

# Joint supplementary guidance:

inspecting safeguarding  
in non-maintained  
settings

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Autumn 2023

This guidance is also available in Welsh.



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**What is the purpose?**

This provides further guidance for inspectors to use for reference during inspection alongside the sector guidance for inspection, to support specific lines of inquiry.

**For whom is it intended?**

For all CIW and Estyn inspectors inspecting care and education in regulated non-school settings eligible for funding for part-time early education

**From when should the guidance be used?**

September 2023

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## Introduction

This supplementary guidance aims to support inspectors as necessary in evaluating settings' safeguarding arrangements when carrying out inspections. It should be used for reference during inspection alongside CIW and Estyn's Policy and Procedures for Safeguarding.

### **Keeping learners safe: the role of local authorities, governing bodies and proprietors of independent schools under the Education Act 2002**

[keeping-learners-safe-the-role-of-local-authorities-governing-bodies-and-proprietors-of-independent-schools-under-the-education-act.pdf](#)

### **Safeguarding CIW Internal guidance to support inspectors and managers**

<https://documents.hf.wales.gov.uk/id:A38355266/document/versions/published>

This guidance does not cover how inspectors should deal with allegations in respect of safeguarding received during an inspection. Inspectors must be familiar with both CIW and Estyn's policies and procedures for safeguarding which covers children. All inspectors should be aware of what to do in the event of receiving allegations in relation to safeguarding, and the requisite actions are outlined in this document. You can find a copy of each of the documents on the following websites:

<https://estyn.gov.uk/Policy/Safeguarding/Admin/Report%20an%20Issue.aspx>

Answers to frequently asked questions (FAQs) about evaluating a provider's arrangements for safeguarding can be found at (Please note that the contact numbers found on this document is for Estyn Inspectors only – CIW inspectors will need to contact CIW leads as outlined below:

[Estyn\\_safeguarding\\_guide.pdf \(gov.wales\)](#)

<https://documents.hf.wales.gov.uk/id:A38355266/document/versions/published>

In the event of concerns or queries in relation to receiving safeguarding allegations, inspectors should contact the relevant safeguarding leads as outlined below.

### **Estyn Inspectors should contact:**

**Estyn's Lead Officer for safeguarding: 02920 446482 (also available out of office hours)**

**Estyn's Deputy Officer for safeguarding: 02920 446484 (also available out of office hours)**

**Estyn's main office (during office hours): 02920 446446**

### **CIW inspectors should:**

**Contact their team managers or duty team manager first for discussion and clarity.**

**CIW Safeguarding Leads can be consulted should the need arise.**

**CIW Designated safeguarding leads**

**Michael Holding, senior manager, local authority inspection team  
Vicky Poole, Deputy Chief Inspector  
Team safeguarding champions**

**Anne Andrews, team manager, childcare and play inspection team**

## Definition of safeguarding

All settings have statutory duties to operate in a way that takes into account the need to safeguard and promote the welfare of children. The arrangements that settings have in place need to ensure that:

- reasonable measures are taken to minimise risks of harm to children's welfare
- appropriate actions are taken to address concerns about the welfare of a child or children, working to agreed local policies and procedures in full partnership with other local agencies

**Safeguarding and promoting the welfare of children** is concerned with:

- protecting children from abuse and neglect
- preventing impairment of their health or development
- ensuring that they receive safe and effective care

This is to enable children to have optimum life chances.

Everyone who works in child care and education shares an objective to help keep children and young people safe. When inspecting a provider's safeguarding arrangements inspectors should consider how effective the setting is in the following:

- creating and maintaining a safe learning environment for children
- identifying where there are child welfare concerns and taking action to address these, where appropriate, in partnership with other agencies
- the development of children's understanding, awareness, and resilience through the curriculum

Achieving this objective requires systems designed to:

- prevent unsuitable people from working with children
- promote safe practice and challenge poor and unsafe practice within the provision
- identify instances in which there are grounds for concern about a child's welfare arising from home, community or setting, and initiate or take appropriate action to keep them safe
- contribute to effective partnership working between all those involved with providing services for children

**Child protection** is a part of safeguarding and promoting welfare. This refers to the activity which is undertaken to protect specific children who are suffering or are at risk of suffering significant harm as a result of abuse or neglect.

