

# Article 39

## Abuse in children's institutional settings: How much is known?

November 2017



## Introduction

There is no easy way to discern or track the prevalence and nature of abuse allegations made by (or about) children in institutional settings. This briefing reports on freedom of information (FOI) research conducted by Article 39 in 2015.

We sought funding for follow-on qualitative research with children, to elicit their views and experiences of the child protection system within the context of institutional settings. Unfortunately, we have been unable to secure funding for this important work, which we planned to undertake with an academic partner, so we have decided to avoid further delay by publishing the quantitative findings alone.<sup>1</sup>

## Summary of findings

We found that 53 local authorities in England received 2,479 allegations of abuse or neglect against adults working in children's institutional settings in the three years between 2012/13 and 2014/15. The institutions we asked about were: children's homes, secure children's homes, boarding schools, residential special schools, mental health inpatient units, other hospitals, young offender institutions, secure training centres, immigration removal centres (detention) and police custody. The data we were provided shows local authorities were notified of child protection allegations against members of staff from every setting apart from immigration detention.

A further 85 local authorities either did not have the data requested, provided incomplete data or refused to release it. The majority of those who did not have data relating to allegations against adults working in specific institutional settings recorded information under broad workplace categories such as health, education, early years, social care or residential care. Two of the 85 local authorities reported having none of the institutional settings we asked about in their area.

The most frequent response to our request for data on child protection enquiries in institutional settings was that the local authority kept records only of aggregate number of investigations pertaining to children in families and other settings.

Fourteen local authorities (9%) failed to provide any response to our request for information.

## Background

Local authorities submit data each year to the Department for Education about child protection referrals, investigations and outcomes. This information is published by the government annually. However, local authorities are not required to provide separate data on allegations made against adults working with children in their area, or the action they have taken to safeguard and promote the welfare of children as a consequence. This is despite the High Court confirming 15 years ago that the legal framework for local authorities investigating and taking action to safeguard and promote the child's welfare applies to prisons, and therefore other institutional settings (see below).

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<sup>1</sup> At the end of October, the Government launched a public consultation on statutory safeguarding guidance. Article 39 will be submitting this research as part of our response to this consultation, which closes on 31 December 2017: <https://www.gov.uk/government/consultations/working-together-to-safeguard-children-revisions-to-statutory-guidance>

## Legal and policy context

Section 47 of the Children Act 1989 requires local authorities to investigate significant harm concerns about children living in their area, in order to decide whether they should take action to safeguard or promote the child's welfare.

Harm is defined in Section 31(9) of the Children Act 1989 as:

*“harm” means ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another.*

When determining what action to take, Section 47(5A) places a duty on the local authority to ascertain and give due consideration (having regard to his/her age and understanding) to the child's wishes and feelings. This latter duty has only been in force since 2005.

### Children Act 1989

#### 47 Local authority's duty to investigate

**(1)** Where a local authority—

(a) are informed that a child who lives, or is found, in their area—

(i) is the subject of an emergency protection order; or

(ii) is in police protection;

(b) have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm, the authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare.

**(5A)** For the purposes of making a determination under this section as to the action to be taken with respect to a child, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare—

(a) ascertain the child's wishes and feelings regarding the action to be taken with respect to him; and

(b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain.

There is provision in Section 47(12) for local authorities where a child ordinarily lives to undertake enquiries, rather than the local authority in which the child currently lives.

In November 2002, the High Court determined that Section 47 of the Children Act 1989 applies to children in prison<sup>2</sup>, with obvious read across to other institutional settings. The local authority's duties were found to “take effect and operate *subject to the necessary requirements of imprisonment*” [emphasis in original]. Two particular scenarios were cited by the judge – immigration and the armed forces – where it was already the case that powers bestowed by parliament could not be usurped by a court. Munby J, hearing the case, observed that it would not be possible for a local authority to remove a child from a young offender institution to place him in local authority accommodation or another place of safety.

<sup>2</sup> R (Howard League for Penal Reform) v Secretary of State for the Home Department [2002] EWHC 2497 (Admin).

