



Memorandum of understanding between the Children's Commissioner and Her Majesty's Chief Inspector of Education, Children's Services and Skills

Introduction

1. This Memorandum sets out the areas in which Ofsted and the Office of the Children's Commissioner for England will cooperate, exchange information and work together as part of their respective statutory responsibilities.
2. The principles underpinning this Memorandum are the establishment of a good working relationship between the Office of the Children's Commissioner and Ofsted to promote the commitment of both to the rights, interests and views of children. Both parties to this agreement are committed to working in ways that are consistent with the content of this Memorandum.

Respective duties regarding children's rights, interests and views

3. "The Children's Commissioner's primary function is promoting and protecting the rights of children in England. The primary function includes promoting awareness of the views and interests of children in England." "The Children's Commissioner must, in particular, have regard to the United Nations Convention on the Rights of the Child in considering for the purposes of the primary function what constitute the rights and interests of children (generally or so far as relating to a particular matter). This function and the powers provided to the Children's Commissioner to fulfill her remit is set out in Part 6 and Schedule 5 of the Children and Families Act 2014.¹
4. The Children and Families Act 2014 also provides for the transfer of the Children's Rights Director's responsibilities to the Children's Commissioner. The Act states that in the "discharge of the primary function, the Children's Commissioner must have particular regard to the rights of children who are within section 8A [of the Children Act 2004] (children living away from home or receiving social care) and other groups of children who the Commissioner considers to be at particular risk of having their rights infringed." This

¹ Taken from the Children and Families Act 2014, Part 6, para 107.2 (4) & (2) and 2A (1).
www.legislation.gov.uk/ukpga/2014/6/part/6/enacted [accessed on 28/03/14]

responsibility includes the provision by Commissioner of advice and assistance to the children and young people who fall within this definition.²

5. Ofsted's statutory functions include the inspection and regulation of a wide range of institutions, establishments and services across a broad remit of education, skills, provision of childcare, provision of services for children and the exercise of statutory social care services provided for children.
6. Ofsted's general duty under the Education and Inspections Act 2006 when exercising its functions, is to keep the Secretary of State informed about the quality, standards, improvement, user focus and efficiency of the services and establishments in his remit, and to encourage improvement, user focus and efficiency of those services and establishments. It must have regard to the need to safeguard and promote children's rights and welfare, and to children's views and levels of satisfaction with their services and establishments. Ofsted is required to have regard to any matters raised by the Children's Commissioner with the Chief Inspector.
7. The Office of the Children's Commissioner and Ofsted each has its own statutory duty in relation to children's rights and views. It is recognised that each must therefore secure children's views as part of their respective primary functions, and that each must interpret and apply children's rights in the exercise of their respective duties.

Communication between the Children's Commissioner and Ofsted

8. Ofsted will provide the Children's commissioner and the Office of the Children's Commissioner with a designated contact person for communications from the Office of the Children's Commissioner and the Children's Commissioner to both the Ofsted and the Chief Inspector.
9. The Office of the Children's Commissioner will provide Ofsted with a designated contact person for communications from the Office for Standards in Education Children's Services and Skills or the Chief Inspector.
10. Regular Keeping in Touch meetings will be held between the Children's Commissioner and the Chief Inspector, and where appropriate, nominated representatives.

Matters raised with the Chief Inspector by the Children's Commissioner, and vice versa

11. The Children's Commissioner will identify as such any matter being raised under sections 117 or 119 of the Education and Inspections Act 2006, to differentiate them from the content of general discussions or exchange of information.

² Taken from the Children and Families Act 2014, Part 6, para 107.2(4).
www.legislation.gov.uk/ukpga/2014/6/part/6/enacted [accessed on 28/03/14]

12. The Children's Commissioner will normally raise matters with the Chief Inspector under those sections through the designated contact persons or in the course of keeping in touch meetings, but may where she considers it necessary raise such matters directly with the Chief Inspector.
13. Where any matter is raised by the Children's Commissioner, or a member of her Office, with HMCI or the wider Ofsted organisation under sections 117 or 119 of the Education and Inspections Act 2006, the Chief Inspector, or an appropriate senior member of the staff of the Office on his behalf, will consider whether any action needs to be taken by Ofsted in the light of the matters raised; in the conduct of Ofsted's functions, or by providing information, or in relation to the regulation, inspection or assessment of any particular establishment, service or local authority. The Chief Inspector or his representative will send a response to the Children's Commissioner's designated contact person (or as appropriate directly to the Children's Commissioner) setting out the outcome of his consideration of the matters raised, and any action being taken in response.

