

ANNUAL REPORT 2011



The Independent Complaints Adjudication Service for Ofsted

### Introduction

This is the first report of the Independent Complaints Adjudication Service for Ofsted (ICASO) and covers the period from 1 April 2010 to 31 March 2011.

Although our service was launched in April 2009, by agreement with the Department for Education we did not produce a report for that first year. During this period, Ofsted's inspection and complaints handling structures went through internal reorganisations, specifically through the establishment of a National Complaints Team and a Quality Assurance National Team which deals with complaints that have been escalated to Ofsted's second stage of internal investigation. The case numbers for 2009/10 have been provided within the Facts and Figures section of this report. I note that no significant issues emerged from our work during this period, which have not since been addressed as part of Ofsted's changes or are set out elsewhere in this report.

I am pleased to report that, based on the experience of our Adjudicators over the past year, Ofsted's new complaints regime is proving effective. Certainly, my colleagues and I have been impressed by the seriousness with which complaints are taken, the thoroughness with which they are investigated and, on the whole, the clarity of Ofsted communications with complainants.

Clearly Ofsted has made considerable progress in its complaints handling systems, and I have included within this report a summary of our adjudicators' perspective of the revised procedures which were introduced in 2010 following public consultation.

This is not to say that things do not go wrong from time to time. However, to put our work into context, Ofsted's Annual Report and Accounts for 2010/11 shows that Ofsted carried out over 32,500 inspections in the year. It received and dealt with 1,480 complaints about its work, just over half of which were about inspection judgements. 191 complaints went to a second stage investigation, and 37 cases were eventually referred to us. And of those cases, we wholly or partially upheld complaints in just 4 instances, all of which related to inspections in 2009 or earlier.

This report sets out some of the emerging themes from our recommendations in the year. It is pleasing to note that a very high proportion thereof have been accepted and, in many instances, already actioned, by Ofsted.

As well as thanking Ofsted's Quality Assurance National Team for their assistance over the year, I would also like to thank my team of ICASO Adjudicators for their professionalism and hard work.

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Dr Karl Mackie CBE CHIEF ADJUDICATOR

ICASO ANNUAL REPORT 2011

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# FACTS & FIGURES

## Caseload

Between 1 April 2010 and 31 March 2011, the ICASO issued 38 reports, compared to 31 issued in the previous year. The table below gives a breakdown of the main categories of complaints:

	Year to 31 March 2011	Year to 31 March 2010	
Early years and childcare			
Childminders	4	4	
Childcare on non-domestic premises	16	7	
Children's social care			
Children's homes	1	2	
Fostering agencies	1	1	
Schools Independent schools Primary schools Secondary schools	2 8 4	1 11 2	
<b>Learning and skills</b> Further education colleges	1	3	
Work-based learning providers	1	-	
TOTAL	38	31	

In approximately 20% of each year's cases, complaints were made by individual parents of children attending a particular school or provider. The balance of complaints came from registered providers or their representatives (i.e. owner, governing body or head teacher).

#### Findings

Across the 38 cases on which we issued reports this year, our Adjudicators upheld complaints in only 3 instances. Of these:

- One related to a 2007 inspection about which Ofsted had long ago accepted there were deficiencies, leading to an agreed re-inspection. However, because Ofsted had declined to offer any financial compensation, this case was referred to ICASO even though we are unable to make financial awards because this was a prerequisite to any referral to the Parliamentary and Health Service Ombudsman.
- One related to failings by an inspector during the conduct of a 2009 inspection, which were not then adequately addressed or remedied during the subsequent complaints process.
- The third arose from a complaint from a parent of a child who suffered a broken arm in June 2009 whilst in the care of a childminder. The complaint largely related to the length of time taken by Ofsted's investigation and complaints processes.

We also partially upheld one complaint about Ofsted's delay in responding to a complaint from a work-based learning provider about its inspection.