*Working together to safeguard children*<sup>3</sup> sets out how local authorities and others must promote and protect children’s welfare. In respect of concerns of significant harm, the statutory guidance requires that a strategy discussion be held to determine, among other things, whether a Section 47 enquiry will be undertaken. At the strategy discussion stage, there is no legal duty to elicit and give due consideration to the child’s wishes and feelings (or their parents). Organisations are required to refer “without delay” any allegation against staff working with children. *Working together* gives the following advice as to which allegations must be referred:

### Extract from *Working together to safeguard children* (2015)

An allegation may relate to a person who works with children who has:

- 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 they may pose a risk of harm to children.

There is no specific advice within *Working together* about investigating allegations of significant harm made by (or in respect of) children living in institutional settings, despite the known risks and history of rights violations. Statutory guidance on promoting the health and well-being of looked after children (many of whom live in institutional settings) similarly does not include any advice or requirements in respect of responding to allegations against staff.<sup>4</sup> However, the Department for Education’s guide accompanying revised regulations (including standards) for children’s homes<sup>5</sup> includes a specific section on abuse, cross-referencing to *Working together*.

In addition to their obligations set out in *Working together*, registered providers or managers of children’s homes are legally required to notify Ofsted of any allegation of abuse against staff working in the home and any child protection enquiry (both come under “serious event”) in respect of children living in the home.<sup>6</sup> Similarly, the directors of privately-run secure training centres must notify the police of any abuse allegations. Where the director considers abuse has been caused by a member of staff, he/she is under a legal duty to report the incident to the independent monitor attached to the centre.<sup>7</sup>

Statutory guidance for schools and colleges<sup>8</sup> sets out the steps educational institutions (including residential schools) must take when it is alleged a teacher or other member of staff in a school or college has: 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

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<sup>3</sup> HM Government (2015) *Working together to safeguard children*. A guide to inter-agency working to safeguard and promote the welfare of children.

<sup>4</sup> Department for Education and Department of Health (2015) *Promoting the health and well-being of looked-after children*. Statutory guidance for local authorities, clinical commissioning groups and NHS England.

<sup>5</sup> Department for Education (2015) *Guide to the children’s homes regulations including the quality standards*.

<sup>6</sup> Regulation 40, *The Children’s Homes (England) Regulations 2015*.

<sup>7</sup> Rule 25(3) *The Secure Training Centre Rules 1998*. (As set out in Rule 46(9)(b) pertaining to contracted out secure training centres).

<sup>8</sup> Department for Education (2016) *Keeping children safe in education*. Statutory guidance for schools and colleges.

way that indicates he or she would pose a risk of harm to children (the same wording as in *Working together*). Referrals must be made to the local authority designated officer. The 'case manager' from the school or college will have an initial discussion with the local authority designated officer, after which they may decide no further action is warranted. There is no duty at this stage for anyone in the local authority to meet the child or children concerned or to elicit the child's views. Decisions to take no further action must be recorded in writing.

The guidance for schools and colleges states that wherever there are concerns about significant harm, a strategy discussion must be convened in accordance with *Working together*. But this cautionary advice is given:

*If the allegation is about physical contact, the strategy discussion or initial evaluation with the police should take into account that teachers and other school and college staff are entitled to use reasonable force to control or restrain children in certain circumstances, including dealing with disruptive behaviour.*

Within the context of educational settings, the outcomes of allegations are to be recorded using the four categories of 'substantiated', 'malicious', 'false' and 'unsubstantiated'.

### Extract from statutory guidance on keeping children safe in education (2016)

The following definitions should be used when determining the outcome of allegation investigations:

- **Substantiated:** there is sufficient evidence to prove the allegation;
- **Malicious:** there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive;
- **False:** there is sufficient evidence to disprove the allegation;
- **Unsubstantiated:** there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

## Our research

Article 39 wished to explore the number of abuse and neglect allegations made against adults working in different institutional settings. We wanted to find out how many of these led to formal child protection enquiries and the outcomes of these, including whether other children were interviewed or moved as a result of the allegations. We sought to examine any possible link between the use of formal enquiries – where there is a legal duty to ascertain and give due consideration to the child's wishes and feelings – and a local authority finding an allegation to be substantiated.

We made an FOI request to every local authority designated officer in May 2015 (152 in all):

- We asked for numbers of abuse or neglect (child protection) allegations against adults in different institutional settings for the financial years 2012/13, 2013/4 and 2014/15. The institutional settings were: children's homes, secure children's homes, boarding schools, residential special schools, mental health inpatient units, hospitals, young offender institutions, secure training centres, immigration removal centres (detention) and police

custody.