**Safeguarding** covers more than the contribution made to child protection in relation to individual children. It also encompasses issues such as:

- the safe recruitment, supervision, training and management of staff
- how staff manage children's behaviour
- how well the provider monitors children's pattern of attendance and engagement

with the provision, which is able to identify quickly unexplained medical conditions, unusual absences, and disappearances

- children's health and safety and wellbeing, on and off-site
- bullying, including cyberbullying
- arrangements for meeting the needs of children with medical conditions
- promoting healthy relationships
- child sexual exploitation
- forced marriage
- preventing radicalisation and extremism
- trafficking
- signposting victims of abuse to appropriate help and support
- mandatory reporting duty for female genital mutilation
- drugs and substance misuse
- e-safety

The Welsh Government has issued specific statutory requirements about many of these issues. There may also be other safeguarding issues that are specific to the local area or population.

Where there are statutory requirements, settings should already have in place policies and procedures that satisfy those and comply with any guidance issued by the Welsh Government. Similarly, arrangements about matters on which the Welsh Government has issued guidance should be evidenced by policies and procedures that are in accordance with that guidance or achieve the same effect.

## **Guidance handbook for inspecting care and education in regulated non-school settings eligible for funding for part-time education**

### **Safeguarding aspects within the framework**

All settings have statutory duties to operate in a way that takes account of the need to safeguard and promote the welfare of children (**see Annex D of Guidance handbook for inspecting care and education in regulated non-school settings eligible for funding for part-time education**).

The arrangements that settings have in place need to ensure that:

- reasonable measures are taken to minimise risks of harm to children's welfare and safety
- appropriate actions are taken to address concerns about the welfare and safety of children

During the inspection concerns relating to the welfare or safety of a child/ren may be identified by any member of the inspection team. Where appropriate, the lead inspector will notify the setting. The CIW inspector will take appropriate action in line with the CIW published policy. Estyn's inspector will also inform Estyn's safeguarding officer of the matter in line with Estyn's safeguarding policy.

### **Theme 2**

Inspectors should evaluate whether children:

- feel secure, happy, comfortable and relaxed
- feel valued and have their rights respected
- know whom to talk to if they are unhappy or worried about something

### **Theme 3, 'Care and development' looks at how well do practitioners safeguard children whilst keeping them safe and healthy.**

Inspectors will make a judgement about the overall culture of safeguarding in the setting. Inspectors will evaluate the quality and effectiveness of the setting's policies and procedures for safeguarding and promoting children's wellbeing and how well practitioners implement them.

These include:

- child protection policy, including procedures for recognising signs of radicalisation and extremism
- the arrangements leaders have to recruit staff safely
- health and safety, including food hygiene and provision for infection control
- fire safety
- the arrangements for site security and safety
- safe administration of medication
- supporting children with medical conditions
- administering first aid
- safety on outings and visits
- internet safety

- bullying
- the management of children's behaviour including policies and practices for physical intervention and restraint
- policies and procedures to promote healthy life styles, including healthy eating, drinking and physical activities

## **Child protection**

In considering the effectiveness of the provider's procedures for child protection, inspectors should evaluate the suitability of the setting's child protection policy and whether practitioners understand and recognise signs and symptoms of abuse in line with the [Wales Safeguarding Procedures 2020](#). They should also evaluate whether practitioners are aware of, and implement correctly, the setting's child protection policy and are able to identify risks to children. Inspectors will report on whether the setting's arrangements for safeguarding children meet requirements and give no cause for concern.

