



## ANNUAL REPORT 2015

# Independent Complaints Adjudication Service for Ofsted



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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 2015 to 31 December 2015. This is our sixth 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.



In presenting this report, I am aware that in September 2015 Ofsted launched far-reaching changes to the way it conducts inspections. There have also been changes to Ofsted's inspection workforce, and to its complaints handling process, with the introduction at Step 3 of regional scrutiny committees, including external stakeholder representatives, whose role will be to consider whether Ofsted's policy and procedures on handling complaints have been followed correctly.

It is too early to tell how these changes will affect ICASO's caseload and the nature of complaints referred to us. As this year's report indicates, however, we are going forward from a strong foundation in that our adjudicators continue to see a high standard in complaint handling, with the system as a whole appearing to work well, although of course further improvement is always welcome.

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.

A handwritten signature in black ink, which appears to read 'Karl Mackie'. The signature is fluid and cursive, with a long horizontal stroke at the end.

# CASELOAD

During the period 1 January 2015 to 31 December 2015 the ICASO issued 20 reports, the lowest in any year of our operation of the service. The table below gives a breakdown of the main categories of complaints since the inception of the service.

	1 Jan 15 31 Dec 15	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
<b>EARLY YEARS AND CHILDCARE</b>							
Childminders	6	13	5	2	3	4	4
Childcare on non-domestic premises	5	25	16	8	13	16	7
<b>CHILDREN'S SOCIAL CARE</b>							
Children's homes	0	1	1	1	3	1	2
Fostering service	0	0	0	3	1	1	1
<b>SCHOOLS</b>							
Independent schools	1	2	1	3	0	2	1
Primary schools	2	10	5	8	4	8	11
Secondary schools	3	5	2	2	2	4	2
Other	2	1	4	2	0	0	0
<b>LEARNING AND SKILLS</b>							
Further education colleges	1	0	2	2	0	1	3
Work-based learning providers	0	0	1	0	0	1	0
<b>TOTAL</b>	<b>20</b>	<b>57</b>	<b>37</b>	<b>31</b>	<b>26</b>	<b>38</b>	<b>31</b>

Although it appeared from last year's report that our activity was steadily increasing, this now appears to have been a temporary phenomenon, and in fact the number of reports we issue has been steadily declining throughout late 2014 and all of 2015. We do not have sufficient direct evidence that might enable us to attribute this pattern to any particular cause. Clearly, however, the number of cases referred to ICASO is still very small in the context of Ofsted's overall workload.

The largest proportion of complaints tends to relate to Early Years and Childcare, but this is to be expected given that Ofsted inspects a higher number of childcare providers than other settings.

As with last year, only a very small proportion (under 10%) of 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).

## 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 the 20 cases on which we reported this year, nine included a complaint about the judgement or other statements contained within the inspection report.

These are not 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. What we have done, however, is consider whether those complaints were properly addressed during the course of Ofsted's own complaints processes.

We have also identified allegations about shortcomings in Ofsted's policies as a new heading of complaint this year. Most of these very clearly touch upon issues of professional judgement (such as the quality of the selection and training of Ofsted inspectors, or the implications upon individual inspection judgements where serious complaints were raised about an inspector) and are therefore regarded as being outside our remit. Again, however, we have considered Ofsted's responses to such complaints.

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

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

### There can be several grounds of complaint in any given case

For the first time this year there were three cases which included direct or indirect allegations of discrimination and breaches of equality policy and legislation by Ofsted. We have looked very closely at how these allegations were responded to by Ofsted's complaints reviewers, and in one case we recommended that Ofsted provide a fuller explanation to a complainant of how it took account of her disability related needs in interpreting the requirements of the Early Years Foundation Stage (EYFS) statutory framework relating to developing children's skills in spoken English. We made no recommendations in relation to the other allegations of discrimination, all of which we found to have been appropriately addressed by the Ofsted complaints process.

As with last year, the largest heading of complaint is about alleged failures in the complaint investigation process. It is important to emphasise that this figure does not indicate a particular concern in this area, but rather it suggests that, following a clarification of Ofsted's complaints handling policy in April 2013, complainants now appreciate that they can only come to ICASO once Ofsted's internal processes are exhausted. This does not appear to prevent them from still 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

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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 20 cases on which we reported, we did not encounter any serious failings.