- We asked for the numbers of enquiries under Section 47 of the Children Act 1989 made as a consequence of these allegations.
- We asked for the outcomes of the Section 47 enquiries under particular headings.
- We asked whether the local authority was investigating, or was aware of police or other investigations into, allegations of abuse or neglect occurring in the past (at least 12 months ago) in children's homes or other residential establishments formerly or presently run by the local authority.

## Our findings

- Only 53 of 152 (35%) local authorities in England were able to provide data on allegations against adults working in institutional settings in the three years between 2012 and 2015.
- Local authority designated officers in 53 local authorities received a total of 2,479 allegations against adults working in children's institutional settings between 2012 and 2015 (Table 1).
- There was large variation between the number of allegations against adults working in institutional settings in different local authorities. In 2012/13, the range was 0 to 93; in 2013/14, the range was 0 to 76; and in 2014/15, the range was 0 to 74.
- 52 local authorities provided disaggregated data on allegations from the different institutional settings (Table 2).
- The greatest number of allegations from institutional settings related to adults working in children's homes.
- However, the three-year data for prisons (young offender institutions and secure training centres) in Table 2 relates only to four institutions – indicating a far higher volume of referrals.
- There are currently four juvenile young offender institutions and three secure training centres in England, located in six different local authorities. During the three-year period we asked for data, a fourth secure training centre was still in operation<sup>9</sup> and children were detained in a fifth young offender institution.<sup>10</sup>
- One local authority received 86 allegations against staff over 3 years in respect of a single secure training centre. This local authority told us 33 Section 47 enquiries were undertaken over the 3 years following these 86 allegations. It did not tell us specifically how many of the Section 47 investigations relating to children in prison led to allegations being found to be substantiated. Nonetheless, the data it provided on outcomes (in addition to the 86 allegations from the child prison, there was 1 allegation against a member of staff in a

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<sup>9</sup> Children were detained in Hassockfield Secure Training Centre, in Durham, until November 2014.

<sup>10</sup> Children were detained in Hindley young offender institution, in Wigan, until April 2015.

children's home), showed 8 allegations (9%) were found to be substantiated and 79 (91%) were found not to be substantiated.

- Another local authority received 74 referrals in less than three years in respect of a secure training centre. It did not have information pertaining to how many of these led to Section 47 enquiries.
- A third local authority received 82 referrals over 3 years in respect of a single young offender institution. This resulted in 28 Section 47 enquiries, and none of the allegations were found to be substantiated (see below).
- Three local authorities with child prisons in their area failed to provide data. Two of these said the information we requested wasn't readily available. They relied upon the exemption that permits statutory bodies not to release information if it would take more than 18 hours to find it. The third local authority provided no response at all to our data request.
- A fourth local authority provided data only for 2014/15. This showed that there had been 25 allegations that year against adults working in a secure training centre in its area.
- Only 34 local authorities were able to tell us how many allegations against adults working in institutional settings led to statutory child protection enquiries by the local authority (Table 3). These 34 local authorities received 1,389 allegations against staff working in institutional settings over the 3 years. Less than a quarter (24%) of these resulted in a statutory child protection enquiry.
- 33 local authorities were able to tell us the outcomes of statutory child protection enquiries (Table 4). One in every three allegations, on average, was found to be substantiated. Several more local authorities gave outcomes data for all referrals, whether or not they led to a Section 47 investigation: we have not included these in Table 4 below.
- 75 local authorities told us whether or not they were aware of investigations of non-recent abuse in children's homes or other forms of residential care they managed (or formerly managed). Of these, nearly a quarter (24%) were aware of investigations occurring in their local authority.