## **Theme 5**

Inspectors should evaluate whether:

- children are cared for in a safe, clean and secure environment
- unnecessary risks to children have been identified and as far as possible eliminated • there is a balance between the need to promote children's safety and protect them from harm, and the need to support children to take risks
- the premises are well maintained
- there are suitable facilities for staff
- there are appropriate arrangements to hold confidential conversations and to store records securely

NOTE: Failures in the above will influence the judgement for safeguarding

## **Theme 6**

Inspectors also need to evaluate how well leaders and managers follow safeguarding policies and procedures when inspecting Theme 6, for example when considering how well they follow safe, robust and timely processes. They should evaluate how well leaders and managers promote safe practices and a culture of safety, including implementing safe, robust and timely recruitment processes.

A setting's leaders and managers should be clear about their statutory responsibilities regarding safeguarding and the steps they are taking to develop good practice beyond the statutory minimum. The registered person or responsible individual/s is accountable for ensuring that the setting has effective policies and procedures in place in accordance with the Welsh Government's guidance, and is monitoring the setting's compliance with this. It is the registered person's responsibility or responsible individual/s to ensure that safe recruitment checks are carried out in line with statutory requirements. There is further information on this in Annexes 1 and 2.



Inspectors should assess carefully how well the registered person or responsible individual/s monitor and evaluate all the aspects for safeguarding. If the setting does not have effective policies and procedures for safeguarding and promoting the welfare of children, and does not take sufficient steps to ensure these are adhered to, this will influence judgements made about the quality of leadership and management in the setting.

## Guidance for inspectors in judging the effectiveness of safeguarding

### Pre-inspection evidence

Inspectors will use a wide range of evidence. Before the inspection, in relation to safeguarding and promoting welfare, both Estyn and CIW inspectors will consider:

- discussions with the local authority advisory teacher
- the local authority report on the setting
- the previous inspection report
- the setting's policies for safeguarding and promoting welfare, including the child protection policy
- responses to the parents' questionnaires, especially the questions about encouragement for children to be healthy and take exercise, being safe and receiving the additional support for any particular needs
- written information from parents or other partners
- any complaints or concerns from either inspectorate

Inspectors should take particular account of the setting's context, including information on:

- the number of children on the child protection register
- the number of refugees or asylum seekers
- the number of looked after children
- exclusions of children

Where pre-inspection evidence identifies possible safeguarding issues or poor management practice by the provider, Estyn inspectors should seek guidance from their sector Assistant Director and a safeguarding officer from the safeguarding lead officer team. Where an issue is considered reportable, Estyn's safeguarding policy must be applied. CIW inspectors should consult their team managers in the first instance or senior leaders if team managers aren't available.

### Inspection activity

When inspecting settings in relation to safeguarding, inspectors will need to refer to **Annex E** of the '**Guidance handbook for inspecting care and education in regulated non-school settings eligible for funding for part-time education**'.

## Reporting on safeguarding

**Inspectors will report on whether the setting's arrangements for safeguarding children meet requirements.**

Inspectors should refer to the '**Guidance handbook for inspecting care and education in regulated non-school settings eligible for funding for part-time education**' when making a judgement about how well practitioners implement the setting's policies and procedures for safeguarding in Theme 3.

Annex E in the document provides detailed information on all aspects of safeguarding which inspectors must consider when making a judgement. Inspectors must include a comment on arrangements for safeguarding. Normally: '**The setting's arrangements for safeguarding children meet requirements and are not a cause for concern**' OR '**The setting's arrangements for safeguarding children do not meet requirements and give cause for concern.**' If any safeguarding arrangements give cause for concern, inspectors must not use the former sentence in their report but must use the latter. Inspectors should only report in detail on any shortcomings in safeguarding arrangements if it does not impact on the safety of the staff and children at the setting.

Inspectors also need to evaluate how well leaders and managers follow safeguarding policies and procedures when inspecting Theme 6, for example when considering how well they follow safe, robust and timely processes. However, inspectors must also include any concerns or failure to meet safeguarding requirements when making a judgement for safeguarding in Theme 3.