In five 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 15 complaints on which we did make recommendations, all had case-specific recommended actions, whilst in seven instances we also suggested general procedural improvements.

### Case specific recommendations

Within the 15 complaints on which we made case-specific recommendations, our adjudicators made a total of 28 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 offers 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 of the 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.

## General recommendations

Our adjudicators also made 13 more general recommendations. It is important to note that there is some duplication within this figure because our adjudicators work on a case-by-case basis and will put forward whatever general recommendations they feel may be appropriate even if they are aware that a similar recommendation has already been made by one of their colleagues on a previous case.

Many of our general recommendations reflected our case-specific findings and recommendations by highlighting the need for constant vigilance to ensure that the complaints investigation process addresses all of the concerns raised by a complainant.

This year we also made a number of general recommendations relating to the intake of cases into Ofsted's formal complaints handling process, and the signposting of stages thereafter:

- There were two instances in which complainants initially made contact with other departments (rather than Ofsted's complaints team) and this led to subsequent uncertainty about whether complaints were being addressed on a formal or informal basis. Our recommendations that procedures should be clarified in this respect were accepted by Ofsted, and as part of the updated complaints procedure, published in September 2015, it is now made clear that, in order to raise a formal complaint with Ofsted, this must be done by way of an online complaints form available on Ofsted's website.
- There were three instances in which our adjudicators felt that Ofsted's complaints handlers could have been clearer in the way that they sign-posted complainants to the next stage in the process, for example by providing complainants with specific contact information about ICASO and our role, when appropriate, rather than simply referring them back to the complaints procedure on Ofsted's website.

We recognise in both of the above situations that it is far more convenient and potentially more reliable, from Ofsted's perspective, if communications with complainants can be channelled through its website, and this is the route that Ofsted wishes to pursue. Our adjudicators believe, however, that there will nevertheless be occasions on which more direct communication is required, particularly with individuals who do not have or are not in a position to use such internet communications. We will, therefore monitor the consequences of this approach in future complaint reviews.

# 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, or occasionally when he was unavailable, Ofsted's Chief Operating Officer, Matthew Coffey. 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 15 31 Dec 15	1 Jan 14 31 Dec 14	1 Jan 13 31 Dec 13
		<b>TOTAL</b>	<b>TOTAL</b>
Reports with no recommendations required	5	25	19
	<b>20</b>	<b>57</b>	<b>37</b>
Reports issued containing recommendations	15	32	16
Case-specific recommendations made	28	47	30
General recommendations made	13	35	18
	<b>41</b>	<b>82</b>	<b>48</b>
Case-specific recommendations accepted	28	46	30
General recommendations accepted	12	31	14
	<b>40</b>	<b>77</b>	<b>44</b>

Of the 28 individual case-specific recommendations made by our adjudicators, all were accepted by Ofsted. Of the 13 general recommendations made by our adjudicators, all but one were accepted by Ofsted.

The one recommendation which was not accepted arose in a case in which a complainant submitted a formal complaint but then indicated a preparedness to engage more informally with Ofsted in order to attempt to reach a satisfactory resolution. Unfortunately this later led to some uncertainty about the nature of the process, with the result that the stipulated timescales of the formal complaints process were not met. Our adjudicator took the view that, once a formal complaint had been made, the process set out in the complaints procedure should have been set in motion. However, in the context of the particular case on which this issue arose, Ofsted took the view that a more pragmatic and effective approach would be to attempt informal resolution first and then to engage the formal process only if it was required.

More generally, Ofsted preferred to maintain the flexibility of being able to exercise its discretion in any future cases as to whether or not to fully engage the formal aspect of the process and, accordingly, our adjudicator's recommendation of more rigour was not accepted. 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. In this instance, there is a balance to be made between upholding the formality of the complaints process and engaging in whatever dialogue is helpful to achieve resolution of a complaint; and we have no difficulty with Ofsted's preference for a more flexible approach, provided that it is well managed and does not lead to the uncertainty that arose in this particular instance.

# OFSTED'S COMPLAINTS PROCESS

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This is a summary of Ofsted's complaints process, as updated from September 2015. 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 a school or childminder.

Ofsted's definition of a complaint is any expression of dissatisfaction about its actions that requires an investigation. Ofsted takes complaints very seriously and does what it can to resolve the issue. However, Ofsted states that it will not change its inspection judgements simply because they are disappointing to the provider or user of a service. Learning is taken from complaints to improve the way Ofsted works and how its staff carry out their roles.

