements.

2. What is 'Whistleblowing' and how is it different from reporting a grievance or complaint?

Whistleblowing is the term used when someone who works in or for an organisation wishes to raise concerns about malpractice in the organisation (for example, crimes, civil offences, miscarriages of justice, dangers to health and safety or the environment), and the covering up of any of these.

If you are making a complaint, you are saying that you, or someone close to you, has personally been poorly treated.

A grievance is when an employee has a dispute about their own employment position.

3. Who can use the hotline?

The hotline can be used by anybody who has a whistleblowing concern about services or practice in any local authority.

Please note that there are already separate arrangements in place for parents and/or other interested parties to make referrals and/or complaints to Ofsted about maintained schools through this website address:

<http://live.ofsted.gov.uk/onlinecomplaints/>

4. Can I seek external advice before I use the Whistleblowing Hotline?

Yes. If you are worried at any stage about how to raise your concern, you should always seek independent advice at the earliest opportunity. You can do this through your union or professional body or the independent whistleblowing charity Public Concern at Work (PCaW) on 020 7404 6609, or by email at whistle@pcaw.org.uk. For further information please see their website at www.pcaw.co.uk.

5. I think I have cause to report an issue to the Whistleblowing Hotline. What should I do next?

Normally, you should first raise your concern internally, for example with your line manager.

If you prefer not to do this, or you have tried and been dissatisfied with the results you can call Ofsted's dedicated Whistleblowing Hotline (0300 123 3155). It is staffed from 8am to 6pm, Monday to Friday. You can also email the Ofsted whistleblowing team (whistleblowing@ofsted.gov.uk) or send your concerns by post to:

WBHL
Ofsted
Piccadilly Gate
Store Street
Manchester M1 2WD.

6. I've made a call to the Whistleblowing Hotline. What happens next?

We will use the information you give us to decide how best to deal with your concerns. If we agree that your concerns count as whistleblowing, we will pass the matter on to our Ofsted whistleblowing team.

7. Will I be kept informed?

We will try and give you as much feedback as we properly can on how we are dealing with your concerns. However due to the legal duties we may owe to others (for example duties of confidentiality we may owe to those at risk or to someone accused of malpractice), what we can tell you may be limited.

8. Will I remain anonymous?

If you have asked us not to reveal your identity, we will do our best to respect your wishes. However, if there are children involved who are in immediate danger of harm, we may not be able to do this.