

INDEPENDENT COMPLAINTS ADJUDICATION SERVICE FOR OFSTED

ANNUAL REPORT 2014



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INTRODUCTION

Dr Karl Mackie CBE

It is with great pleasure that I present the Annual Report for the Independent Complaints Adjudication Service for Ofsted (ICASO) for the period 1 January 2014 to 31 December 2014. This is our fifth report as the adjudication service provider for the Department for Education.

ICASO has provided a complaints investigation service for Ofsted since January 2009. The purpose of the service is to review the way in which Ofsted has responded to complaints made by members of the public who have engaged with Ofsted for a wide range of reasons. We are contracted by the Department for Education and our service runs completely independent of Ofsted. Our role is to provide recommendations, advice and guidance to Ofsted with a view to improving its complaints handling procedures.

This report covers the first full year of operation since the last update in Ofsted's complaints handling policy, which took place in April 2013. There has been a marked increase in the number of cases being referred to us since this change, but they still cover a very small proportion of Ofsted's overall caseload and our review of their nature suggests that this increase is attributable to better sign-posting to the ICASO service rather than to any underlying cause. Overall we are pleased to report that we continue to see a high standard in complaint handling, and the system as a whole appears to work well.

The complaints handling team at Ofsted have been very cooperative in working with ICASO. I would like to extend my thanks to Her Majesty's Chief Inspector, Sir Michael Wilshaw, for his constructive responses to our recommendations and I would also like to thank the Department for Education for their part in overseeing the service and ensuring that it is running smoothly and effectively.



CASELOAD

During the period 1 January 2014 to 31 December 2014 the ICASO issued 57 reports. The table below gives a breakdown of the main categories of complaints since the inception of the service.

	1 Jan 14 31 Dec 14	1 Jan 13 31 Dec 13	1 April 12 31 Mar 12	1 April 11 31 Mar 12	1 April 10 31 Mar 11	1 Jan 09 31 Mar 10
EARLY YEARS AND CHILDCARE						
Childminders	13	5	2	3	4	4
Childcare on non-domestic premises	25	16	8	13	16	7
CHILDREN'S SOCIAL CARE						
Children's homes	1	1	1	3	1	2
Fostering service	0	0	3	1	1	1
SCHOOLS						
Independent schools	2	1	3	0	2	1
Primary schools	10	5	8	4	8	11
Secondary schools	5	2	2	2	4	2
Other	1	4	2	0	0	0
LEARNING AND SKILLS						
Further education colleges	0	2	2	0	1	3
Work-based learning providers	0	1	0	0	1	0
TOTAL	57	37	31	26	38	31

Although the number of reports we issued this year has increased markedly over the previous year's level, there is no evidence that this increase reflects any decline in performance by Ofsted. Rather, the increased caseload appears to be connected to improved sign-posting to our service following the updating of Ofsted's complaints handling policy in April 2013.

Overall, the number of cases referred to ICASO still represents a very small percentage of the actual complaints dealt with by Ofsted. To put things in perspective, the Ofsted Annual Report and Accounts 2013-14 indicates that Ofsted dealt with 2,449 complaints at Step 2 of the complaints procedure. The total number of complaints received by Ofsted this year represents 4% of the inspection and regulatory visits undertaken in 2013-14.

The largest proportion of complaints tends to relate to Early Years and Childcare, particularly regarding Childcare on non-domestic premises. This is to be expected given that Ofsted inspects a higher number of childcare providers than other settings.

This year, in just 9% of cases, the complaints that reached ICASO were raised by individual parents of children attending a school or provider. The remainder of complaints came from representatives of inspected institutions (owner, governing body or headteacher). This is a marked decrease from the 19% of complaints coming from parents in previous years.

TYPES OF COMPLAINTS

Consistent with previous reporting periods, the most common issue referred to ICASO is that the complainant does not agree with the outcome of an inspection. In 57 of the cases on which we reported this year, 46 included a complaint about the judgement or other statements contained within the inspection report.

