

**DfE consultation:****[Keeping children safe in education](#)**

This consultation ran from 14<sup>th</sup> December 2017 – 22 February 2018  
Response submitted on 20<sup>th</sup> February 2018

**Introduction****1 What is your name?**

Name:

[REDACTED]

**2 What is your email address?**

Email:

[REDACTED]

**3 What is your organisation?**

Organisation:

Independent Schools Inspectorate

**4 Would you like us to keep your responses confidential?**

No

Reason for confidentiality:

**Section 1****5 Is the additional information on early help at paragraph 17 helpful?**

No

**Please give the reasons for your answer above:**

Some confusion arises in practice and in KCSIE from the phrase “early help” as to when it is being used to refer to assistance accessed from the LA and other agencies via local inter-agency procedures, such as a CAF, or when it is being used to refer to timely early support that can and should be provided in-house by schools. This confusion is not resolved by the new wording in para 14. It is still not clear from the first line of para 14, “All staff should be aware of the early help process and understand their role in it”, what is meant here by the “early help process”.

It might be useful to amend para 14 to, for example,

Either:

In this document, “early help” is used to refer to the continuum of early support which is provided in-house by schools, supplemented where appropriate by local authorities and other agencies. ....

Or

Where possible, schools should provide support as soon as a problem emerges ... etc In this document, “early help” is used to refer to the supplementary support which may be accessed from the local authority and other agencies.

(The latter would appear to be supported by the breakdown given in the bullet points of draft para. 24.)

It might also be helpful to be clear about what is meant by “staff” here. It is not clear to us for inspection purposes, who should be expected to know what in terms of internal and/or external processes, unless the current draft means that all staff of whatever level should have some familiarity with all processes.

Although we do not suggest that a table of expected knowledge would be appropriate for KCSIE, it might support the drafters of the guidance to think about the various categories of “staff” and levels knowledge:

- Non-teaching/pastoral staff Teaching/pastoral staff
- In-school support
- Early help (Inter-agency)
- Referral to statutory agencies

The proposed new wording in para 17 largely reflects the wording of WT, para 5. The reason for the discrepancies is not clear and it might be clearer to keep the two lists aligned because WT essentially lists the groups of children to whom LAs have particular statutory duties. Inclusion of the list, without explanation of the reason for the focus, might be misinterpreted as meaning that schools do not need to respond to other types of need (signs of neglect).

## **6 Have the changes to paragraphs 22-35 improved the clarity of this section?**

Yes

### **Please give the reasons for your answer above:**

Yes - para 22 – 25 contain useful information, although it could be clarified that the options in para 24, first bullet, should be guided by the relevant local referral threshold. Para 24 does however, introduce potential confusion where it suggests that individual members of staff will be decision makers : “ ... the DSL will help staff decide what to do next...” In our experience, many individual staff will not have the same level of experience overview and training as the DSL, and removing decision making responsibility from the DSL would seem to undermine their role as professional with lead responsibility for safeguarding and child protection (page 79).

We would suggest rephrasing to :

Wherever possible, staff with a concern should seek advice from the DSL (or deputy) and keep them informed. Options include ...

Para 26 could cause confusion. Here “early help” appears to be used to refer specifically to external support accessed through an inter-agency assessment . We would currently expect to see the DSL taking the lead responsibility in liaising with other agencies, rather than this being the role of other members of staff with the support of the DSL, as might be implied here. While it is important that staff understand that on a moral level they carry individual responsibility, a school’s approach needs to be thorough and systematic and if the DSL is to be responsible, they must be aware of developing situations and be able to retain an overview.

Para 29 - Inspectors have commented that it would be useful to define “immediately”. For example, “immediately, or no later than one working day” or “immediately, or no later than 24 hours”.

Inspectors also observe that while schools often make referrals as required, delay or reluctance is often experienced on the part of the local authority. We would favour including the time limits for LA action in the main body of the text.

In the flow chart on page 13, it would assist to refer again to the published local referral thresholds and statutory referral thresholds ( eg that a child is at risk of significant harm) . It is right that front line professionals should be permitted some latitude for professional judgement but we are aware of situations where schools have not referred appropriately, and it is difficult for inspection to respond to that when the flow chart apparently allows for decisions not to refer without referencing thresholds.