In these cases, the report must contain a recommendation that the setting address the safeguarding / wellbeing issues identified during the inspection. The CIW inspector will also judge whether or not there are issues of non-compliance (including safeguarding). In such cases, CIW's [Securing Improvement and Enforcement Policy](#) must be followed. Estyn no longer issues a 'well-being letter' to non-maintained nursery settings who do not meet the necessary safeguarding requirements. If there has been a technical or isolated failure that has not been remedied to the satisfaction of the inspector during the course of the inspection, then the inspector will include this under the non-compliance section in the Judgement Form.

Where matters are **minor** and **easily remedied**, and are not considered significant, there is no need for a comment and/or a recommendation in the final inspection report. However, it should be recorded in the inspection JF, and given as feedback to the leader and registered person / responsible person as soon as possible.

## Annex 1: Disclosure and Barring Service (DBS) checks, repeat checks and portability

The Protection of Freedoms Act 2012 came into effect on 10 September 2012 with further changes coming into force on a staged basis over the next few years.

The following changes have since been made:

- a new definition of “regulated activity” to focus on work which involves close and unsupervised contact with vulnerable groups
- activities and work that have been taken out of the definition of “regulated activity” will still be eligible for Enhanced DBS checks
- the repeal of “controlled activity”
- the repeal of registration and continuous monitoring
- the repeal of the provision of additional information
- the implementation of a minimum age (16) at which someone can apply for a DBS check
- a more rigorous ‘relevancy’ test for when the police release information held locally on an enhanced DBS check

On 1 December 2012 the CRB and ISA merged to form the Disclosure and Barring Service. The DBS is responsible for administering three types of checks;

- **Standard** – a check on the Police National Computer (NPC) records of convictions, cautions, reprimands and warnings.
- **Enhanced** – a check on the PNC as above plus also other information held by the police that is considered relevant by the police.
- **Enhanced with barred list information** – for people working in regulated activity with children. This adds checks of the DBS children’s barred list to the enhanced check.

During 2013, the DBS launched its Update Service. Employees are now able to register once for a DBS check, which is then automatically updated and available for organisations to check.

However, there are aspects of the old system which are not changing, these are:

- employers must make appropriate referrals to the DBS
- employers must not allow someone whom they know has been barred by the DBS to undertake regulated activity
- employers may undertake checks for anyone employed in activities which fall within the pre-September definition of regulated activity, as they remain eligible for enhanced DBS checks, whether or not they fall within the post-September definition of regulated activity (but they will no longer be eligible for barred list checks if they do not fall within the new definition of regulated activity)

Previously there has been widespread misunderstanding about when and how frequently to undertake checks. The following sets out the current position in relation to schools and settings as to when checks need to be in place before an employee can start work.

- CRB checks were strongly recommended for all employees who have regular contact with children if they were employed after March 2002. However, the only requirement for those appointed before this date was that they must have been List 99 checked.
- CRB checks became mandatory for the entire maintained schools' workforce from 12 May 2006 (September 2003 for independent schools). Employees who took up post from this date must have an enhanced CRB disclosure.
- **No further checks are required** for any staff unless the person has a break in service of more than three months. There is no statutory requirement for staff to have routinely updated checks, **although some employers may require this as policy**. There is also no statutory requirement for staff employed before March 2002 to have retrospective CRB or DBS checks as long as they have been in continuous service. In this context, continuity means no break of service of longer than three months. However, prior to 2002, there was a requirement for all staff who work with children and young people to have to been checked against List 99, and evidence of this should be checked.
- The CIW website states that 'all care staff, including registered managers, registered persons and responsible individuals must hold a current DBS certificate. In some cases (staff in children's homes, adoption services, children's day care and child minding) these need to be undertaken every three years.'

An employer can only ask for a barred list check for those staff undertaking regulated activity. It's a criminal offence to ask for a barred list check for any other role.

### Visiting staff

Staff such as educational psychologists, health visitors, advisory teachers who are employed by an agency should be CRB or DBS checked by their employer, for example the health board or local authority.

It is sufficient for settings to seek written confirmation that all appropriate checks, have been carried out for these people (most commonly on appointment) and by whom (most commonly the relevant human resources department). Settings should then confirm the identity of these visitors.