These are not, however, matters on which we can comment as it is not within the remit of ICASO to review the professional judgements or decisions made by Ofsted. There were also 4 complaints about non-compliance with Freedom of Information Act requests which similarly are outside our scope.

Amongst complaints that did fall within our remit, the following table shows the number of times each type of complaint was raised:

	1 Jan 14 31 Dec 14	1 Jan 13 31 Dec 13	1 April 12 31 Mar 12
Alleged failure to follow procedures	4	14	12
Alleged failure to respond in a timely manner	6	4	4
Alleged discourtesy	0	3	0
Alleged failure to apologise or accept mistakes	2	8	4
Inspector/staff conduct	25	15	15
Alleged failure in complaint investigation process	39	0	0

[There can be several grounds of complaint in any given case](#)

The updating of Ofsted's complaints handling policy in April 2013 has clearly had an impact on the nature of the complaints that are reaching ICASO in that, for the first time, we are seeing a significant number of complainants clearly recognising that they can only come to ICASO once Ofsted's internal processes are exhausted. This does not appear to prevent them from complaining about matters that are outside our remit, but it does mean that, if they are minded to come to ICASO, they bring us not only their original complaint but also their concern that the Ofsted complaints process did not address it to their satisfaction.

RECOMMENDATIONS

The remit of ICASO is to investigate the manner in which Ofsted has dealt with a complaint, and to provide advice and make recommendations to improve Ofsted's systems and policies, either to address failings particular to a complaint or generally to improve complaint handling procedures.

We do not, therefore, regard our role as being to make a choice about whether to uphold or reject a complaint. Nevertheless, it is appropriate for us to report that, across the 57 cases on which we reported, we did not encounter any serious failings.

In 25 cases, the adjudicators found that Ofsted had dealt with the complaint in accordance with its published complaints procedure and we did not have any advice or recommendations to make in improving the service. From the remaining 32 complaints on which we did make recommendations, 29 had case-specific recommended actions, whilst in 21 instances we also suggested general procedural improvements.

Case specific recommendations

Within the 29 complaints on which we made case-specific recommendations, our adjudicators made a total of 47 individual recommendations.

The vast majority of these recommendations related to an issue on which we have commented in previous reports, namely a failure by the Ofsted complaints process to fully address all of the issues that have been raised by a complainant.

We acknowledge that this is a difficult area to get right every time. Ofsted's very sensible practice is for their investigating officers to seek to narrow the issues in a complaint by grouping items together in order to deal with them as efficiently as possible. However, particularly where there is a complex fact pattern or if a complainant has not set out their real cause of concern very clearly, there is a risk that some elements of a complaint are missed. In such circumstances, our adjudicators typically make two case-specific recommendations, namely that any omitted issue is revisited, and the complainant provided with both a response and an apology.

Of the seven remaining case-specific recommendations that did not come into this category, two related to the need for Ofsted to feedback lessons learned to the inspectors concerned; whilst the remaining five were recommendations that apologies should be offered for delayed or unclear communications.

General recommendations

Within the 21 complaints on which we made case-specific recommendations, our adjudicators made a total of 35 more general recommendations (although within this total were a number of very similar recommendations that were made on more than one occasion).

Reflecting the case-specific findings and recommendations, a high proportion of these general recommendations also related to the need for the complaints investigation process to address all of the concerns raised by a complainant. We have not recommended any procedural changes to address this concern, but clearly it is a matter which needs careful attention by Ofsted's investigating officers.

Of the 16 remaining recommendations that did not come into this category, the majority took the form of reinforcing reminders of good complaints handling practice, namely:

- If an error is accepted, it is also appropriate to offer an apology and an indication of the steps that would be taken to avoid any recurrence.
- If an investigation is delayed, the complainant should be kept informed, ideally before the deadline on which a response was due to be provided.
- If a complainant misdirects their complaint to another Ofsted department, or to one of its sub-contractors, procedures should be sufficiently robust as to ensure that complaints are properly identified and appropriately routed.