For the purpose of inspection there is a need for clear boundaries to mark the place at which schools can be said to have failed to refer and failed to follow the guidance appropriately without good reason.

## **Section 1**

### **7 Does your school or college already hold more than one emergency contact number?**

Not applicable

### **8 Is suggesting schools go beyond the legal minimum a sensible approach?**

Yes

#### **Please give the reasons for your answer above :**

ISI would support this recommendation as a sensible approach. It should not be onerous for schools but a development of the existing pupil registration regulations which require schools to have the name and address of every person known to the school to be a parent and at least one emergency contact number.

We suggest that it should be re-drafted to recommend that schools hold emergency contact numbers for more than one person, rather than simply "more than one ... number", although it can be helpful to have several ways to contact a parent.

We agree that this step would potentially improve safeguarding arrangements and believe that it is already required by some LSCBs as a matter of local policy.

Numbers should not only be held (as an end in itself), but there should be an appropriate system in place to use the contact information in a timely way to follow up absent children.

We suggest amending the first bullet point of para 55 as follows:

Individual schools and colleges having an effective child protection policy which is appropriate to the school and reflects the risks to pupils.

## **Section 1**

### **9 What changes can we make to Annex C to help schools and colleges keep their pupils safe online?**

#### **Please comment:**

ISI finds this Annex useful and clear enough and we are not encountering problems in practice. We would suggest that it could be supplemented by a reminder of the need to teach pupils how to stay safe online.

## **Section 1**

### **10 Do you have any comments on the effectiveness of the sexual violence and sexual harassment advice?**

#### **Please comment:**

Before responding in relation to para 86, we would like to comment on paras 81 and 82. We note that a new sentence has been included. ISI would recommend that the requirement for recruitment training should be extended to independent schools.

We find the new information about peer-on-peer abuse helpful but are cautious about the inclusion of advice that girls are more likely to be victims as statistics have been provided only in relation to girls (footnote 102, page 72). Certainly inspectors encounter peer to peer abuse of male pupils. It may assist schools to explain when peer to peer abuse should be dealt with under the child protection/safeguarding policy rather than under the anti-bullying policy.

We suggest replacing the word "hazing" which is not universally recognised.

**11 Do you have any comments on the effectiveness of the sexual violence and sexual harassment advice at Annex A of KCSIE, including whether the summary is of an appropriate length?**

**Please comment:**

We find the new advice useful and of appropriate length. We note that at the top of page 76 a sentence begins “whilst the school of college establishes the facts of the case, and starts the process of liaising with children’s social care and the police...”. It might be helpful to remind schools that they are not to investigate criminal behaviour themselves beyond establishing basic facts.

Also in relation to allegations, there is much emphasis in the guidance as drafted on respecting the wishes of the victim in terms of how they wish to proceed.

There have been instances where pupils or parents have been persuaded by schools, or pupils have been persuaded by their own parents, that it would not be in their own best interests to take action in response to assault, and where this decision has allowed a perpetrator to continue to commit crimes on other children.

ISI would suggest that there should be clear advice in KCSIE that where a crime appears to have been committed, schools should always refer on to statutory authorities and that this step cannot be veto-ed by parents. In difficult cases which are not clear cut, it would be beneficial for KCSIE to encourage schools to take advice informally if necessary.

As regards steps to be taken in relation to the alleged perpetrator, the new guidance advises on keeping the alleged victim and perpetrator apart. We suggest that a reminder should be added to the guidance that schools should work with statutory authorities to risk assess whether the alleged perpetrator might also present a danger to other pupils, and if so to put in appropriate measures to mitigate any risks noted.

**12 Which of the following options would you support?**

Not Answered

**Please give the reasons for your answer above :**

From ISI’s perspective, the important issue is the legal status of the guidance rather than the length or location. If it is incorporated into KCSIE it becomes statutory guidance which must be followed in the absence of good reason, and part of the Independent School Standards. Stand-alone advice would be unlikely to have any similar statutory underpinning and might be seen as not relevant for inspection purposes.

