

Inspection guidance for inspecting provision on the Early Years Register following the risk assessment process

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Introduction

1. Information received by Ofsted about registered early years provision is subject to a risk assessment process. The purpose of this process is to assess whether the information may suggest a provider is not complying with the requirements for registration. Details of how we deal with the information we receive and the risk assessment process are given in the *Compliance, investigation and enforcement handbook: childminding and childcare*.¹
2. This guidance explains how inspectors should deal with an inspection of provision on the Early Years Register following the risk assessment process. It supplements that already given in the *Evaluation schedule for inspections of registered early years provision*² and *Conducting early years inspections*.³

Brought-forward and prioritised inspections

3. If the information received is assessed to be sufficiently significant, it will trigger an inspection. This inspection will either be a priority inspection carried out within five days of receiving the information or a brought-forward inspection carried out within 30 days of receiving the information, according to the assessment of risk to children.
4. The inspection will be a full inspection of all the matters set out in the evaluation schedule; the inspection will not be an investigation of the concern itself. Inspectors should use the information from the concern to determine the sample of compliance checks they carry out.
5. Inspectors should determine ahead of the inspection the aspects of compliance they will check and how they intend to do this, taking into account the previous registration history of the setting; and where relevant other settings owned by the same provider.

Unannounced and announced visits

6. We should attempt to conduct all concern driven inspections as unannounced inspections.
7. For priority inspections, inspectors should undertake an unannounced visit as early as possible into the five days. If the provider is present the inspector should complete the inspection. If the provider is not present on the first unannounced attempt, the inspector should telephone the provider to agree an inspection window, within the five days. The provider should be unaware of the

¹ *Compliance, investigation and enforcement handbook*, Section 2.1a, Ofsted, 2012; www.ofsted.gov.uk/resources/ciehandbook.

² *Evaluation schedule for inspections of registered early years provision*, Ofsted, 2012; www.ofsted.gov.uk/resources/120086.

³ *Conducting early years inspections*, Ofsted, 2012; www.ofsted.gov.uk/resources/120087.

exact date of the intended inspection. During the telephone conversation the inspector should not give details that the inspection is the result of a concern. This must only be discussed at the inspection.

8. For brought forward inspections, inspectors should make at least two unannounced attempts. If these are unsuccessful then the inspector should telephone the provider to agree an inspection window, within the 30 days. Again the provider should not know the intended date of the inspection nor be told on the telephone about the concern.
9. Inspectors should follow the above arrangements unless there are exceptional circumstances, for example if the visit needs to be conducted in Cornwall and the nearest member of staff lives 100 miles away. Such exceptions must be made on a case by case basis. For in-house inspections, the inspector should record the reasons for the exception in their evidence. For inspections carried out through Ofsted's inspection service providers, the contractor should inform Ofsted via the exceptions return.
10. If, during an unannounced visit, there are no children on roll or no children present at the time of the inspection the inspection must continue; it cannot be deferred under the 'no children on roll' guidance. If the inspector has to make a telephone call under the above exception, and the provider says they have no children on roll or no children present, the inspection must still go ahead within the required timescale.

Sharing the concern with the provider

11. Inspectors should raise any matter of potential non-compliance as soon as possible on arriving at the setting, usually during the introductory discussion with the childminder or provider/manager. The inspector should:
 - give brief details of the information/concern received
 - explain that the inspection will be a full inspection covering the matters in inspection guidance including a check on the provider's compliance with the requirements for registration
 - indicate there will be an opportunity for further discussion during the inspection
 - ensure that matters concerning potential compliance are discussed during the introductory tour where appropriate (for example, staff deployment or ratios in particular rooms).

How to deal with the concern during the inspection

12. The concern received should form part of the check on the provider's understanding of the requirements of the Early Years Foundation Stage and their ability to meet them.