**Table 1: Allegations against adults working in institutional settings – total**

Year	No. of allegations against adults working in institutional settings (data from 53 LAs)	Average per local authority
2012/13	717	14
2013/14	876	17
2014/15	886	17
<b>Total all 3 years</b>	<b>2,479</b>	<b>47 (over 3 years)</b>

**Table 2: Allegations against adults working in institutional settings – by setting**

Institutional setting	No. of allegations against adults working in institutional settings (data from 52 LAs)		
	2012/13	2013/14	2014/15
Children’s home	479	573	574
Secure children’s home	17	11	27
Independent boarding school	23	36	27
State boarding school	4	2	4
Residential special school	21	25	45
Mental health inpatient unit	23	43	33
Hospital not falling into category above	26	39	20
Young offender institution	21	42	51
Secure training centre	57	49	21
Immigration detention	0	0	0
Police custody	5	6	1

*NB: Data for individual institutional settings was provided by 52 local authorities, but total allegation figures were given by 53 (see Table 1 above).*

**Table 3: Allegations against adults working in institutional settings – formal child protection enquiries (2012-15)**

Total number of allegations against adults working in institutional settings 2012-15, where it was known whether a s47 enquiry was undertaken (data from 34 LAs)	1,389
Total number of Section 47 enquiries undertaken in respect of allegations against adults working in institutional settings 2012-15 (data from 34 LAs)	340
Proportion of allegations against adults in institutional settings resulting in s47 enquiries (data from 34 LAs)	24% (less than 1 in 4)

**Table 4: Known outcomes of formal child protection enquiries (2012-15)**

Outcome	No. (data from 33 LAs)
Allegation substantiated	136 (32%)
Allegation not substantiated	295 (68%)
Child moved	15
Other children in establishment interviewed	8
Other children moved	12
Member of staff convicted of criminal offence	6
Criminal proceedings ongoing	10
Member of staff subject to disciplinary action	115
Staff disciplinary proceedings ongoing	3
Other	116

Four of the 33 local authorities who gave data for outcomes said they found none of the allegations to be substantiated. These local authorities were notified of 96 allegations against members of staff over the three-year period.

One local authority particularly stood out. It received 87 allegations over the three years, 5 of these in respect of staff in children’s homes and 82 concerning staff in a young offender institution in its area. We were informed that not a single one of the 87 allegations was found to be substantiated, yet 22 of them led to children being moved and 2 led to staff disciplinary action.

One local authority informed us that all allegations against staff working in institutional settings would automatically result in a formal child protection enquiry. There had been 14 allegations in that local authority over the three years and 14 Section 47 enquiries. However, the local authority refused to provide data on the outcomes of these enquiries, citing the exemption in the Freedom of Information Act which protects personal data.

Several local authorities provided exemplary responses to our request, with detailed data for each category of institutional setting over the three-year period. Regrettably, many more did not have data to hand or did not disaggregate data for particular settings; they instead recorded information under broad headings (education, health, social care and police for example). It was impossible to know from the data how many allegations related to adults working in community or institutional settings.

## Earlier research

Researchers commissioned by the NSPCC submitted freedom of information requests to UK local authorities, to elicit the number of residential and foster care abuse allegations and whether these were found to be substantiated or unsubstantiated for the financial years 2009/10, 2010/11 and 2011/12. The research report was published in 2014.<sup>11</sup>

Local authorities were asked to provide the number of abuse allegations in respect of adults working

<sup>11</sup> Biehal, N., Cusworth, L., Wade, J. with Clarke, S. (2014) Keeping children safe: Allegations concerning the abuse or neglect of children in care. Final report. NSPCC.

in residential care reported to their local authority designated officer. Using data obtained from local authorities in England, the research team reported the mean rate of allegations against residential staff per local authority, and the average number of allegations found to be substantiated. These are set out in Table 5 below.

**Table 5: Research for the NSPCC on abuse allegations (residential placements - England)**

	<b>2009/10 (n=102)</b>	<b>2010/11 (n=109)</b>	<b>2011/12 (n=115)</b>
Average number of allegations per English local authority	6.64	7.56	8.1
Average number of substantiated allegations per English local authority	2.05	2.07	2.31

Like Article 39’s FOI research, the study undertaken for the NSPCC found that not all local authorities collated information centrally and there was large variation in allegation numbers between local authorities, even those of a similar size. The researchers suggest, “there may be differences in how allegations are defined and in the thresholds at which referral and investigation are triggered”.

## Observations and recommendations

### Data collection and publication

There appears to be no uniform process for local authorities recording and reporting data on institutional abuse and neglect allegations and outcomes. One local authority informed us, “There is no statutory requirement to record such allegations in this way”. This inevitably hampers the accumulation of local intelligence about individual establishments, and the safety of children within them. Inspection reports do not routinely contain this data either.