#### Recommendations

The value of an independent complaints service is more clearly indicated by the number of recommendations that arose from our work and the extent to which they have subsequently been accepted by Ofsted.

In 2010/11, our Adjudicators made a total of 99 recommendations, of which 25 related to the specific cases and the remaining 74 to Ofsted procedures generally. The 25 case-specific recommendations may be further broken down as follows:

On 12 occasions, the Adjudicators recommended that Ofsted considers whether there were any lessons to be learned from the episode. Half of these cases arose from inspectors failing to comply with standard Ofsted procedures, and here we recommended that the individuals concerned should be spoken to and, if necessary, provided with support to improve their future performance. The remaining cases could be

attributed to human error elsewhere the system, normally in the early stages of the complaints handling process.

- On 6 occasions, we identified further information which we recommended that Ofsted should provide to the complainant. This was the area in which Ofsted most commonly disagreed with our recommendations, usually suggesting that they had already provided sufficient information.
- On 3 occasions, we recommended that Ofsted should meet with the individual complainant. Generally these were cases where our Adjudicators considered that, whether or not merited by the particular circumstances of the complaint, relations between Ofsted and the service provider had deteriorated to such an extent that it would clearly have been difficult for both sides to re-establish an effective working relationship in the future without a face-to-face discussion.

- The majority of our remaining case-specific recommendations covered situations in which our Adjudicators considered that the most effective means of resolving the situation was for Ofsted to bring forward the next scheduled inspection (although in no case did we go so far as to suggested that a previous inspection should be cancelled).
- I acknowledge that Ofsted has some difficulty with recommendations regarding the timing of future inspections, since clearly it has a large portfolio of visits to plan and manage. Nevertheless, I believe it is appropriate that we raise this recommendation where it is applicable.

As for the 74 general recommendations, this may sound like a large number but in the majority of instances, they reflect suggestions for improvements which, as it turned out, were already in hand by Ofsted as part of its internal reorganisation. There are also a considerable number of duplications in our recommendations as we consider each case in isolation. The case book later in this report is intended to highlight the key issues emerging from these general recommendations.

### Ofsted response

I am pleased to report that virtually every one of our adjudication reports was responded to personally by Her Majesty's Chief Inspector, Christine Gilbert and if not by her, then a member of Ofsted's Executive Board. This included setting out a specific response to each individual recommendation that we put forward.

It should be reassuring to all of Ofsted's stakeholders that independent complaints adjudication reports receive this high level attention. I believe that this confirms that the complaints process is taken very seriously within Ofsted, and the Chief Inspector's personal involvement sets the tone for the organisation as a whole.

I am also pleased to report that the vast majority of our recommendations have been accepted by Ofsted. 68 of our recommendations (which included extensive duplication of points) were accepted unequivocally, and in each case was accompanied by a specific action that Ofsted would undertake or already had in hand; a further 16 recommendations were acknowledged as being appropriate but requiring some modification in order to be practicable; and there were just 15 instances in which Ofsted disagreed with our recommendations.

As part of the process of compiling this report, our adjudicator team has revisited those 15 instances of disagreement. On three of those instances, our adjudicators had recommended further dialogue between Ofsted and complainants (an issue discussed further below); two recommendations relating to the approach to complaints against providers (again see below) have since been actioned; two related to employment issues which were not practicable for Ofsted to action; two related to the timing of future inspections which was not a matter on which Ofsted was able to commit itself; three were inconsistent with Ofsted's view of its role as a regulator rather than adviser; and the remaining items are not, in our view, of significance.

# CASE BOOK

The cases that the ICASO has reviewed during the year have covered the whole range of Ofsted's remit. In this chapter we highlight some of the main messages from the cases we have investigated and the way in which our recommendations have helped to improve Ofsted's procedures, and reduce the likelihood of future complaints.