**Section 1**

**13 Is making the link between children with SEND and considerations regarding restraint helpful?**

Yes

**Please give the reasons for your answer above:**

**14 Do you have any comments on any other changes made to Part one and Part two? Please be clear as to which section and paragraph you are referring.**

**Please comment:**

Para.s 71-73 - we suggest that consideration should be given to advising schools to also share information with their inspectorate. In the longer term, ISI would like to see the introduction of a “duty of candour” to inspectorates. This would assist to avoid situations where inspection decisions are made on the basis of incomplete information.

Para.80 – This paragraph should recognise that there are also independent inspectorates.

**Section 1**

**15 Do the changes now make clear what information must be recorded on the SCR?**

No

**Please give the reasons for your answer above :**

Although the guidance is clear as far as it goes - it is clear that certain information must be included for “staff” - in our experience, schools have difficulty recognising “staff” and/or distinguishing them from visitors, volunteers, contractors, for example.

Schools continue to be confused about peripatetic music teachers, for example, who might not be employed direct by the schools but might submit termly bills to parents for instrumental tuition. In an inspection context, ISI is very clear that these should be considered “staff” and subject to normal vetting checks as for other staff.

Similar confusion arises in respect of people who take after-school clubs; if they come from another company, eg a local dance company, or are paid direct by parents, schools do not know how to treat them. Likewise, there is confusion about whether kitchen contractors, for example, from a company such as Sodexo, should be included on the SCR. (ISI inspects on the basis that it not a requirement to include the employees of other employers on the SCR – but this advice is not included in KCSIE.)

So more information needs to be included to help schools to identify “staff”.

From para 138 onwards, KCSIE refers to various other groups eg Agency and Third Party Staff., and at 159, Contractors. We find confusion in schools as to when an individual is to be considered “third party staff” and aligned with agency staff or when they are to be treated as a “contractor”. There is also confusion as to whether these groups must be included in the SCR, because KCSIE is not clear that the SCR is only for agency “staff” and the school’s own “staff”, not the “staff” of other employers. We therefore observe schools trying to include the staff employed at the local swimming baths in their SCRs because the pupils attend once a week.

It would be helpful in this context to differentiate self-employed contractors from contractors who are employed by other employers.

For these other groups, the guidance mainly deals with the issue of DBS checks and schools are often confused about whether the other checks are also required.

It would be helpful to include that the SCR must be printable. It might also assist schools if vetting guidance could be tabulated for clarity.

Para 132 concerns MATs, which are not inspected by ISI. However, we encounter confusion in schools concerning

- whether it is permissible to have separate registers in, for example, the junior and senior sections of the school if it is registered as a single “all through” institution, or
- in groups of schools, whether the SCR may be held at the head office.

Our experience of schools where the information is not held locally is that head offices are not always aware of all people on site and the precise basis of their employment or extent of their role, which may lead to inadequate vetting.

**16 If, in future, the requirements for what schools and colleges must record on the SCR were reviewed, is there any other information that you think should be recorded?**

**Please comment:**

The requirement to record employment history and references on the SCR were removed in a drive to de-regulated some years ago. However, this is felt by inspectors to have led to confusion and some would prefer the requirements to be reinstated. In order to go down that route, the status of the advice concerning references, and the number of references required, would need to be clarified. It would also be helpful if para 126 explained school record keeping duties in relation to references.

## Section 1

**17 Is the revised Annex E clear about a school or college's responsibilities when arranging exchange visits?**

Yes

**If not, which parts are unclear?:**

The guidance is clear although we would appreciate confirmation, separately if necessary, from an inspection perspective whether inspectors would be expected to fail a school which did follow the advice that they “should” carry out DBS checks on host families in the UK, if this issue were to be inspected. (Currently it is not inspected on routine inspections.)

## Section 2

**18 Does this section make clear the differences between prohibitions, directions, sanctions and restrictions and when they would prevent an individual from being employed in a particular roles?**

Yes

**If not, which part is not clear and why? :**

Yes this seems very clear to ISI although it is unfortunate that in common parlance words like “barred”, “prohibited” and “disqualified” are often interchangeable and we encounter confusion in practice.

