

# The Independent Complaints Adjudication Service for Ofsted

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Annual Report

April 2012 to December 2012



## Introduction

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It is with pleasure that I report CEDR has once again been appointed to provide the Independent Complaints Adjudication Service for Ofsted, following a competitive tender by the Department for Education. This is the annual report of the Independent Complaints Adjudication Service for Ofsted (ICASO) and covers the period from 1 April 2012 to 31 December 2012. Future reports will cover the calendar year, the first of which will cover the period 1 January 2013 to 31 December 2013.

The role of the ICASO is to review the way in which Ofsted has responded to complaints made by members of the public who have been affected by the actions or decisions of Ofsted, provided that the complainant has first exhausted Ofsted's internal complaints procedure. The service is completely independent of Ofsted. Whilst we are unable to overturn inspection judgements or decisions made by Ofsted, we offer an independent view on how complaints have been handled by Ofsted, and we provide recommendations, advice and guidance to Ofsted in order to engender best practice in complaint handling procedures. It is pleasing to note that, as was the case last year, a large majority of our recommendations have been accepted outright and implemented by Ofsted.

In our report covering the period 1 April 2011 to 31 March 2012, we found that there had been a marked improvement in the complaint handling procedure from the previous reporting period, covered in our 2011 annual report. We are pleased to report that Ofsted has maintained the high quality service it was found to have provided in our last report.

In April 2013, Ofsted completed a review of the arrangements for the handling and investigation of concerns about its work and about the conduct of its staff, as well as complaints received about inspected institutions. It will be important to see how the proposed changes resulting from the outcome of the consultation and review will affect Ofsted's overall complaints procedure, which will be considered in our next report.

A handwritten signature in black ink, appearing to read 'Karl Mackie', written in a cursive style.

Dr Karl Mackie CBE

*Chief Adjudicator*

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## Facts and figures

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### ***Caseload***

Between 1 April 2012 and 31 December 2012, the ICASO issued 31 reports, compared to 26 issued in the previous twelve month reporting period. The table below gives a breakdown of the main categories of complaints since CEDR was appointed to provide the service.

	<b>1 Apr 12 to 31 Dec 12</b>	<b>1 Apr 11 to 31 Mar 12</b>	<b>1 Apr 10 to 31 Mar 11</b>	<b>1 Jan 09 to 31 Mar 10</b>
<b>Early years and childcare</b>				
Childminders	2	3	4	4
Childcare on non- domestic premises	8	13	16	7
<b>Children's social care</b>				
Children's homes	1	3	1	2
Fostering service	3	1	1	1
<b>Schools</b>				
Independent schools	3	0	2	1
Primary schools	8	4	8	11
Secondary schools	2	2	4	2
Other	2	0	0	0
<b>Learning and skills</b>				
Further education colleges	2	0	1	3
Work-based learning providers	0	0	1	0
<b>TOTAL</b>	<b>31</b>	<b>26</b>	<b>38</b>	<b>31</b>

The number of complaints per quarter has varied. However, there has not been any noticeable overall increase since we were first appointed to provide the service. To put these numbers into context, in the Ofsted Annual Report and Accounts 2011-12 it was reported that Ofsted received and dealt with 1,828 complaints about Ofsted. It was also reported that the total number of complaints received that year represented 2.6% of the inspection and regulatory visits undertaken in 2011-12.

In approximately 10% of cases completed within this reporting period, complaints were made by individual parents of children attending a particular school or provider, which is lower than the 20% of complaints made by parents out of all complaints recorded in the previous year. The balance of complaints came from inspected institutions, or their representatives (i.e. owner, governing body or headteacher).

The table above indicates that primary schools and childcare providers raise the most complaints and that this has remained unchanged, although it should be noted that Ofsted inspects a higher number of primary schools and childcare providers than other settings. In 83% of cases we received from representatives of early years, childcare providers and primary schools, concerns were raised about an inspection.

In our first report published for 2011, we noted that common themes in the complaints that were brought to ICASO related to the conduct of Ofsted inspectors during a visit to a setting or the performance of providers, which often accompanied wider complaints about the overall outcome of an inspection. It was also noted that Ofsted had changed their approach to resolving situations where there were differing accounts of what took place during an inspection visit, and that they had shown a greater willingness to issue apologies without being prompted to do so.

In our previous report published for 2012, it was noted that there was a far lower amount of recommendations made to Ofsted by our adjudicators, compared to the previous year. This was attributed to Ofsted having implemented so many of the recommendations that had previously been made. The recommendations that were reported in our previous report related more to the clarification and refinement of existing Ofsted policies and procedures, rather than comprehensive suggestions for change.

There remains a significant proportion of complainants who either proceed to the ICASO knowing that we are not in a position to investigate complaints which are outside our remit, or simply do not understand the purpose of the service. The most common issue which arises is where a complainant is unhappy with an inspection grade awarded.