## STEP Resolving concerns quickly

### 1

Ofsted expects that in the first instance all complaints about its work will be raised, wherever possible, as soon as they arise and directly with the individuals involved. This provides an opportunity for all parties to clarify any misunderstanding or to resolve matters of concern quickly and informally.

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 any concern about the inspection process, how the inspection is being conducted, or the provisional inspection judgements. In most cases, concerns can be considered and resolved before the inspection is completed.

If a concern cannot be resolved directly with the individuals involved, the complainant should ask to speak to a manager about it.

## 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 the complaints procedure.

Complaints should be submitted to Ofsted as soon as possible and, in any event, no later than 10 working days following 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. Ofsted considers a 'working day' to be any weekday other than a public holiday, rather than the days on which an inspected provider operates. Complaints sent after the 10 working day period will not normally be considered, as they would be deemed 'out of time'. This is to ensure that concerns can be investigated as soon as possible.

For Ofsted to consider a complaint:

- concerns must be submitted using the online complaints form available on Ofsted's website at: [www.gov.uk/government/organisations/ofsted/about/complaints-procedure](http://www.gov.uk/government/organisations/ofsted/about/complaints-procedure)

This form enables concerns to be set out clearly and enables Ofsted to effectively handle complaints

- complainants must provide a concise account of their concerns, details of any actions already taken to resolve these, and what they expect should happen as a result of their complaint
- complainants must provide contact details and indicate their availability to enable an investigating officer to make contact as part of Ofsted's investigation process.

Complainants will receive an automated response when they submit an online complaints form. They will then receive a formal acknowledgement from Ofsted to confirm when the investigation of their complaint will be completed and who to contact if they have any queries.

Ofsted will not normally investigate a complaint about an inspection or event that is received from a third party not directly linked to the inspected provision; for example, a parent or other user of the service. This is for reasons of confidentiality as Ofsted would not provide any further explanation of the inspection findings to a third party, other than what is already in the published inspection report. For this reason, a third party should raise any queries about an inspection directly with the inspected provision. Those involved in the inspection are best placed to explain the inspection process, the findings of the inspectors and the action that the provision intends to take to address these.

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 in most inspection remits Her Majesty's Chief Inspector has a duty to report the findings of an inspection or investigation on its completion. There is a public interest in the prompt publication of reports as it is important for users or prospective 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. A challenge to the inspection process or disagreement with the inspection findings alone would not normally be considered an exceptional circumstance.

Where a complaint is about an inspection at which a school is judged to have serious weaknesses or to require special measures, these judgements will not be reconsidered under Step 2 of this policy. This is because all such judgements are subject to extended quality assurance procedures prior to authorisation of the judgement on behalf of Her Majesty's Chief Inspector. The school contributes to this process and may comment on the inspection findings prior to publication of the report. The scrutiny 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, once the report has been finalised, any complaints about inspector conduct or the inspection process can be considered under Step 2 of this policy. Schools can request a review of the process of confirming the inspection judgements under Step 3 of this policy after completion of the Step 2 complaint investigation.

An investigating officer will contact a complainant by telephone to discuss their concerns and to establish if any, or all, aspects of their complaint can be resolved quickly. Wherever possible, Ofsted will attempt to resolve complaints through professional dialogue as part of this telephone discussion. Investigating officers will confirm to complainants the agreed main areas of their complaint that will be subject to investigation.

When carrying out the investigation, the investigating officer will consider the information that a complainant has submitted and the issues raised. In the case of complaints about inspections, this will include, as appropriate, a review of the inspection evidence and responses from the inspection team to the concerns raised. Additional documentation received after the submission of the complaint will not normally be considered.

Written responses will be provided for all complaints investigated. The response will provide a conclusion on whether or not each main aspect of the complaint has been upheld and may link together similar issues for conciseness and clarity. On occasions, it may not be possible to reach a firm conclusion where there are conflicting accounts and it is not possible to independently verify either of them. For an account to be considered independent, this must be from someone not involved in the issue of concern or inspection. In these cases, the outcome will be recorded as 'no decision could be reached' and the reasons for not reaching a conclusion will be explained.