In addition, our adjudicators offered a number of suggestions as to how Ofsted's policies might be clarified so as to avoid any future misunderstandings:

- The complaints procedure might provide further clarification as to the weight which will be attached to different types of evidence. This would include clarification of Ofsted's approach to contacting third party witnesses as part of a complaints investigation.
- It would be helpful for the complaints procedure to clarify the treatment of any new concerns that may be raised during the course of the telephone call between a complainant and the investigating officer, which takes place at the start of each complaint investigation.
- The complaints procedure might be amended to provide clarification that on some occasions more than one investigating officer may be involved in a complaint.
- Ofsted's guidance to its service providers on managing conflicts of interest should be expanded to emphasise that inspectors must record any contact with a school or provider, or record reasons why contact has not been made, even if this is not considered to be an explicit conflict of interest.

OFSTED'S RESPONSES

We are pleased to report that every one of our adjudication reports was responded to personally by Her Majesty's Chief Inspector, Sir Michael Wilshaw. Every response included a specific comment and, where appropriate, a commitment to action, in relation to each individual recommendation put forward by our adjudicators. This level of attention to complaints and what can be learned from them at the highest level within Ofsted is, in our view, very welcome.

	1 Jan 14 31 Dec 14		1 Jan 13 31 Dec 13	
		TOTAL		TOTAL
Reports with no recommendations required	25	57	19	37
Reports issued containing recommendations	32		16	
Case-specific recommendations made	47	82	30	48
General recommendations made	35		18	
Case-specific recommendations accepted	46	77	30	44
General recommendations accepted	31		14	

Of the 47 individual case-specific recommendations made by our adjudicators, all but one were accepted by Ofsted. The one recommendation that was not accepted was that Ofsted should re-visit a particular complaint by contacting an apparently independent witness who had been present at an inspection which resulted in a judgement that was then disputed. Ofsted's stated reason for not accepting this recommendation was that their investigating officers would not normally contact third parties to discuss aspects of concern and complainants were expected to submit all information that they want to be considered, including witness statements. They added that in any event such witness statements would be unlikely to impact on the original investigation outcome.

Of the 35 general recommendations made by our adjudicators, all but four were accepted by Ofsted. The recommendations which were not accepted were in fact one recommendation which had been proposed on four separate occasions, namely that, upon completion of the telephone conversation which takes place between an investigating officer and a complainant at the outset of the step 2 process, Ofsted should produce a formal written note of that conversation so that there is a clear record of the nature of the complaint that is to be investigated.

Ofsted's grounds for rejecting this recommendation are that, in their view, it would add an additional administrative burden in handling complaints which may in turn lead to delays in responses being provided. Furthermore, there is already a Step 3 process that provides an opportunity for any confusion over the scope of a complaint investigation to be considered.

The role of ICASO is to provide advice and recommendations to improve Ofsted's complaints handling practice but we acknowledge that ultimately it is for Ofsted to adopt procedures that work best for its organisation.

OFSTED'S COMPLAINTS PROCESS

This is a summary of Ofsted's complaints process. Fuller guidance notes on how to make a complaint about Ofsted's staff or service are available on its website. There is a separate procedure for making complaints to Ofsted about the provisions and institutions that Ofsted inspects and regulates.

Ofsted's definition of a complaint is any expression of dissatisfaction about its actions that needs a response. Ofsted takes complaints very seriously and does what it can to resolve the issue. Ofsted view them as an important way of improving what it does. Complaints tell it about things that worked less well and this feedback supports self-evaluation and improvements in the way Ofsted works with people and conducts its business.

STEP Resolving concerns quickly

1

Ofsted expects that in the first instance all complaints about its work will be raised, wherever possible, directly with the individuals concerned as soon as these arise. This provides an opportunity for all parties to resolve the matter quickly. If a concern cannot be resolved immediately, the complainant should ask to speak with a manager to ensure that their concerns are considered and resolved promptly.

