

Gathering additional evidence to secure an incomplete inspection

Ofsted protocol

Arrangements for gathering further evidence where an inspection is incomplete.

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Introduction

This protocol sets out the arrangements through which Ofsted will deal with inspections, in circumstances where the report has not been published, that are deemed to be incomplete because there is a need to gather additional evidence in order to secure the inspection evidence base. Further action to complete the inspection, and revise and report the findings, may be required.

Background

1. Ofsted has established processes for checking quality, finalising reports and dealing with concerns raised by providers within all remits of its work. In the case of early years inspections, these are carried out in partnership with inspection service providers (ISPs) who are contracted by Ofsted to carry out inspections and who are responsible for the employment of early years inspectors.
2. Exceptionally Ofsted will think it necessary to delay publication of a report to ensure full consideration of concerns raised by a provider (or identified by Ofsted or an ISP). Very rarely, usually following consideration of the provider's concerns, or following its own internal pre-publication quality assurance/moderation processes, Ofsted may identify elements in the inspection evidence base which are not sufficiently secure and this may cause Ofsted to conclude that the inspection is incomplete. In such cases, Ofsted will need to take further action to complete the inspection and this action may include a further visit to the provider to gather more evidence to secure the evidence base. In those circumstances the inspection report will not be published until Ofsted is satisfied that the inspection judgements are secure.
3. When a draft report has been sent to the provider for a factual accuracy check or comments, and Ofsted decides subsequently that the inspection of the provider has not provided a sufficiently sound evidence base upon which to make judgements about the provider, Ofsted or the ISP may carry out further inspection activity to secure the inspection. This may include a further visit to gather more evidence. An amended draft report will be sent to the provider following the conclusion of further inspection activity for factual accuracy checking and comment.
4. These situations should happen very rarely, but when they do, it is important that full and sensitive communication with the provider is maintained throughout.
5. In other cases, following publication (that is, receipt of the final report by the provider) of the inspection report, Ofsted may conclude that the evidence base for an inspection was insecure or that the inspection outcome is unreliable for another reason (see paragraph 11 below). **This protocol is not applicable in those circumstances.**

Deciding whether an inspection should be deemed incomplete before the report is published.

6. The Regional Director (RD) or relevant designated officer (RD's delegate) will refer to the evidence base and any other appropriate material to decide whether the evidence base is secure. The RD or delegate will normally arrange for an evidence base review (EBR) to be carried out.
7. In circumstances where the RD or delegate considers that there are insecure elements in the inspection evidence base, Ofsted's legal advisors will be consulted. Publication of the report will be withheld until the RD or delegate has decided what further inspection activity is required.
8. If the decision is reached that the inspection is incomplete, steps will be taken to secure the evidence base. These may include a further visit to the provider to gather more evidence. Ofsted will need to be satisfied that the evidence base is secure and the inspection process complete before publication of the report.
9. When a decision has been made by the RD or delegate that an inspection is incomplete, the evidence base should be retained for as long as is necessary to resolve all the issues identified with regard to the inspection process. Once the report is published, the inspection evidence base is retained in accordance with Ofsted's retention and disposal policy.
10. Examples of circumstances in which an inspection may be considered to be incomplete include:
 - where key judgements that may affect the overall outcome of the inspection are given orally by the lead inspector at final feedback to the provider or stated in the written report, but are not substantiated by evidence gathered and recorded by the inspection team
 - where the conduct of the inspection is such that the evidence gathered and recorded cannot be relied upon to provide a fair and accurate view of the provider, in whole or in part
 - where the inspector or inspection team has not gathered sufficient evidence or evidence of sufficient quality to allow it to obtain a fair and accurate view of the provider, in whole or in part.
11. Examples of circumstances in which an inspection may be unreliable for other reasons are given below. This protocol is not applicable in those circumstances and legal advice should be sought before further action is taken.
 - Where an inspection may have been carried out using an incorrect statutory power.
 - Where inspection judgements reached relied upon the assessment of matters or activities that may fall outside Ofsted's remits.

Procedure to be followed where the inspection is deemed to be incomplete before the report is published

12. Once an inspection has been deemed incomplete, the following action is required.
 - **For early years inspections only:** If the inspection was ISP-led, the RD or delegate will inform the ISP of the decision.
 - **For all inspections:** The RD or delegate will write to the provider:
 - informing them of the reasons for deeming the inspection incomplete
 - offering an apology
 - (if appropriate) confirming that there will be a further visit to the provider by an inspector/inspection team in order to gather and analyse the necessary evidence to secure the evidence base and complete the inspection. This further visit will take place as soon as practicable.
 - The RD or delegate will inform HMCI of the decision and take steps to ensure that the evidence base is retained in accordance with paragraph 9 above.

Completing the inspection

13. Further inspection activity to complete an inspection may focus on the insecure elements of the evidence base, but, in some instances, the RD or delegate may determine that all elements of the evidence base must be re-visited to ensure that reliable judgements can be reached.
14. Where a further inspection visit is considered necessary the RD or delegate will determine whether it is practicable to use the same inspector or inspection team, but Ofsted maintains the right to use a different inspector or inspection team where this is considered to be more appropriate.
15. When the further inspection activity has been concluded, an amended draft inspection report will be shared with the provider for factual accuracy check or for comment in the usual way ahead of final publication where appropriate.