#### Differing accounts

One of the most common recurring themes in the case portfolio we have handled this year concerns the question of how Ofsted's complaints process deals with those situations where there are differing accounts of what took place during the course of an inspection visit. Perhaps inevitably, these issues often come down to a question of one person's word against another's, but unfortunately a frequent complaint that we receive in such circumstances is that service providers perceive the Ofsted complaints process as favouring the inspector.

There are two situations to distinguish. Firstly, where an inspector has drawn a conclusion based on a recorded observation with which a provider disagrees, it seems a reasonable approach for Ofsted to rely on the professional judgement of its inspectors. However, where there is a contested complaint about an inspector's personal conduct, the position is not so clear cut.

Ofsted complaints handling processes have long recognised the problem arising from conflicting accounts of what happened during an inspection, and it used to be common practice for a complainant to be told that their complaint was "not upheld" simply because the inspector disputed the account. Understandably, however, this led complainants to feel that Ofsted was inclined to accept the inspector's account rather than their own.

I am pleased to note, therefore, that Ofsted acknowledged this issue in a public consultation launched in mid-October 2009, the result of which is that Ofsted has now changed its approach. From June 2010 onwards, Ofsted's complaint handlers have taken the approach that, where the evidence is inconclusive, for example if there is a difference of opinion which cannot reasonably be resolved through independent corroboration, then no conclusion will be drawn and the outcome of a complaint will be recorded as "no decision could be reached". A full explanation of why a conclusion cannot be reached is also now provided.

Some of the cases referred to ICASO in the early part of this reporting period clearly pre-date this changed policy, but as the year has gone on we have seen increasingly effective usage of this formulation. There will remain a limited group of complainants who argue that the evidence is not inconclusive and that theirs is compelling, but on the whole the revised approach seems to be effective and has been accepted as fair and reasonable by many complainants.

#### Conduct of inspectors

A significant proportion of the complaints referred to ICASO (21 out of the 38) relate, in one way or another, to the conduct of Ofsted inspectors during a visit to a setting. Usually these refer to allegations of individuals behaving rudely and/or apparently refusing to take account of an explanation or evidence that a provider is trying to put forward. Many of these episodes seem to be associated with potential conflict situations such as where an inspector indicates an intention to make what is regarded as a negative judgement.

It is evident from the cases referred to ICASO that some Ofsted inspectors do overstep the mark from time to time, quite often by acting in a way which is perceived as over-forceful when making their point in the course of a disagreement with a provider. Sometimes accounts are disputed, but usually Ofsted's complaints team, either at the original investigation stage or at the second stage review or sometimes on both occasions, has appropriately identified the issue, offered a suitable apology, and undertaken to speak to the inspector and their line manager to remind them of Ofsted's code of conduct. And yet such cases are still referred by complainants through to ICASO for adjudication.

Looking at these cases in the round, it is clear that most complaints about inspectors' conduct accompany wider complaints about the overall outcome of an inspection. Indeed sometimes it appears that we receive complaints about inspectors' conduct simply as a means of challenging an inspection judgement, an area which is outside ICASO's terms of reference. At other times it is unclear what complainants want Ofsted to do about a situation - once a position has been accepted at an earlier stage in the process, an apology issued, and the individual and their line manager spoken to, there is very little else that can be done. An additional complication here is that, for employee confidentiality reasons, Ofsted is only ever able to report back to a complainant in the most general terms.

It may be that this practice of citing inspector behaviour as a key element in such a high proportion of complaints is inevitable. I am aware that significant resources are consumed in revisiting such issues and therefore I am minded to review the ICASO application process with a view to encouraging complainants to give more focus to their case, in particular by amending our application form to require complainants to be clearer about (a) why they are dissatisfied with Ofsted's internal complaints processes and (b) what remedy or outcome they are looking for from ICASO.