**19 Does this section make clear how checks for prohibitions, directions, sanctions and restrictions can be made?**

Yes

## Section 2

**20 When recruiting staff who have worked in a school in England during the three months prior to their appointment, does the revision make clear the circumstances in which a check must be undertaken?**

Yes

**If you feel the revision does not make this clear, please explain why it does not.:**

It seems to us that the formatting has gone awry. The presentation of the text of para 121 is confusing. We think it should be re-presented as follows :

- ... if during a period which ended not more than three months before the person’s appointment, the applicant has worked in
  - A school in England in a post
    - o which brought the person regularly into contact with children or young persons; or
    - o to which the person was appointed on or after 12th may 2006 and which did not bring the person regularly into contact with children or young persons; or
  - an institution within the further education sector .. etc

When there is no requirement to carry out a DBS check, due to the 3 month check, we are asked whether the school should at least view the original pre-existing certificate. We would be grateful for your view on that.

**21 Do you have any evidence to suggest that information about criminal activity that would have been relevant to an individual's suitability to be employed would not be obtained as a result of only undertaking a barred list check?**

Yes

**22 If your answer to Question 21 is yes:**

**a) What action would you take if new information emerged?:**

One of our staff has experience of conducting lengthy disciplinary proceedings as a governor which clearly established criminal behaviour ( a sexual relationship with a pupil) but the “victim”, having assisted with the internal proceedings which led to the member of staff losing her job, did not wish also to go through a criminal prosecution. The ISA, as it then was, did not bar the individual, which we found surprising as a school. This information would not show up, therefore, on the barred list and would only be revealed on a DBS check as “soft information”, if at all.

**b) If that new information had been available to you sooner, would it have altered your decision to appoint that individual? :**

**23 When recruiting staff who have worked in a school in England during the three months prior to their appointment, is your school or college's normal practice to request an enhanced DBS certificate in all cases?**

Not applicable

**If your answer above is yes, please give further details of why your school considers this necessary:**

As an inspectorate, our observation is that most schools renew DBS checks unnecessarily, from a regulatory perspective. This is because they do not trust the recruitment decisions of other institutions and sometimes due to doubt about whether a person has been continuously employed in a school. We are aware that some trainers or local authorities advise that it is poor practice to accept a pre-existing even when this is permissible.

**Section 2**

**24 Is the flowchart clear about when you must/should carry out a DBS check?**

No

**If you answered no above, please explain why it is not clear:**

We do not find the flow chart clear enough at present.

- There is confusion in schools about who should be considered to be “staff”.
- Although “Supply teachers” are mentioned, it should be clearer that this means teachers from an employment agency. In common parlance in education, it is believed that a “supply” means “ad hoc” or “short term”. So that if a school has a bank of retired colleagues who may step in to assist at short notice, they refer to these as “supply” and are confused about how they should be checked. We suggest relabelling this box: “Agency staff ( eg teachers or other temporary staff supplied by an agency)”. It should also be referenced here that the school should not only obtain confirmation from the agency that the agency has carried out the appropriate checks, but also independent schools must see the original criminal record certificate.
- It does not deal with peripatetic staff or non-agency ad hoc staff, for example, both of which continue to confuse schools.
- The section about contractor staff is not explicit that it would be the contractor (not the school) which would be obliged to carry out the DBS check and confirm in writing that this has been done.
- Other categories that could be included would be self-employed contractors, proprietors, governing bodies.

## Section 2

### **25 Does KCSIE provide sufficient information to assist employers to ensure references and CVs are accurate and complete, including where they are received electronically?**

No

#### **If you answered no above, what do you think is missing?:**

Proposed new text in para 124 indicates that references should preferably be provided by a senior person with appropriate authority. We would rephrase this to recommend that for applicants who are currently working in a school or have worked in a school, a reference should be sought from a senior person in the school who would be in a position to know whether any concerns had been expressed about the individual.

Consideration should be given to the expectation around references for people who have never worked in a school before or at all. Many employers are no longer willing to give references save for specifying the dates of employment. We are often asked whether these “count”.

Queries often arise about the guidance in connection with references for internal candidates. This advice is perhaps best comprehensible if it is envisaged that the head/SLT making the appointment would sound out more junior colleagues about suitability concerns. However, this understanding might be undermined by the proposed clarification that references should be sought from a senior person.