Ofsted's complaints process sits outside of the other procedures for disclosure of information held by Ofsted under the Freedom of Information Act 2000 or Data Protection Act 1998. Details of these procedures are available on its website at: [www.gov.uk/government/organisations/ofsted](http://www.gov.uk/government/organisations/ofsted). Ofsted will not normally suspend a complaint investigation while such a request for information is considered, or make a formal disclosure of any inspection evidence ahead of or during a complaint investigation. However, complaint responses will include reference to inspection evidence when appropriate to explain or clarify inspection outcomes.

Ofsted's complaints process sits outside the procedures for appeals to be made to the First-tier Tribunal (Health, Education and Social Care Chamber) against registration decisions made by Ofsted. Details of these procedures are available on its website at: <https://www.gov.uk/government/collections/ofsteds-compliance-investigation-and-enforcement-handbooks>. Ofsted will not normally carry out a complaint investigation while an appeal to the Tribunal is ongoing and will not investigate issues that have previously been adjudicated by a Tribunal.

Ofsted aims to respond to all complaints investigated under Step 2 of this policy as quickly as possible. A written response will be sent to a complainant as soon as is practicable and normally within 30 working days of the date the complaint was received by Ofsted. The response will include an explanation of any steps that Ofsted will take as a result of the investigation outcome.

## STEP 3 Requesting an internal review

### 3

If a complainant is dissatisfied with the way in which their complaint has been handled, they can request an internal review. This must be submitted within 15 working days of the date of the response to the original complaint.

For Ofsted to consider a request for an internal review:

- the request must be submitted using the online internal review form available on Ofsted's website at: [www.gov.uk/government/organisations/ofsted/about/complaints-procedure](http://www.gov.uk/government/organisations/ofsted/about/complaints-procedure)

This form enables complainants to set out their concerns about the original investigation clearly and enables Ofsted to effectively undertake the review

- complainants must be clear on which parts of the original investigation and response they want Ofsted to review and why.

Scrutiny committees, including external stakeholder representatives, will meet regionally to consider whether Ofsted's policy and procedures on handling complaints were followed correctly to address complainants' original concerns. The review will be based on available information from the original investigation and is unlikely to require further telephone contact with a complainant to discuss their concerns. New concerns that are raised or new evidence presented will not normally be considered as part of this review.

If a complaint is about an inspection of a school judged to have serious weaknesses or to require special measures, requests for a review of the process of confirming the inspection judgements will be carried out under Step 3 of this policy.

The review outcome will be a final decision on whether or not the original complaint was investigated fairly and properly in line with Ofsted's published policy.

Ofsted aims to provide a written response as soon as is practicable and normally within 30 working days of the date a request for an internal review was received by Ofsted. The response will include an explanation of any steps that Ofsted will take as a result of the internal review.

This is the final step within Ofsted's internal complaints handling procedure. Following the completion of an internal review, further investigations will not normally be conducted into correspondence that may subsequently be submitted on any aspect of a complaint.

## Independent and external review of Ofsted's complaint handling

Ofsted aims to resolve all complaints satisfactorily. However, if complainants remain dissatisfied with the responses they receive, they can request an external review of the handling of their complaint from the Independent Complaints Adjudication Service for Ofsted. This must be done within three months from the date of the internal review response letter.

The role of the Adjudicator is to investigate the manner in which Ofsted has dealt with a complaint and to provide advice to improve Ofsted's complaints handling. Details of the process for submitting concerns to the Adjudicator can be found on our website at: [www.ofstedadjudicationservice.co.uk](http://www.ofstedadjudicationservice.co.uk). Please note that the Adjudicator cannot overturn the inspection judgements or decisions made by Ofsted.

If complainants are not satisfied with the outcome of the review by the Adjudicator, they can refer their concerns to the Parliamentary and Health Service Ombudsman. Details of the Ombudsman are available on their website at: [www.ombudsman.org.uk](http://www.ombudsman.org.uk).

# ABOUT ICASO

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## 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.

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. 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](http://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 2015 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. Since its founding in 1990, CEDR has worked with 30,000 parties in commercial disputes and helped resolve over 100,000 consumer complaints across 30 sectors.

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

## Key performance indicators

CEDR's contract with the Department for Education contains a number of Key Performance Indicators relating to its operation of ICASO; these cover such matters as our speed of response to correspondence and enquiries, and the length of time taken by our Adjudicators to issue their report once all relevant information has been provided to them. In relation to 2015, CEDR has satisfactorily complied with all of these targets.



**Independent Complaints Adjudication Service for Ofsted**  
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