### Moving between settings and local authorities

Providers should contact their CIW inspector to check whether a new CRB or DBS check is required when practitioners move between settings and/ or local authorities.

## Annex 2: Regulated activity as defined by the Protection of Freedoms Act 2012

The full, legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended (in particular by the Protection of Freedoms Act 2012).

Regulated Activity still excludes family arrangements, and personal, non-commercial arrangements.

**The new definition of regulated activity** relating to children comprises of:

- (i) **Unsupervised activities**: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children;
- (ii) **Work for a limited range of establishments** ('specified places'), with opportunity for contact: for example, schools, children's homes, childcare premises. **Not work** by supervised volunteers;

Work under (i) or (ii) is regulated activity only if done regularly. Regular means carried out by the same person frequently (once a week or more often), or on 3 or more days in a 30-day period (or in some cases, overnight).

The government has provided statutory guidance about supervision of activity, which would be regulated activity if it were unsupervised.

- (iii) **Relevant personal care**, for example washing or dressing; or health care by or supervised by a professional;
- (iv) **Registered child-minding** and foster-carers.

### **What is no longer a regulated activity when working with children?**

- Activity supervised at reasonable level
- Health care not by (or directed or supervised by) a health care professional
- Legal advice
- "treatment/therapy" (instead "health care")
- Occasional or temporary services, (not teaching etc.) e.g. maintenance at a school
- Volunteers supervised at a reasonable level

### **Annex 3: Handling allegations of abuse against staff** **Welsh Government Circular 009/2014**

Settings should have procedures for dealing with allegations and all staff and volunteers should understand what to do if they receive an allegation or have concerns about another member of staff.

The procedures should make it clear that **all allegations should be reported immediately**, normally to the designated safeguarding person

The procedures should also identify the person to whom referrals should be made in their absence; or in cases where the designated safeguarding person is the subject of the allegation or concern.

Procedures should also include contact details for the Local Authority Officer with responsibility for providing advice and monitoring professional abuse cases and the relevant CIW inspector. The Local Authority Officer and relevant CIW inspector should be informed of all allegations that come to a setting's attention and appear to meet the criteria set out below.

A member of staff is alleged to have:

- behaved in a way that has harmed a child, or may have harmed a child;
- possibly committed a criminal offence against or related to a child; or
- behaved towards a child or children in a way that indicates he or she would pose a risk of harm if they work regularly or closely with children.

The above procedures relate to members of staff who are currently working in any setting, regardless of whether the setting is where the alleged abuse took place.

Allegations against a member of staff who is no longer working at the setting should be referred to the police.

## **Annex 4: Online safety**

### **Possible questions for leaders and managers**

- 1 How do you ensure that all staff receive appropriate training on online safety that is relevant and regularly up to date?
- 2 What mechanisms does the setting have in place to support children and staff facing issues with online safety?
- 3 How does the setting educate and support parents and the whole setting community with online safety?
- 4 Does the setting have e-Safety policies and acceptable use policies in place? How does the setting know that they are clear and understood and respected by all?
- 5 Describe how your setting supports young children to understand the importance of e-Safety.
- 6 Describe how you are preparing to implement the Citizenship strand of the Digital Competence Framework.

### **Possible questions for staff**

- Have you had any training that shows the risks to your and children's online safety?
- Are there policies in place that clearly demonstrate good and safe internet practice for staff and children? Have you read these? Have you discussed them in a staff meeting or training event?
- Are there sanctions in place to enforce the above policies?
- Do all staff understand what is meant by the term cyber-bullying and the effect it can have on themselves and children?
- Are there clear reporting mechanisms with a set of actions in place for staff or children who feel they are being bullied online?
- How well prepared are you to implement the Citizenship strand of the Digital Competence Framework?

In a good setting we should expect positive answers to all of the above. It would demonstrate a setting's commitment to eSafety if all staff had received some awareness training outlining what the current risks are and what resources are available to help them keep children and themselves safe online.