We question whether it is realistic in practice for schools to be expected to always obtain written references before interview. Schools commonly experience difficulty obtaining references. The advice about timing is most likely to be feasible in relation to teaching staff but the guidance should also cover the non-teaching staff.

The guidance does not cover oral references, for example those given by telephone. KCSIE implies that references will be written which would implicitly mean that oral references do not suffice. We would prefer KCSIE to be clear about this one way or another. For inspection purposes, ISI recognises that sometimes it is difficult to obtain written references, particularly as there is no duty on potential referees to give them and also it can be beneficial to speak direct to referees.

It might be helpful to be clear about whether references should be retained. It would be difficult to inspect effectively whether schools are having regard to KCSIE if there is neither a requirement to record taking up references in the SCR nor on file.

### **26 Have you ever established that an applicant has provided inaccurate information as part of a reference or CV?**

Yes

#### **If you answered yes above, please give details :**

The small group of experienced inspectors to whom we put this question have indicated that it is a common experience for candidates not to be entirely truthful on their CV and for references to be inaccurate. Neither should be assumed to be wholly accurate but considered alongside all the other information taken as a whole when making recruitment decisions. Inspectors recently came across a situation where a head had concealed on-going disciplinary proceedings when providing a reference. Inspectors have suggested that giving a false reference should be grounds for a referral to the NCTL.

## Section 2

### **27 Do you consider that it is possible to provide a reference which includes information about an unsubstantiated allegation that is fair, factual, accurate and free of conjecture?**

Don't know

#### **If you have answered yes above, what information do you consider could be included and in what circumstances?:**

This is a very difficult situation; even to state that a person has been the subject of allegations which were investigated and found to be unsubstantiated would be likely to be harmful to an application by the individual. Increasing numbers of employers are refusing to provide references. It might be helpful to include guidance for schools on how to proceed when they encounter difficulty in obtaining references, for example, to address whether the person can start work under risk-based supervision.

### **Section 3**

#### **28 How easy is it for you to identify information that would enable you to identify relevant events that may have taken place abroad?**

Not easy

#### **Please give the reasons for your answer above:**

Schools often encounter difficulty obtaining information from overseas. It would be helpful to stipulate how far back schools must enquire for; ISI is currently relying on recommendation from the NSPCC, which may now have been withdrawn, that they should consider obtaining criminal record information from overseas when a person has lived overseas as an adult for more than three months in the last five years. We encourage schools to go further if possible and take into consideration the last ten years.

#### **29 When appointing individuals who have lived or worked abroad, what “further checks” do you think it would be appropriate to make?**

#### **Please comment:**

We suggest checking qualifications from overseas, taking references relating to posts held overseas, or additional references specifically covering periods of time spent overseas as an adult, internet searches. We would be clearer that these checks are for the first school-based employer in the UK and that subsequent schools are not required to repeat them.

#### **30 Has the requirement to “carry out further checks as considered appropriate” created any barriers to being able to employ individuals who have lived or worked abroad?**

Yes

#### **If you answered yes above, what barriers have you experienced and what was the resulting impact? :**

It is important, particularly following the report of the serious case review concerning Southbank International, for example, to encourage schools carry out checks in respect of time spent overseas. However, this does cause delay in the recruitment process and may make it difficult for people from some countries to enter the children’s workforce. We would suggest that KCSIE should provide with greater guidance about what to do when overseas criminal record information is not readily obtainable eg taking up additional references, internet checks and supervision.

### **Section 3**

#### **31 Considering the full KCSIE document, which of the following would you select?**

The proposed length of the new KCSIE is about right

#### **Please give the reasons for your answer above :**

In our view the proposed length is acceptable, particularly as some information has been separated out into Annex A.

### Section 3

#### **32 Considering Part one of KCSIE, which of the following would you select?**

The proposed length of the new Part one is about right

#### **Please give the reasons for your answer above:**

The proposed length is about right and adds clarity to recent legislative changes in recognising and understanding abuse.

### Section 3

#### **33 Considering Annex A in KCSIE, which of the following would you select?**

The proposed new Annex A is about right.

