

Whistleblowing to Ofsted about local authority safeguarding services

Policy and guidance for whistleblowers

The Office for Standards in Education, Children's Services and Skills (Ofsted) regulates and inspects to achieve excellence in the care of children and young people, and in education and skills for learners of all ages. It regulates and inspects childcare and children's social care, and inspects the Children and Family Court Advisory Support Service (Cafcass), schools, colleges, initial teacher training, work-based learning and skills training, adult and community learning, and education and training in prisons and other secure establishments. It assesses council children's services, and inspects services for looked after children, safeguarding and child protection.

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About Ofsted

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 and surveys that focus on specific subjects (such as English) or aspects of learning (such as apprenticeships).

Ofsted's role in relation to local authority safeguarding services is to evaluate and report on the extent to which children's services improve the safeguarding and well-being of children and young people.

Introduction

1. The statutory guidance *Working together to safeguard children*, updated in 2006, makes clear that all organisations that provide services for, or work with, children, must have appropriate whistleblowing procedures, and a culture that enables issues about safeguarding and promoting the welfare of children to be addressed by the organisation.¹ The term whistleblowing applies when a worker raises a concern about malpractice or wrongdoing in their workplace that has a public interest aspect to it, usually because it threatens others as well. It applies to raising a concern within the organisation as well as externally; to a regulator for example.
2. The Public Interest Disclosure Act (PIDA) 1998, known as the Whistleblowing Act, is intended to promote internal and regulatory disclosures and encourage workplace accountability and self-regulation. 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.

What is whistleblowing?

3. 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 cover up of any of these. In the case of local authority safeguarding services, this is likely to be about a dangerous or

¹ www.everychildmatters.gov.uk/workingtogether.

illegal activity, or widespread or systemic failure in relation to children and young people and/or the services they receive.

4. Whistleblowing is very different from a complaint or a grievance. It only applies when you have no vested interest and you are acting as a witness to misconduct or malpractice that you have observed.
5. If you are making a complaint, you are saying that you, or someone close to you, have personally been poorly treated and you are seeking redress or justice for yourself. In these circumstances, because you have a vested interest in the outcome of the complaint, you would be expected to be able to prove your case. Ofsted has limited powers to deal with complaints. We do, for example have powers to consider complaints about the effectiveness of schools. Our responsibilities in relation to local authorities are more general. Ofsted does not have the authority to investigate or follow up complaints relating to individual cases in either situation. Although we will respond to individual complaints, explaining the best route through which to pursue your concerns, Ofsted cannot investigate or take action on individual users' dissatisfaction with local services.
6. 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.

What to do if you have a concern about wrongdoing in the workplace

7. 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.
8. 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 (PCaW) on 0207 404 6609; or by email at helpline@pcaw.co.uk. For further information please see their website at www.pcaw.co.uk/. If you decide to seek advice from a legal advisor, then anything you say to them is automatically protected.
9. 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.

10. It is advisable, in terms of both addressing the concern and securing your own protection as a whistleblower, to raise 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. If your concern is about an immediate or current risk to an individual child or children, it is important that you follow child protection procedures.
11. If you approach Ofsted with a concern about child protection, we will always refer it to the appropriate authority, as direct investigation or intervention in individual cases falls outside Ofsted's statutory powers. You can find advice on what to do to report immediate child protection risks at:

www.teachernet.gov.uk/wholeschool/familyandcommunity/childprotection

12. Primarily, 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.

What does the law say?

13. Under the PIDA, workers are protected from reprisals for reasonably raising an honest and genuine concern internally, but you must be acting in the public interest and not for personal gain to be given this protection. Protection is also readily available for disclosures to prescribed regulators (such as Ofsted, whose powers under the Care Standards Act are prescribed under PIDA). In certain circumstances, wider disclosures (for example to an MP or the media) may also be protected. However, some disclosures cannot receive protection, for example if you break the law when making a disclosure, or if the information is protected under legal professional privilege.
14. The PIDA covers all workers, including temporary agency staff. It does not cover the self-employed or volunteers. The Act also provides protection should individuals have difficulty gaining a reference from an employer because they have raised a concern. It makes it clear that any clause in a contract that purports to gag an individual from raising a concern that would be protected under the Act is void.
15. For more information on the law visit: www.pcaw.co.uk/law/uklegislation.htm

How to contact Ofsted

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

17. 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
Royal Exchange Buildings
St Ann's Square
Manchester
M2 7LA.

18. The hotline can be used by anybody who has a whistleblowing concern about services or practice in any local authority, or in a care or educational setting regulated and inspected by Ofsted, 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
- foster carers or adopters
- employees within secure provision for children and young people
- voluntary workers in care or educational settings
- Ofsted employees in receipt of whistleblowing disclosures from any of the above.

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/>

Ofsted inspects safeguarding and looked after children services in every local authority in England, and regulates and inspects the following care and educational settings:

- 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 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.

Confidentiality

19. It is best to raise your concern openly with us. 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 make this impossible. You should also bear in mind that others may guess who has contacted us, or we may not be able to investigate the issue you have raised without your identity being disclosed (for example if your evidence is essential).
20. 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
21. If you come to us anonymously – this is when we do not know who you are – it will be harder for us to take up the matter or be sensitive to your position, though we will look into the substance of the information that has been provided. We would encourage either open or confidential whistleblowing as the best means for you to be protected and for the concern to be addressed.
22. 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. We will let you know if this is the case.

What to expect if you decide to contact Ofsted

What we will ask you, what action we will take and how we will keep you informed.

What will we ask you?

23. 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.
24. 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 or an ombudsman). As it is important, in order to protect your own interests, that you follow the correct procedures, we may suggest that you might like to obtain some advice, for example from Public Concern at Work or from an independent legal advisor, union or professional body.
25. 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), the way in which it was handled, what you think should be done and whether you have had a formal response.
26. 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 – if this is the case, we will let you know and we may need to identify you in order that the issue can be fully investigated
27. Once we have obtained all this information, we will pass the matter on to our Ofsted whistleblowing team who will handle the concern in accordance with the procedure set out in paragraphs 29 to 34 below.

What action will we take?

28. People contacting Ofsted using the whistleblowing hotline, email or postal address generally have concerns that fall into two categories:
 - child protection 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.
29. If you call our national hotline, we will gather and record as much information as possible about your concerns. Our call centre staff will then forward this record on to Ofsted's national Compliance, Investigation and Enforcement team (CIE) to categorise the call.

30. 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 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. These will be referred to the Ofsted Whistleblowing Team who will liaise over contact with the regional Government Office and the local authority. The local Government Office has day to day oversight of the work of local authorities. 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 also 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
31. 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.
32. If we have categorised your concerns as category 2, using the above criteria, we will usually write directly to the local authority to ask them to investigate your concerns and tell us what they find. We will usually copy this letter to the regional Government Office so that it can also take account of the information in routine discussions with the authority. The local authority's responses will enable us to decide if we are able to or need to take any further action. This action could include:
- Using the information to plan a line of investigation in a current or forthcoming inspection; we will do this in most cases in order to judge 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 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.
 - If the concerns are particularly serious or the local authority does not appear to be able to respond to our enquiry, triggering an immediate inspection of the local authority's safeguarding arrangements.
33. When we do write to the local authority, in order to try to protect your confidentiality, 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.

34. 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 PIDA gives to workers.

How will we keep you informed?

35. If you have provided an email or postal address, we will send you an initial acknowledgement.
36. 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.
37. 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.
38. 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 may include writing to the local authority and/or the regional Government Office.
39. 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.
40. Data Protection and Freedom of Information
41. 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. 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.