## **Annex 5: Preventing radicalisation and extremism**

From 1 July 2015, schools and settings, must have 'due regard to the need to prevent people from being drawn into terrorism'. This is set out in Section 26 of the Counter-Terrorism and Security Act 2015 and the accompanying Prevent duty guidance under section 29 of the Act. Although settings are not specifically included in the 2015 Act, it is regarded as good practice for them to have due regard for preventing people from being drawn into terrorism.

The context of the setting will affect the extent to which inspectors will need to consider the setting's work in this area. However, it is good practice for every setting to comply with the duty and inspectors should satisfy themselves that the provider is aware of the duty and acting appropriately.

Possible questions to consider:

- Does the provider's safeguarding policy take account of the duty to protect children and young people from radicalisation and extremism?
- Has the provider assessed the potential risk of radicalisation and extremism in their local area? Is the risk assessment available and is it being implemented?
- Are there clear protocols for ensuring that any visiting speakers are suitable and appropriately supervised?
- How well does the provider co-operate with the police and local authorities where relevant?
- Do staff, responsible person/registered person understand what radicalisation means and why people may be vulnerable to being drawn into terrorism as a consequence of it?
- Are relevant members of staff aware of what measures are available to prevent people from becoming drawn into terrorism and how to challenge the extremist ideology that can be associated with it?
- Has the provider ensured that appropriate training has been given to staff? The provider's approach to training should take account of the level of risk in their local area.
- Does the provider know how to obtain support for children who may be being exploited by radicalising influences?
- Does the setting give due regard to developing tolerant attitudes?



## **Annex 6: Security**

### **Site security and site safety**

It is the responsibility of the lead practitioner/registered person / responsible person / proprietor to ensure that the setting's site and its building are safe. These arrangements will vary from setting to setting depending on the nature of the site.

We expect the setting to:

- carry out a thorough risk assessment of the setting site, for example taking account of site security, public rights of way, traffic management arrangements and the condition of all buildings
- make appropriate arrangements to manage those risks appropriately
- tell their employees about the risks and measures to be taken to manage the risks
- ensure that adequate training is given to employees on health and safety matters

## **Annex 7: Safeguarding Intelligence and inspections**

**Advice to lead and team inspectors on the importance of taking account of any intelligence held by Estyn and CIW regarding parental complaints/ concerns against a provider, and any safeguarding matters in the management of an inspection.** When preparing for inspection, the IC will inform the lead/ team inspector if there is any relevant safeguarding intelligence, or complaints about the provider held by Estyn. CIW inspectors should consider the information held by CIW in the settings service record (SIN) on Cassi. This information should be shared with the Lead/ team inspector during planning. This is so that the lead inspector may use this information to inform lines of inquiry. This information is helpful and may alert the lead inspector that parents may raise concerns during the inspection.

The lead inspector is also able to use the provider's self-evaluation report and the parent questionnaires to inform their lines of inquiry for wellbeing and safeguarding. Where pre-inspection evidence in any sector identifies possible safeguarding issues or poor management by the provider, Estyn inspectors should seek guidance from your sector's Assistant Director and a Safeguarding Officer from within the safeguarding lead officer team. CIW inspectors must refer to a Team Manager or the safeguarding lead. Where any new issue is potentially referable, the lead inspector must apply Estyn's safeguarding policy.

During the inspection, if Estyn / CIW receives any relevant information about a safeguarding matter, a safeguarding officer will inform the lead inspector and agree how to deal with the matter. The lead inspector must ensure they record any evidence relating to any safeguarding lines of inquiry from interviews, observations or file reading in their TIF, as this may be needed for any subsequent correspondence arising after the inspection.

### **Remember**

An incident may come to light after an inspection, and Estyn/ CIW may be asked to account for what it knew at the time and the actions it either took, or did not take. In the case of serious injury or death, this accountability could be through a Child Practice Review. Your recording in your TIF, and any confidential information stored in the safeguarding files will be highly important.