### ***Complaint referrals***

Of the cases considered in this period, one provider, under the category of Other Schools, engaged legal representation to manage its complaint and in another case, a Member of Parliament contacted the ICASO on behalf of the owner of a children's home. The complainant may, at their discretion, obtain legal representation at any stage of the complaints procedure. However, in the vast majority of cases which are directly referred to us by registered providers, inspected institutions, their representatives or parents, it is not usual practice nor a requisite of the service. The

service is intended to be equally accessible to all; from individuals to large institutions who may have easier access to and resources for legal advice.

If a complainant remains unhappy with the outcome of the complaints procedure after the adjudicator has issued their report under this service, they may ask their Member of Parliament to refer their complaint to the Parliamentary Ombudsman. Although the ICASO has received case referrals from Members of Parliament acting on behalf of their constituents in the past, this statutory requirement only applies to cases which are referred to the Parliamentary Ombudsman, and does not apply to complaints which are referred directly to the ICASO.

## Types of complaints

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<b>Complaint Heading</b>	<b>*Number of times raised 1 Apr 2012 - 31 Dec 2012</b>	<b>*Number of times raised 1 Apr 2011 - 31 Mar 2012</b>
<b>Alleged failure to follow procedures</b>	12	10
<b>Alleged failure to respond in a timely manner</b>	4	5
<b>Alleged discourtesy</b>	0	3
<b>Alleged Failure to apologise or accept mistakes</b>	4	3
<b>Inspector/staff conduct</b>	15	18
<b>Outside remit of the ICASO</b>	18	19

*\*There can be several grounds of complaint in any given case*

As shown above, a significant number of issues raised were outside the remit of the ICASO. The vast majority of issues were in relation to the outcome of an inspection. It is not within our remit to review the professional judgements or decisions made by Ofsted. There is a separate process for this within Ofsted. As identified in our last annual report, a significant proportion of complainants who enter into the ICASO stage of the complaints procedure appear to do so either without a clear

understanding of the remit of the ICASO or choose to proceed with their complaint knowing that we are not in a position to investigate such matters.

In the majority of cases that related to an inspection conducted by Ofsted, concerns were also raised about the quality of an inspection report or inspector conduct. Of the 18 cases that were outside the remit of the ICASO, 3 cases also raised issues regarding the quality of an inspection report; and 5 of the 18 cases also raised issues about the quality of the inspection, challenging the evidence relied upon by the inspector.

Other common issues raised by complainants during this reporting period related to alleged failures to follow procedures or the conduct of the inspector. Out of the 12 complaints categorised as 'alleged failure to follow procedures', 8 cases were specifically in relation to claims that Ofsted had failed to provide a full response which addressed all of the issues raised. The number of cases involving issues of an alleged failure to respond in a timely manner or failure to apologise or accept mistakes, remained largely the same as the previous year.

## Findings

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In our last report, we found that there had been a marked improvement in the complaints handling procedure from the previous reporting period. We are pleased to report that Ofsted has maintained the high quality service it was found to have provided in our last report.

As was the case in the previous reporting period, a significant number of cases that have been referred to the ICASO during this reporting period have been based around dissatisfaction with inspection grades received by the various setting types. Often in these cases, issues have also been raised about the conduct of the inspector, and the quality of the inspection that took place.

There is always a risk that issues could be either missed or not fully addressed when a complaint investigator groups issues together or narrows them down in an effort to deal with them in a more efficient manner. In 58% of cases where issues with the outcome and quality of the inspection were raised, adjudicators recommended that further clarification be provided to the complainant.

## Recommendations

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During this reporting period, our adjudicators made a total of 61 recommendations: 20 related to specific cases they handled, and the remaining 41 related to Ofsted procedures generally. In a total of 5 cases, no recommendations were made at all, as the adjudicators felt that the case had been dealt with appropriately by Ofsted and they did not have any general recommendations for future improvement.

The 20 case-specific recommendations may be further broken down as follows:

- On five occasions, the adjudicators recommended that Ofsted issue an apology to the complainant.
- On thirteen occasions, the adjudicators recommended that Ofsted provide further clarification in writing to the complainant regarding particular points raised at various stages of the complaints procedure. The previous responses were either unclear, or simply did not address all of the issues raised by the complainant. In most cases where the issue was not addressed at all, this was due to an oversimplification of the original complaint, or through an attempt to group the issues when responding in an effort to deal with them in a more efficient manner.
- In one case, the adjudicator recommended that Ofsted give serious consideration to further investigate allegations raised by the complainant.
- In one case, the adjudicator recommended that if Ofsted had not already done so, it should feedback the finding of the second stage response to the first stage investigator.