#### Complaints against providers

Around 20% of the complaints referred to ICASO by or about early years and childcare providers have arisen as a consequence of concerns being raised about a provider, quite often following an accident involving a child. Sometimes parents have complained about inadequate action by Ofsted, whilst on other occasions providers have complained that their reputation has been damaged by publication of details of unfounded allegations. These cases present some clear challenges for Ofsted, not least because the general public have a perception that Ofsted's role is to get to the bottom of all such complaints and, where appropriate, to deal with the responsible parties. In contrast, Ofsted's stance is that they are a regulatory body:

"When we receive a concern or complaint about a provider, our role is not to prove or disprove that information. Instead, we will look to see whether the information means the provider is failing to meet, or failed to meet at the time of any incident, the requirements and conditions of their registration".

CONCERNS AND COMPLAINTS ABOUT CHILDCARE PROVIDERS (MAY 2009)

This formulation is very clear and, indeed, I believe that the guidance note 'Concerns and complaints about childcare providers (May 2009)' is both comprehensive and fair. In practice, however, parents who are upset and possibly quite angry that their child has been injured are looking to Ofsted to investigate their concerns and take more punitive action - most often to "close them down!"

Given this recurring misconception of its regulatory responsibilities, we have recommended to Ofsted that it considers whether there is any way that its position can be further clarified so as to avoid raising false expectations of its role. One possible approach might be to publish some examples of what Ofsted can and cannot do in responding to complaints about providers.

ICASO has also handled a number of complaints from providers aggrieved at Ofsted's actions following its investigation of concerns raised against them. The issue here is that, when an Ofsted inspector visits a setting to investigate concerns, it is not uncommon that some other issue is noticed which, whilst not in any way connected with the matter complained about, still requires remedial action for the provider to retain its registration. The question that then arises is how such required action should be reported on Ofsted's website.

Since May 2009, Ofsted's approach has been to publish the summary of the outcome of a

complaint about a registered provider wherever Ofsted or the provider took action to meet the requirements of registration. However, some providers have argued that its approach to publication is unfair in that, even if the specifics of a complaint are unfounded but something else turns up, a report is published under the heading "complaint about childcare provision". Providers feel it is unfair that their reputation should be tarnished by being linked to the word "complaint". A further complication is that in some complaint reports, the description of the required action was written in such a way that it implied that it was in fact a required remedy to the matter complained about and thus that the complaint was justified.

ICASO adjudicators have made a number of recommendations to Ofsted to address these concerns, and I am pleased to note that the position is moving in the right direction. In December 2010, Ofsted published internal guidance for inspectors on writing complaint and compliance action summaries. This made it clear that inspectors must make a proper distinction between actions taken in relation to a complaint and any other non-compliance they might find when investigating the original complaint. In cases where inspectors recommend that Ofsted takes action that does not relate to the original complaint, they must make a distinction in the outcome summary between findings that relate to the initial complaint and those findings that arise incidentally through the course of the investigation.

I welcome this new guidance and look forward to seeing its implementation during 2011. I hope also that Ofsted will be able to make further progress with the question of where such reports are published on Ofsted's website. In this respect, I am encouraged by Ofsted's recent guidance note '*Publishing compliance action*  (March 2011)' which describes Ofsted's intention to extend its publication of complaint outcome summaries to include publication, under the heading 'compliance action', of circumstances where Ofsted requires action as a result of information received other than from a complaint.

#### Talking things through

All of the ICASO adjudicators are trained mediators and dispute resolution professionals who believe in the value of face-to-face conversation, rather than written correspondence, as a means of resolving differences. We have, therefore, on a number of occasions sought to encourage Ofsted to adopt a more discussion-oriented approach to difficult situations.

We have also from time to time suggested that the engagement of a third party mediator might be a helpful means of airing differences and establishing a workable way forward when relationships become particularly problematic.

Unfortunately, for reasons which ICASO entirely understands and accepts, Ofsted is not in a position to implement our recommendations in this area. One reason is that there is an understandable sensitivity that Ofsted does not wish to give the impression that its inspectors' professional judgements are in any way negotiable. Of equal significance, there is a resourcing issue in that having frequent meetings with complainants would have an impact on productivity.

