



ANNUAL REPORT 2016

INDEPENDENT COMPLAINTS ADJUDICATION SERVICE FOR OFSTED



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INTRODUCTION

Graham Massie
Chief Operating Officer, CEDR

It is with great pleasure that I present the Annual Report of the Independent Complaints Adjudication Service for Ofsted (ICASO) for the period 1 January 2016 to 31 December 2016. This is our seventh 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 September 2015, Ofsted launched far-reaching changes to the way it conducted inspections. These included changes to Ofsted's complaints handling process, most notably through the introduction at Step 3 of regional scrutiny committees, including external stakeholder representatives, whose role is to consider whether Ofsted's policy and procedures on handling complaints have been followed correctly.

Because of lead times, these new committees will not have been involved in many of the cases that we dealt with in the early part of 2016. However I can confirm that the new system is now in place, and I recently had the opportunity to attend a scrutiny committee session to observe its workings. The meeting, chaired by a Senior HMI and including a remit-specific Ofsted inspector and an external representative (a current provider from a different region), undertook a detailed review of the work undertaken by the Step 3 reviewing officer, including consideration of the draft review response to the complainant. I was impressed not only by the thoroughness of this review, and the detailed questioning of the reviewing officer, but also by the scale of the commitment to the process. In the particular instance that I observed, the complainant was essentially seeking a re-inspection of a setting, something that could have been done relatively quickly by a fresh inspector, but I was pleased to see that the Ofsted team did not take the easy way out but instead devoted considerable time and resource to undertaking and then quality checking a thorough review of the complaint so that comprehensive feedback could be given to the complainant and any appropriate lessons learned by Ofsted.

It would perhaps be overly optimistic to believe that these new procedures will ever completely eliminate the ICASO workload, but I would certainly expect to see a continuation of the reduction that we have already seen in the number of individual recommendations arising from our work. More generally, our adjudicators continue to see a high standard in complaint handling by Ofsted, with the system as a whole appearing to work well.

Much of the credit for this success should go to the complaints handling team at Ofsted, who have been very cooperative in working with ICASO. I would also like to extend my thanks to the former Her Majesty's Chief Inspector, Sir Michael Wilshaw, for his constructive responses to our recommendations, and I am pleased to report that his successor, Amanda Spielman, has continued his practice of personally responding to every one of our adjudicator's reports. 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 2016 to 31 December 2016 the ICASO issued 21 reports, about the same as the previous year. The table below gives a breakdown of the main categories of complaints in each year since the inception of the service.

	1 Jan 16 31 Dec 16	1 Jan 15 31 Dec 15	1 Jan 14 31 Dec 14	1 Jan 13 31 Dec 13	1 Apr 12 31 Mar 13	1 Apr 11 31 Mar 12	1 Apr 10 31 Mar 11	1 Jan 09 31 Mar 10
EARLY YEARS AND CHILDCARE								
Childminders	5	6	13	5	2	3	4	4
Childcare on non-domestic premises	6	5	25	16	8	13	16	7
CHILDREN'S SOCIAL CARE								
Children's homes	1	0	1	1	1	3	1	2
Fostering service	1	0	0	0	3	1	1	1
SCHOOLS								
Independent schools	2	1	2	1	3	0	2	1
Primary schools	1	2	10	5	8	4	8	11
Secondary schools	3	3	5	2	2	2	4	2
Other	0	2	1	4	2	0	0	0
LEARNING AND SKILLS								
Further education colleges	1	1	0	2	2	0	1	3
Work-based learning providers	0	0	0	1	0	0	1	0
OTHER								
Applicant for HMI position	1	0	0	0	0	0	0	0
TOTAL	21	20	57	37	31	26	38	31

It is encouraging to note that 2016 has seen a recurrence of the 2015 experience of far fewer cases than we had seen in previous years. This appears to confirm that the improvements that Ofsted have made, including the April 2013 update in its complaints handling policy, have borne fruit after an initial upturn in activity in 2014 that we attributed at the time to better sign-posting to the ICASO service.

Overall, the number of cases referred to ICASO remains 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.

The vast majority of complaints came from representatives of inspected institutions (owner, governing body or head teacher), and only a very small proportion were raised by students or individual parents of children attending a school or provider. Ofsted will not normally investigate a complaint that is received from a third party not directly linked to the inspected provision. This is for reasons of confidentiality as Ofsted cannot provide third parties with any further explanation of findings beyond what is already in the published inspection report.

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 21 cases on which we reported this year, 13 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.