13. Where appropriate, any non-compliance arising from the concern should form part of the small sample of documents checked by the inspector; and should be checked further in observations of practice and/or discussions with practitioners. However the inspection activities must be balanced and inspectors should not spend excessive time following through concerns unless they discover non-compliance that has an impact on children's care or learning.
14. Inspectors should make sure their evidence references the concern that caused the inspection to be brought forward or prioritised and that it is covered in the inspection planning and the interview with the provider/manager along with any follow up activities such as observations.
15. There are two main types of concern. The first relates to a matter of fact which the provider does not dispute. In these cases, the provider may have notified us of an incident in accordance with regulations; or, where they have not, accept that the incident occurred. The second relates to a situation where a parent or other person alleges something happened and the provider denies it happened or denies it happened in the way the parent/other person has described.
16. In the first situation, the discussion with the provider/manager should focus on what happened, whether the incident was preventable and any lessons learned. For example, if the incident was an accident to a child, the discussion should cover the quality of the risk assessment in place at the time of the incident, how this has been reviewed and amended since the incident, and how any potential risks have been removed or reduced further. The inspector should supplement the discussion by checking the area of the premises and discussing risk assessment with staff.
17. In the second situation the inspector should not try and prove or disprove the concern. Where there is a clear difference of opinion, the inspector should focus on observations on the day of the inspection and whether these lead to any concerns about compliance. For example, if the concerns relate to excessive crying in the baby room, the inspector should make sure they visit the baby room during an introductory tour and note in their inspection plan they will spend particular time observing in this room. They may also want to check that the staff for that room present during the inspection are the 'normal' staff and talk to parents and carers of children in that room.

Making judgements

18. Inspectors must use the grade descriptors in the evaluation schedule as the guide for their inspection judgements, using both what they see on the day of the inspection and what they know about the provider. Any non-compliance

must be dealt with in line with the evaluation schedule and the supplementary guidance in *Conducting early years inspections*.⁴

19. Where an incident is confirmed as having occurred, the inspector must consider:
 - the provider's attitude to the incident
 - the provider's compliance with requirements such as notifying the incident to Ofsted
 - whether this was a one-off incident or whether there are other examples of incidents or non-compliance recently associated with the setting
 - the provider's willingness to learn lessons from any incident and any improvements they have made between the time of the incident and the inspection
 - compliance during the inspection and the quality of risk assessments, staff induction and professional development.
20. Notifying an incident to Ofsted and using it to consider further improvement is generally a sign of a responsible provider. The provision may be good or better where there is compliance at the time of the inspection; the provider uses information from concerns to improve practice and, where relevant, the provider took steps to notify us about an incident in line with the Early Years Foundation Stage.

Inspection reports

21. Inspectors should:
 - report on any non-compliance at the time of the inspection following the general principles for reporting on such matters set out in *Conducting early years inspections*⁵ and raise an action or arrange for other enforcement measures; or
 - always reference the concern if it is a matter of fact that it happened and the incident arose because of non-compliance with one or more requirements. If the provider is complying at the time of the inspection, it will not usually be appropriate to tackle previous non-compliance through a notice to improve as there is no remedial action a provider can take to bring about improvement. The report should include an explicit statement about the failure to comply as this will act in the same way as a warning letter to the provider, and it will also ensure that the non-compliance is brought to the attention of the provider and parents and carers; or

⁴ *Conducting early years inspections*, Ofsted, 2012; www.ofsted.gov.uk/resources/120087.

⁵ *Conducting early years inspections*, Ofsted, 2012; www.ofsted.gov.uk/resources/120087.

- include a reference to the area of concern, but not necessarily to the explicit concern, where:
 - there is no evidence to support whether the concern happened; or
 - where an incident happened but all the evidence suggests the provider was compliant at the time of the incident and took all the necessary steps.
22. Where we are inspecting providers as part of a one-off review of historical concerns (rather than a current concern), inspectors do not need to refer to all previous non-compliance in the inspection report, since this will already have been covered by previous inspection reports or published outcome summaries. However, inspectors should refer to previous concerns if they find that on the day of the inspection, the provider is not complying with the same or different requirements.
23. The following examples are not intended to give a full picture of a concern or the evidence collected, or cover each of the avenues an inspector will need to explore to come to a judgement. Nor do they indicate that if an inspector encounters a similar incident they should come to the same conclusions. They are intended to illustrate how inspectors may reference concerns in reports.

Example 1

A child broke their arm by falling off the balancing logs in the garden. The nursery immediately contacted the child's parents and took the child to hospital. The manager reported the incident to Ofsted and to the local authority. The parent of the child complained that the logs were dangerous and staff failed to supervise children appropriately. At the inspection the manager showed the inspector the risk assessment from before the incident and the review of the garden following the incident. Ratios were correct at the time of the incident and in the manager's view nothing could have prevented the accident. Following further risk assessment the nursery manager decided to leave the balancing logs in place and to increase staff supervision by always having one person by the balancing logs. The inspector's observation of outdoor play and discussions with staff in the garden area showed that there was an appropriate balance between the activities planned to develop children's physical skills and confidence and the supervision of children who were attempting new activities.