If a concern is about an Ofsted inspection or inspector, this should be raised with the lead inspector as soon as possible during the inspection visit. This includes concerns about the inspection process, how the inspection is being conducted, or the inspectors' judgements. If a complainant feels unable to raise concerns directly with the lead inspector during the inspection, the complainant can telephone Ofsted's national helpline and request to speak with the inspection service provider.

There is a further opportunity to raise concerns about the accuracy of an inspection report as part of a provider's response to the factual accuracy check of the draft. Concerns about the factual accuracy of a report will be considered as part of this quality assurance process prior to the finalised report being published. If considered necessary, a reviewed draft copy is sent to providers for a final factual accuracy check.

Ofsted recognises that from time to time, a complainant may choose to escalate their concerns to Step 2 of this policy without following Step 1.

STEP 2 Making a formal complaint

2

If concerns about an inspection or other area of Ofsted's work have not been resolved at Step 1, a formal complaint can be raised under Step 2 of this complaints policy.

Complaints should be submitted to Ofsted within 10 working days of the incident of concern - in the case of concerns about inspections this should be no more than 10 working days following the publication of the report. Complaints sent after this period would not normally be considered, as they would be deemed 'out of time'.

Ofsted's complaint process sits outside of other procedures regarding the provision of information held by Ofsted under the Freedom of Information Act 2000 or Data Protection Act 1998.

Ofsted will not normally suspend its investigation of a complaint or disclose any inspection evidence ahead of or during a complaint investigation.

Ofsted will not normally withhold publication of an inspection report or withdraw a published inspection report while it investigates complaints unless there are exceptional circumstances. This is because Her Majesty's Chief Inspector has a duty to report the findings of an inspection or investigation on its completion. It is also important for users of the inspected provision, who are aware that an inspection has taken place, to be informed about the findings of the inspection within the published timescales.

Where a complaint is about an inspection where a school is judged to have serious weaknesses or to require special measures, these judgements are not reconsidered under Step 2 of this policy. After the inspection, all such judgements are always subject to moderation procedures prior to authorisation of the judgement by Her Majesty's Chief Inspector. The school contributes to this moderation process and may comment on the inspection findings prior to publication of the report. The moderation of the judgements and consideration of any comments received from the school is undertaken by Her Majesty's Inspectors who are independent of the inspection. However, any complaints about inspector conduct and inspection process are considered under Step 2 of this policy. Providers can request a review of the moderation of judgements process under Step 3 of this policy.

As part of all complaint investigations, the investigating officer contacts the complainant by telephone to discuss the concerns and to establish if any, or all, aspects can be resolved quickly. Investigating officers will confirm to complainants the agreed main areas of complaint that will be subject to thorough investigation.

No additional documentation received after the submission of the complaint would normally be considered. Written responses are provided for all complaints investigated at Step 2.

Responses may include reference to inspection evidence as appropriate to explain inspection outcomes. On occasions, where the evidence is inconclusive because of differing opinions that cannot reasonably be resolved through independent corroboration, the outcome will be recorded as 'no decision could be reached'.

Where multiple complaints are received about the same incident or issue of concern, Ofsted may choose to undertake a single investigation covering a similar complaint from different individuals. This would lead to a single investigation response which would be communicated to all complainants.

A written response is sent to the complainant as soon as is practicable and normally within 30 working days of the date of receipt. The complaint response will include an explanation of any steps that Ofsted will take as a result of the investigation.

STEP 3 Requesting an internal review

3

If a complainant is dissatisfied with the way their complaint has been handled, a review of the complaint process can be requested using an online form. This should be submitted within 15 working days of the date of the response to the original complaint.

The review will consider whether Ofsted's policy and procedures on handling complaints were followed correctly to address the complaint. The review will be based on available information from the original investigation. No new concerns or evidence will normally be considered as part of this review.

The internal review is carried out by a senior manager in Ofsted with no previous involvement in the investigation of the complaint and so is independent of the original investigation outcomes. Based on available evidence, the reviewing officer will come to a final view on whether or not the original complaint was investigated fairly and properly in line with Ofsted's published policy. Ofsted provides a written response as soon as is practicable and normally within 30 working days of the receipt of a request for an internal review.