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

	1 Jan 16 31 Dec 16	1 Jan 15 31 Dec 15	1 Jan 14 31 Dec 14	1 Jan 13 31 Dec 13	1 Apr 12 31 Dec 12
Alleged failure to follow procedures	7	2	4	14	12
Alleged failure to respond in a timely manner	2	3	6	4	4
Alleged discourtesy	0	1	0	3	0
Alleged discrimination	0	3	0	0	0
Alleged failure to apologise or accept mistakes	0	0	2	8	4
Inspector/staff conduct	11	4	25	15	15
Alleged failure in complaint investigation	16	14	39	0	0

There can be several grounds of complaint in any given case

As with last year, the most frequent 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 the 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, however, appear to prevent people 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. Thus, for example, of the above-mentioned 13 cases that contained a complaint about an Ofsted professional judgement (outside our scope), nine also included a complaint that Ofsted's processes had been insufficient insofar as they had not resulted in a correction of that judgement; this potentially brings the decision within our scope, at least as far as requiring us to consider whether or not the Ofsted complaints process has been properly completed, including the provision of clear explanations for the professional judgements which were reached. Again, however, it is not our role to question those judgements.

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

In 12 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 about improving the service. From the remaining nine complaints on which we did make recommendations, all had case-specific recommended actions, whilst in two instances we also suggested general procedural improvements. It is encouraging to note that all of these figures are markedly lower than in previous years; last year we made recommendations in 15 out of 20 cases, with a total of 28 case-specific and 13 general recommendations.

Case specific recommendations

Within the nine complaints on which we made case-specific recommendations, the same issue emerged on six occasions, and is something we have commented on 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 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. In each case where this happened, Ofsted have accepted our recommendations and have written again to the complainant.

Of the remaining three cases involving case-specific recommendations, all were situations where our adjudicators felt that Ofsted's final explanation of the basis of a judgement was not as clear as it could have been, so we recommended that further clarification be provided to the complainant. Here also Ofsted have accepted our recommendations.

General recommendations

Our adjudicators also made two more general recommendations, both related to situations where our adjudicators felt that there may be a wider lesson to be learned from particular cases which might usefully be reinforced through inclusion of the issue in the next round of planned training for inspectors. In each instance, Ofsted have confirmed to us that the learnings have been fed back to its investigating and reviewing officers.

Follow up on previous years' recommendations

Although it is not part of our remit to follow up on Ofsted's responses to our recommendations in order to ensure that they are properly actioned, we do take note of whether the same general points are being made from year to year, as this might imply that appropriate remedial action is not being taken.

It is, therefore, pleasing to note that no adjudicator has felt the need to repeat the general recommendations that we made last year in relation to the intake of cases into Ofsted's formal complaints handling process, and the sign-posting of stages thereafter. This would seem to confirm that Ofsted's change to a mandatory online complaints form, introduced in September 2015, and more overt sign-posting through the web-based complaints procedure documents, has satisfactorily resolved these concerns.

We are, however, as noted above, still seeing a number of instances in which our adjudicators consider that the Ofsted complaints process has not fully or clearly addressed all of the issues that have been raised by a complainant. There has, however, been an overall reduction in the number of instances in which this issue was raised, and we anticipate that the introduction of scrutiny committees to the Step 3 process should have a marked effect in reducing this incidence even further next year.

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 up until 31 December 2016 and thereafter Amanda Spielman), or, in their occasional absence, by 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 16 31 Dec 16	1 Jan 15 31 Dec 15	1 Jan 14 31 Dec 14	1 Jan 13 31 Dec 13
Reports with no recommendations required	12	5	25	19
Reports issued containing recommendations	9	15	32	16
TOTAL REPORTS	21	20	57	37
Case-specific recommendations made	9	28	47	30
General recommendations made	2	13	35	18
TOTAL RECOMMENDATIONS MADE	11	41	82	48
Case-specific recommendations accepted	9	28	46	30
General recommendations accepted	2	12	31	14
TOTAL RECOMMENDATIONS ACCEPTED	11	40	77	44

For the first time ever, this year all of our recommendations were accepted by Ofsted.

OFSTED'S COMPLAINTS PROCESS

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 any provision that Ofsted inspects.

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

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. 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

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. 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.

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.

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.

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:

- Joanna Cavell
- Eisei Higashi
- Abigail Jennings-Mitchell
- Dr Karl Mackie CBE
- 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 2016, CEDR has satisfactorily complied with all of these targets.



Independent Complaints Adjudication Service for Ofsted
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