The majority of the 41 general recommendations that were made related to clarifying and further improving Ofsted's complaint handling procedures. Many of the recommendations were made in relation to providing clear explanations which responded specifically to all issues raised, and referring to the evidence provided by the complainant. Other recommendations made included:

- serious consideration in making further investigations, if only to provide full feedback to the lead inspector
- if a complaint changes in scope during a phone call, this should be outlined in the investigation response letter
- Ofsted should retain evidence showing that emails have been sent until the complainant has exhausted all stages of the complaints procedure
- Ofsted should consider very carefully the appropriate route for complainants
- where there is evidence to show that one of the parties has sought corroborative evidence from third parties, Ofsted should request the evidence in question
- publish guidance in relation to its assessments of conflicts of interest in the inspection of Children's Homes
- where an allegation of a conflict of interest has been made, until an investigation into the matter has been concluded it would be more appropriate for a member of staff with no prior involvement to contact the provider
- consider in its formal framework use of an initial telephone call with the complainant, including a question to assess a complainant's understanding of the complaints process

- clarify its policy with regard to the setting of actions following an inspection
- put measures in place to ensure that information pertaining to an ongoing complaint is communicated directly and immediately to the person responsible for dealing with the matter, so that any response issued is accurate and based upon the most up to date information available
- Ofsted should clarify the meaning of the term 'early scrutiny' in its published inspection guidelines
- where complaints have been revised or condensed during a phone call, it would be helpful if Ofsted could provide its notes or records from the call along with its responses
- where a complainant has provided written evidence it should be acknowledged, and reference made to how it was used to assist in Ofsted's investigation and review of the complainant's concerns
- Ofsted considers reviewing the types of evidence it uses to investigate allegations of misconduct, in order to minimise the instances where no conclusions can be drawn
- it would be useful to have guidelines which explain the types of evidence which are viewed as independent when investigating complaints
- amend its complaints procedure to explain what happens when further correspondence is received from a complainant after the complaint has been referred to the ICASO
- put additional measures in place to ensure that anyone involved in or affected by an inspection is made aware of the process of raising concerns about an inspection right away, well in advance of an inspection.

## Ofsted's response

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We are pleased to report that virtually every one of our adjudication reports was responded to personally by Her Majesty's Chief Inspector, Sir Michael Wilshaw. On 3 occasions, a response was issued by the Deputy Chief Inspector, John Goldup. Every response included a specific response to each and every recommendation put forward by our Adjudicators.

In this reporting period, 45 of the 61 recommendations, amounting to 73%, were accepted outright by Ofsted. Although the percentage of accepted recommendations is less than the 82% which were accepted last year, we feel that this is still indicative of a continued commitment by Ofsted to improve its service.

In 3 cases, Ofsted agreed with the adjudicator's recommendations in principle, but did not accept them in full as a result of additional factors which were explained in detail within each response. There were 13 cases in which Ofsted disagreed with our recommendations.

There are three main reasons as to why Ofsted does not accept a recommendation. Firstly, Ofsted may already have a process in place which it considers to be fit for purpose. For example, its decision to refer to complaints based on the nature of the setting rather than the nature of the complaint. Secondly, Ofsted may be unable to implement the recommendation for practical reasons. For example, where Ofsted has been asked to quote directly from a source, Ofsted advised that it is not practicable for inspectors to always quote directly from documents that are reviewed and instead normally summarise key points. Thirdly, Ofsted has already undertaken the action recommended before the adjudicator made their recommendation. The recommendations and reasons for not accepting them have been summarised below:

- In relation to the adjudicator's recommendation that Ofsted conduct a further investigation into allegations raised by the complainant, Ofsted did not accept this recommendation on the basis that its complaints procedure was already clear that investigating officers rely on information put forward by complainants in the first instance. Ofsted further outlined that it would not be practical for investigating officers to contact all third parties, nor would it be appropriate bearing in mind the aspects of concern had already been investigated at stage 2 of the complaints procedure.
- When the adjudicator recommended that the headings used in written correspondence during the complaints procedure accurately reflected the nature of the complaint, Ofsted did not accept this on the basis that complaints were referred to by the name of the setting for ease of reference, regardless of the nature of the complaint.
- Whilst it was acknowledged that Ofsted cannot contact third parties in relation to an investigation, the adjudicator recommended that where evidence had been provided to show that one of the parties had sought corroborative evidence from third parties, Ofsted should ask to see the evidence referred to. This recommendation was not accepted, as Ofsted determines whether a provider is meeting the requirements of its registration rather than investigating individual concerns. While third party evidence may add to the information available to the inspector, Ofsted submitted that third party evidence is unlikely to carry as much weight as first-hand evidence. Whilst Ofsted noted that it was not usual practice to request such evidence unless it related to a serious safeguarding concern for which they have a specific protocol in place, they did not rule it out altogether.
- The adjudicator recommended that Ofsted issue an apology and provide an explanation for why an inspector might have adopted a negative tone within the report, and further recommended that an apology also be issued for the demoralising effect the report had on the organisation under investigation. Ofsted did not accept the recommendation on the basis that reports must

reflect the inspection findings in a fair and balanced manner. The second stage review already found that changes in the report were necessary to ensure that this was done, and an apology had already been issued.