If a complainant remains dissatisfied with the responses Ofsted has provided, an external review can be requested from the ICASO. This must be done within three months from the date of the response letter following an internal review by Ofsted.

ABOUT ICASO

Remit

The ICASO is entirely independent of Ofsted and our contract for this service is with the Department for Education. The service is available to anyone who has previously made a complaint to Ofsted and is dissatisfied with the response.

We can investigate the manner in which Ofsted has dealt with a complaint, and we can provide advice and recommendations to improve Ofsted's systems and practices for dealing with complaints. These may include methods for addressing failings particular to a complaint or generally to improve complaint handling procedures.

The ICASO adjudicators can investigate complaints into:

- alleged failure to follow procedures;
- alleged failure to respond in a timely manner;
- alleged discrimination;
- alleged discourtesy;
- alleged failure to apologise or accept mistakes; and
- inspector/staff conduct.

We cannot investigate complaints into issues relating to government policy or legislation; or issues where there are clear rights of appeal through a Court or Tribunal.

Powers

The ICASO cannot overturn individual Ofsted inspectors' professional judgements, nor can we award any financial damages or compensation.

Our recommendations are not binding upon Ofsted. However, if Ofsted decides not to comply with any recommendation, it must state publicly the reasons for doing so.

The procedure

The ICASO can only look at complaints which have first been through all stages of the complaints review process operated by Ofsted. Applications to the ICASO must be made within three months of the internal review outcome.

People may contact the ICASO by telephone, e-mail or letter, but wherever possible we ask them to complete a formal application form to begin the process. The application form asks them to set out full details of their complaint and also that they supply us with all supporting information.

Upon receipt of an application, the ICASO administrator will contact Ofsted to ensure that the complainant has exhausted the internal process and the application to the ICASO has been submitted within the deadline set. Once this confirmation is received, an ICASO Adjudicator will be appointed by the ICASO administrator within 48 hours and details of the appointment will be confirmed to both Ofsted and the complainant.

Our initial contact with Ofsted will include a copy of the application and a request that Ofsted supply a summary of what has happened so far in the complaint process within 21 working days.

The Ofsted summary will be sent to the ICASO Adjudicator who will send this to the complainant. The complainant will then be given five working days to submit any final comments on the Ofsted summary. Comments must be limited to observations about the summary and cannot include any new information or re-argument of the case.

Upon receipt of the comments, if any, the ICASO Adjudicator will consider all documentation and in doing so decide if further information is required from the parties.

The ICASO Adjudicator will issue brief written recommendations and these will be sent to both Ofsted and the complainant within 21 working days of the ICASO Adjudicator being in receipt of all information.

Further appeal

Complainants who remain dissatisfied may ask their Member of Parliament to refer the matter to the Parliamentary and Health Service Ombudsman for further review. Further details of the Ombudsman's work are available at www.ombudsman.org.uk.

Provider organisation

ICASO is run by CEDR, the Centre for Effective Dispute Resolution, who were initially appointed in 2009, and then re-appointed in 2012 to provide the service for another term.

CEDR is an independent, non-profit organisation with a mission to cut the cost of conflict and create choice and capability in dispute prevention and resolution. CEDR has helped with more than 30,000 disputes since its founding in 1990.

It operates a number of mediation and adjudicative processes for local and national government, and for other public sector parties, as well as those in the commercial sectors. It also provides training and consultancy in mediation, conflict management and negotiations skills.

The ICASO adjudication team is:

- Dr Karl Mackie CBE (Chief Adjudicator)
- Joanna Cavell
- Eisei Higashi
- Abigail Jennings
- Graham Massie
- Justine Mensa-Bonsu
- Uju Obi



Independent Complaints Adjudication Service for Ofsted
CEDR, 70 Fleet Street, London EC4Y 1EU Email: info@icaso.co.uk