Exchange of information

14. The Office of the Children's Commissioner (whether this is the Children's Commissioner direct or through a member of her Office) will advise Ofsted, whether directly to HMCI, through designated contact persons or in Keeping in Touch meetings, of any issues or findings arising from the work of the Children's Commissioner, including from enquiries, consultation with children or young people, or from the provision of advice and assistance to individual children, which in the Children's Commissioner's opinion has a significant relevance to Ofsted's regulatory, inspection or assessment work, or to the regulation, inspection, or assessment of a particular establishment, service or local authority.
15. The Children and Families Act 2014, Part 6, paragraph 110 2F (1), *Provision of information to the Commissioner* states that "any person exercising functions of a public nature must supply the Children's Commissioner with such information in that person's possession relating to those functions as the Commissioner may reasonably request for the purposes of the primary function or the function under section 2D.³ Ofsted will provide information to the Office of the Children's Commissioner in line with this legislative power.
16. Ofsted will also meet the legislative provision set out in the Amendment of the Care Standards Act 2000 (Registration) (England) Regulations 2010 which sets out the power for the Children's Commissioner to hold and be provided with current lists and contact details of children's social care services or establishments registered or inspected by Ofsted in order for the Children's Commissioner to carry out her functions.

³ www.legislation.gov.uk/ukpga/2014/6/part/6/enacted [accessed on 28/03/14]

17. The Children's Commissioner and Chief Inspector, or their designated representatives, will share information regarding planned data collection in order to ensure that both organisations liaise effectively over the collection sharing and use of data.
18. Where appropriate, the two organisations may send each other documents in advance of publication. The nature and type of documents considered appropriate will be discussed in KiTs, but are likely to include, but not be limited to, thematic reports relevant to the Children's Commissioner's Annual Business Plan. Any documents shared in advance of publication are shared in confidence and will be embargoed, and both organisations will take appropriate steps to maintain that confidentiality.

Information from casework

19. The Office of the Children's Commissioner will provide Ofsted's designated contact officer with regular summaries of issues raised through the Office of the Children's Commissioner's individual advice, assistance and representation work, or concerns in relation to individual local authorities or establishments regulated or inspected by Ofsted, which Ofsted may use as information in future inspection work. This action may be part of keep in touch meetings or delegated to designated contacts.

Joint working

20. Subject to legal and resource constraints, their respective separate statutory roles, and preservation of the independence of each organisation, the Office of the Children's Commissioner and Ofsted may jointly conduct or commission work relevant to the functions of both.
21. The Office of the Children's Commissioner and Ofsted may seek each other's views on children's rights matters and interpretations, given the importance of children's rights in the exercise of each organisation's functions, where this is likely to assist either organisation in benefitting children.

Referral of cases

22. Ofsted may refer, where appropriate, any child or young person identified through its own work as needing individual advice or assistance, with their consent if of sufficient age and understanding to give or withhold consent, to the Children's Commissioner for consideration for provision of individual advice and assistance.
23. Ofsted will clarify to the child or young person (or an appropriate other person on their behalf) that the powers and functions of the Children's Rights Director have transferred to the Children's Commissioner and that Ofsted does not provide advice, assistance or representation to an individual child or young

person. Neither can it commit the Children's Commissioner to any particular course of action, only ask the Commissioner to consider the referral.

24. The Children's Commissioner will send a response to any child or young person referred (or their adult representative as appropriate), on whether or not they are able to provide them with advice, assistance or representation. The Children's Commissioner will inform Ofsted of the result of the referral only insofar as it may impact on the function of the Chief Inspector under sections 117 or 119 of the Education and Inspections Act 2006. The Children's Commissioner will decide on the means and degree of any such feedback to the Chief Inspector or his delegated representative.

Planning

25. The Children's Commissioner will consult Ofsted in the course of planning future programmes which are identified by the Children's Commissioner as relevant to Ofsted's work. This includes requirements set out for the Children's Commissioner in the Children and Families Act Part 6 paragraph 112, 7B.
26. Ofsted will consult the Children's Commissioner in planning its future survey and thematic inspection programmes of work.

Resolution of disagreement

27. Any disagreement in relation to matters covered in this Memorandum will normally be resolved between the nominated contacts of each organisation. If this is not possible, it may be referred upwards by either of them, up to and including the Children's Commissioner and Her Majesty's Chief Inspector, who will jointly be responsible for ensuring a mutually satisfactory resolution. If any dispute requires further arbitration the matter will be referred to the Permanent Secretary at the Department for Education.

Implementation

28. This Memorandum takes is effective from 1 April 2014 to coincide with the implementation of Part 6 and Schedule 5 of the Children and Families Act 2014.
29. This Memorandum will continue to remain in force until such time as it is revoked by either party.
30. The Memorandum will be reviewed six months after it is first agreed, and annually thereafter.

Initial Agreement

31. This Memorandum has been agreed by Dr Maggie Atkinson, Children's Commissioner for England, and Sir Michael Wilshaw, Her Majesty's Chief Inspector of Education, Children's Services and Skills.

Signed:

A handwritten signature in black ink, appearing to read 'M Atkinson', written on a light-colored rectangular background.

Dr Maggie Atkinson
The Children's Commissioner for
England, Office of the Children's
Commissioner

A handwritten signature in black ink, appearing to read 'Michael Wilshaw', written on a light-colored rectangular background.

Sir Michael Wilshaw
Her Majesty's Chief Inspector of
Education, Office for Standards in
Education, Children's Services and Skills