### Section 3

#### **34 Which, if any, of the safer recruitment requirements in KCSIE do you find most confusing or difficult to understand and why?**

#### **Please comment:**

In ISI's experience, schools have difficulty with the following areas:

- There is confusion in about who should be considered to be "staff".
- There is confusion about whether self-employed peripatetic staff (such as instrumental tutors who work regularly in the school but are paid direct by the parents) should be treated as "staff" for vetting purposes. They fall under the definitions of both "staff" and "contractors" but for inspection purposes we expect them to be treated as "staff" if they are in regulated activity. This is explained in ISI literature available to schools but not in KCSIE.
- There is confusion about the meaning of "supply staff". It should be clearer that this means teachers from an employment agency because in the education sector it is widely believed that "supply staff" simply means ad hoc or short term staff. For example, if a school has a bank of retired colleagues who may step in to assist at short notice, they may refer to these as "supply", even though they are not from an agency, and they are confused about how they should be checked.
- The advice about contractors does not distinguish contractors who are employees of about company from self-employed workers. Both might be termed "contractors" but are checked in different ways, where relevant. The former must be vetted by their own employer while the latter must be checked by the school, if necessary (see the example of peripatetic teachers, above).
- There is added confusion caused by the alignment of "third party staff" with agency in current para 116, when "third party staff" might also be considered to be contractors under para 134. The significance of the distinction is that the vetting requirements differ (eg agency staff must be included on the SCR while the employees of other companies need not be). Schools are unsure of whether or when they should follow the advice in para 116 or 134.
- When a person starts helping in a school in one capacity and then moves to another, schools are often unsure of whether checks must be repeated eg when a volunteer or self-employed contractor becomes a member of staff.
- The advice in KCSIE about some categories deals only with the requirement for DBS checks and schools are therefore unsure whether they should carry out the other checks, such as prohibition from teaching, if a volunteer teaches on a voluntary basis or a contractor who comes in only on one or two occasions (whether employed or self-employed), eg to lead a club, should be checked for prohibition from teaching.

We suggest that it might be useful to tabulate as much information as possible in order to make the advice accessible to colleagues in schools.

**35 Is there anything that you are currently required to do when completing safer recruitment activities that you find difficult?**

Not applicable

**If you have answered yes above, please explain what you find difficult:**

Schools tend to have reasonable systems in place for carrying out suitability checks for core staff but struggle with anything slightly out of the ordinary. There is particular difficulty in assessing which checks are required for third party staff and contractors.

**36 If you could change one thing about the safer recruitment requirements set out in KCSIE, which in your view would further safeguard against the possible risks to children, what would that be?**

**Please comment:**

We are concerned about the introduction of para. 132 which will remove the requirement for MATs to hold SCRs for each school. Although this is not relevant as yet to independent schools, our concern is that this will make the inspection of registers harder as these 'super-sized' SCRs may have hundreds of entries.

Anything that makes the SCR more unwieldy for schools to use or inspectors to check would not assist to keep children safe. We are also concerned about how centralised registers will be made accessible to inspectors in a timely way.

**37 If you could change anything about the current requirements placed on schools and colleges regarding handling of allegations of abuse, in order to strengthen against possible risks to children, what would that be?**

**Please comment:**

ISI would like to see the introduction of a duty of candour on schools towards inspectorates, and a duty to inform the relevant inspectorate when a situation first emerges, including that the LADO has been informed and at which LA. This would assist to avoid a repeat of instances where inspections have been carried out without inspectors being appraised of all relevant information.

While schools must inform the LADO of allegations, they are not currently obliged to follow the advice that the LADO gives. We would recommend that KCSIE should give a clearer steer that this would be the expectation in the absence of good reason.

**38 Is there anything that you are currently required to do when addressing allegations of abuse that you find difficult?**

Not applicable

**If you have answered yes above, please explain what you find difficult:**

ISI inspectors note that there is a variety of approaches between LCSBs. Some authorities will not give schools informal advice on a no-names basis when a situation first emerges but require a formal referral before they will advise. Schools working with several LSCBs find different structures, terminology and procedures confusing.