**RECOMMENDATION 1:**

**We recommend the Department for Education (as the government lead on child protection and safeguarding) and inspectorate bodies consider the routine publication of data on abuse allegations and outcomes relating to all children’s institutional settings.**

### Statutory guidance on responding to allegations in institutional settings

Our research reveals overall poor data-collection by local authorities in respect of allegations against adults working in institutional settings. The principal purpose of such data collection should be to monitor and identify any patterns of allegations, in order to strengthen safeguarding in individual institutions (where this is possible). Data collection around the proportion of allegations which lead to Section 47 enquiries and, crucially, whether the child is seen by a child protection professional outside of the institution are important measures of how well the child protection system is working in institutional settings.

Many local authorities who provided data used the terminology contained in statutory safeguarding guidance for schools and colleges, for example classifying allegations as false or malicious. This is not found in the *Working together* statutory guidance, which distinguishes only between substantiated

and not substantiated allegations. In the absence of any other statutory guidance on responding to institutional abuse allegations, we are not surprised the advice issued for schools and colleges (where children are most often living with their families) is being used by local authority designated officers. But this does not take into account the particular vulnerabilities of children in institutional settings, and the challenges they face in making allegations, adults properly listening to them and being believed. This is especially pertinent for children in closed institutions like prisons who have limited or no contact with family members and whose integrity is often automatically doubted.

### **RECOMMENDATION 2:**

**We recommend the Department for Education develop distinct guidance for local authorities on responding to institutional abuse allegations. This should bring together the known barriers which prevent children in institutional settings from being heard and believed, and offer advice on creating safe, fair and inclusive processes.**

**During the course of consulting on, and drafting this, guidance broader considerations will inevitably be asked about protecting children in institutions. Is it right, for example, that local authorities appear not to have the power to remove children from custodial institutions and places of detention which have been found to cause the child significant harm? Should independent advocates be automatically informed of allegations and asked to make contact with children at the earliest stages? What kind of support should a child living in an institution be offered (entitled to) to recover from abuse?**

### **Children's perspectives**

The statutory duty to ascertain and give due consideration to children's wishes and feelings applies only when a formal child protection enquiry is initiated.

Our research tentatively points to 3 out of every 4 allegations against adults working in children's institutional settings not resulting in a formal child protection enquiry. This may mean many children never get the chance to give their account to the local authority. At its most basic level, a telephone call between a manager of an institution and the local authority designated officer could be all that occurs before an allegation is classified as not substantiated, false or malicious.

Not hearing directly from the child or children concerned raises immediate safeguarding concerns but could also act to silence children in the future (who may believe, rightly or wrongly, that any future allegations will not be taken seriously).

The data we have been able to obtain suggests 1 in every 3 allegations is substantiated by the local authority. We did not ask local authorities to indicate who made the allegation (child, parent or professional for example). This is clearly an area for further investigation.

We are concerned about the messages conveyed to children in institutional settings – assuming they hear the outcome of allegations – when referrals about their safety and well-being are classified by the local authority as unsubstantiated, false or malicious. This is an area which requires further urgent research. We know from our other work that many local authorities offer children support from an independent advocate during child protection investigations. But we do not know

whether this occurs systematically across all institutional settings and, crucially, whether such assistance is offered at the allegations stage or only after the local authority has determined that a formal enquiry is necessary. The role of high quality independent advocacy services in ensuring children are heard and taken seriously would be an important part of any research into children's views and experiences of institutional child protection enquiries.<sup>12</sup>

### **RECOMMENDATION 3:**

**The Department for Education commission qualitative research into children's experiences of the child protection system when they are living in institutional settings. The role of independent advocacy in ensuring children are heard and taken seriously should be part of this research.**

## **About us**

Article 39 fights for the rights of children living in state and privately-run institutions, a population of around 80,000 in England. We take our name from the part of the United Nations Convention on the Rights of the Child (UNCRC) which entitles children and young people who have been abused or neglected to recover in environments where their health, self-respect and dignity are nurtured.

We formed in 2015 and registered with the Charity Commission in March 2016 (no. 1166092).

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<sup>12</sup> Willow, C. (2013) Independent advocacy in child protection. Guidance for policy makers. National Children's Bureau.