Leadership and management (good)

Arrangements for safeguarding children within the provision are good. Children are allowed to explore their surroundings and are appropriately physically challenged. The inspection took place following notification of an accident to a child using the balancing logs in the outdoor area. The inspection found that the staff were fully aware of their responsibilities and took all the necessary steps for appropriate treatment, informing parents and the relevant authorities. The manager carried out a

full review of the outdoor area following the accident and put in place additional arrangements for supervision. In addition, the manager routinely reviews risk assessments each term with the staff team to make sure risks are minimised or eliminated.

Example 2

A child left a pre-school unsupervised and was found by a passer-by. The child's parent reported the incident to Ofsted. At the inspection the pre-school manager explained the incident had occurred when a visiting parent left the external door open for a moment to collect their child who had run back into the playroom. The manager had placed new signs to keep the door closed at all times at the entrance; and had allocated a staff member whose role was to monitor the door whenever visitors arrived or left. At inspection the door was closed throughout and there was no means for children to open the door. There was evident supervision of the entrance by staff at key times such as arrival and collection of children.

Leadership and management (satisfactory)

Arrangements for safeguarding children in the setting are satisfactory. Any incidents concerning children's safety and wellbeing are reviewed and this helps the setting to improve. However, in light of a recent incident when a child left the setting unsupervised for a short period of time, arrangements for keeping the building secure are too dependent on individual adults supervising the entrance area and this system is prone to human error.

Example 3

Several parents complained about the activities on offer in the two-year-old room, including that children were bored and that behaviour was poor. During the inspection the manager said the room leader was very experienced and was also the deputy manager, but was occasionally away from the room carrying out managerial duties and agency staff were used in the room regularly. This was the case on the day of the inspection. During the inspection, observations in the two-year-old room showed that while there was a good range of appropriate age-related activities, the agency person, while very caring, did not extend children's learning as well as the other practitioner.

How well the provision meets the needs to the children who attend (satisfactory)

The regular use of agency staff in the two-year-old room leads to variable practice. Although practitioners support children's personal care needs and provide a suitable range of activities, some children's progress is not as good as it could be because of the lack of a consistent staff group.

Leadership and management (satisfactory)

Arrangements for monitoring the progress of particular groups of children, for example two-year-olds, are not well established, and this results in some children not being sufficiently supported to make the best possible progress.

Checking minor matters

24. Where minor matters have been referred to a provider, inspectors must check how these are dealt with at the subsequent inspection. Inspectors must always check as part of the inspection preparation whether there have been any such referrals.
25. During the inspection, inspectors should use the minor matter as a prompt to check that requirements are being met. If requirements are being met the inspector need do no more, other than acknowledge with the provider that the minor matter referred to them is not a concern. There is no need to reference the matter in the inspection report.
26. If the matter identified indicates that the provider is not meeting requirements, the inspector should treat the non-compliance in the same way as any other matter of non-compliance found on inspection. The aspect of non-compliance should be referenced in the inspection report and taken into account when arriving at the inspection judgement in line with inspection guidance.

Inspecting after investigating a serious concern

27. Where a serious incident occurs involving other agencies, Ofsted carries out a full inspection at the conclusion of the initial investigations alongside those agencies. Where the investigation has resulted in actions or other enforcement measures, the inspector should check the provider is still compliant in these areas.
28. Where we have set actions or taken other enforcement measures as a result of the investigation, the report should include a brief reference to the concern, the actions or other enforcement measures taken and the provider's current compliance with those requirements. This should form part of the evidence for leadership and management and be included in that section of the report. Where any failure is significant it should also be included in the front-page bullet points.

Example

A nursery owner's partner was convicted for sexual assault. He was the handyman at the nursery. Recruitment procedures were good and there was evidence of a recent Disclosure and Barring Service check. On first hearing the information, the nursery owner immediately banned him from her home and the nursery and has no further connection with the individual. Ofsted subsequently set a condition on the

registration requiring the provider to prevent the alleged perpetrator from being on the premises during the hours of operation and monitored compliance with the condition. The nursery owner fully complied with the condition and at all times demonstrated an excellent understanding of how to protect children. There was no evidence that linked the case to children in the nursery and the resulting court case found the person guilty. He is now in prison and has no further connection with the nursery owner. The inspection took place after the court case and following a request from the provider to have the condition of registration removed.

Leadership and management (good)

Arrangements for safeguarding children within the provision and through work with outside agencies are good. A recent serious incident required Ofsted to set a condition banning a named individual from the nursery premises. The nursery owner took immediate action to make sure children were safe, cooperated fully in the resulting investigation and has a secure knowledge and understanding of the safeguarding procedures to follow.