- The adjudicator suggested that it might be useful for Ofsted to channel all correspondence with complainants through one team to avoid confusion. Ofsted did not accept this recommendation, explaining that for the case in question, the complainant had written to Her Majesty's Chief Inspector personally and also to the national complaints team. Acknowledgements were therefore issued from both.
- When referencing a complainant's own procedure, the adjudicator recommended that Ofsted consider quoting directly from the document in question, or citing the location of the policy. Ofsted did not accept this recommendation on the basis that it is not practical for inspectors to always quote directly from documents that are reviewed, and instead inspectors normally summarise key points. They would only quote directly in cases where there was a dispute or confusion.
- As a case-specific recommendation, the adjudicator felt that Ofsted should signpost the complainant to a particular reference which was cited during the inspection. This recommendation was not accepted, as the inspector's evidence showed that this was discussed with the managers present at the visit.
- Where the complainant did not receive a response to their letter, the adjudicator recommended that Ofsted issue a written response to the complainant. Ofsted explained that on this occasion, the complainant had already contacted them and said that the complaint had already been dealt with, and that no further investigation was required. This was confirmed in writing the following day.
- Three recommendations were issued in relation to: addressing an aspect of the complaint that had not been addressed to date; the use of the provision of further details of the evidence relied on in an inspection; and the adjudicator also noted that it would have been more effective for Ofsted to have apologised at an earlier stage in the complaints process. These recommendations were not accepted on the basis that the aspect which had not been addressed had not been raised in the complaints process; there was no record of the complainant specifically asking for further details on the evidence relied upon; and that they felt that the apology had already been provided at the appropriate time, as the issue in question had not been raised right away.
- The adjudicator recommended that, where complaints are reviewed or condensed during a phone call with the complainant, it would be helpful if Ofsted could provide its notes or records from the call along with its responses. Ofsted did not accept this recommendation, as they felt that they were already meeting this underpinning principle. Ofsted noted that their

written complaint responses are already based on the issues discussed during the telephone conversation.

- The adjudicator recommended that in order to minimise the risk of notes not being available when requested at a later date, that Ofsted keeps electronic scanned records of handwritten notes taken during an inspection. Ofsted did not accept this recommendation on the basis that it was not necessary. Ofsted explained that handwritten notes can still be classified as inspection evidence, and should normally therefore be retained with the evidence base for the agreed retention period.

Adjudicators will continue to suggest improvements to Ofsted's process but acknowledge that it is up to Ofsted to find the best process for its organisation.

## Ofsted's complaints process

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Wherever possible, Ofsted encourages complainants to resolve concerns informally with the lead inspector or by contacting its helpline. In the event that a complainant remains dissatisfied, a formal two-stage process is available:

- Upon receipt of a formal complaint, a member of the National Complaints Team will assess the complaint and decide who will carry out the investigation. Investigating officers, who will have had no prior involvement in the inspection that is the subject of the complaint, will be assigned to investigate the complaint and aim to report back in writing within 20 working days.

Where a complaint is about a judgement contained within an inspection report, the Ofsted response will be moderated by an independent panel of senior inspectors who have had no prior dealing with either the inspection or the complaint investigation.

- In the event that a complainant is still not satisfied, they may contact Ofsted's Quality Assurance National Team to request a review of their complaint (referred to as a "second stage review"). This review will be carried out by a senior Ofsted manager with no previous involvement in the case. The review will consider whether the original complaint was handled fairly and properly and whether or not all matters raised were responded to fully and appropriately, based on the available evidence. If necessary, this process will include a further investigation into the complaint itself.
- Following the second stage complaint investigation, complainants have three months to refer their case to ICASO if they remain dissatisfied.

# About ICASO

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## ***Remit***

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.

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***

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***

ICASO can only look at complaints which have first been through all stages of the complaints review process operated by Ofsted.

People may contact 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.

The letter to 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.

If the ICASO Adjudicator feels that the complaint is complex or relates to a matter of public interest it will be passed to the Chief Adjudicator and the parties will be informed by the ICASO administrator.

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 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 20,000 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 comprises of:

- Dr Karl Mackie CBE (Chief Adjudicator)
- Joanna Cavell
- Andy Grossman
- Eisei Higashi

- Abigail Jennings
- Graham Massie
- Justine Mensa-Bonsu
- Uju Obi
- Gina Shim