This does not, however, mean that Ofsted is totally averse to spoken communication. We were pleased to see that one new feature of the complaints process, introduced following the 2009 public consultation, was that investigating officers should contact complainants by telephone within five working days of receipt of a complaint to clarify aspects of the complaint and ensure as far as possible that there is sufficient evidence available to support a full investigation of the complaint. Such a telephone call is specifically stated not to be an occasion for mediating or attempting to talk the complainant out of pursuing their case, but it does nevertheless appear to be helpful not only in establishing the issues but also in giving the complainant early feedback that their concerns are to be taken seriously.

There have also been a few occasions this year where Ofsted has accepted our recommendation to meet with a complainant once the process was complete, simply with a view to trying to reestablish cordial working relationships.

We welcome the steps that Ofsted has taken towards being open to dialogue wherever possible. Plainly this is an area in which we would like more to be done, but we recognise the constraints and therefore we will limit our recommendations to requesting that Ofsted complaints handlers are always mindful of the possibility of improved communication options as part of their personal toolkit for handling difficult situations.

### The power of apologies

One of the most significant trends in our recommendations as compared to those of our predecessor independent complaints adjudicator is that, during 2008/09, some 17% of her 114 recommendations involved Ofsted issuing an apology to the complainant, whereas this did not appear in any of our 99 recommendations in 2009/10.

We have considered whether this variance might reflect a change in adjudication approach or style, but we have concluded that the real explanation is that Ofsted's complaints handlers now seem to be very prepared to issue apologies without our prompting. Indeed virtually every case referred to us this year contained some element of an apology having been given at either initial investigation or second stage review.

This preparedness to apologise when things do go wrong seems to be a very healthy development. It does, however, present the challenge of how to phrase a genuine and credible apology, particularly in those circumstances where facts may be unclear or contested, so we have recommended that Ofsted gives some consideration to developing internal guidance on how apologies might be worded.

# OFSTED'S COMPLAINTS PROCESS

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.

Following its public consultation in 2009/10, Ofsted introduced a number of significant changes to its complaints process. The table below sets out the specific commitments set out in the June 2010 report: *"Responses to Ofsted's consultation on proposed changes to our process for responding to complaints made about our work: an evaluation report"* and, where appropriate, our ICASO Adjudicators' perspective on whether they have since been actioned:

DMMITMENT FROM OFSTED	ACTIONED	
Introduce a complaints form as an option for use by complainants; however, we will still accept complaints written as free text letters and emails	Yes	
Accept complaints by telephone - complaints made in this way will be transcribed by our call centre staff on receipt of the call and details of the complaint will then be relayed back to the complainant for verification	Yes	
Provide a written acknowledgment of all complaints within one working day of receipt	Target set. Usually met	
Contact complainants by telephone within five working days of receipt of a complaint to clarify aspects of the complaint and ensure as far as possible that there is sufficient evidence available to support a full investigation of the complaint	Target set. Usually met	
Make a record of these initial telephone calls and include a summary of the issues discussed and agreed in the final outcome letter	Yes	
Introduce moderation by a panel of senior managers unconnected with the relevant inspection	Yes	
Ensure responses provide a clear conclusion in terms of whether an aspect of a complaint has been upheld or not upheld. However, where the evidence is inconclusive, for example if there is a difference of opinion which cannot reasonably be resolved through independent corroboration, then no conclusion will be drawn and the outcome will be recorded as 'no decision could be reached'. Where this occurs, we will give a full explanation of why a conclusion cannot be reached	Yes	

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MITMENT FROM OFSTED	ACTIONED	
Ensure all outcome letters are sufficiently detailed to provide a substantive response to all aspects of the complaint	Usually met	
Introduce satisfaction questionnaires	Unknown - outside ICASO remit	
When complainants are dissatisfied with aspects of the outcome of an investigation, conduct a review of how the complaint was handled, which will be managed by a separate team within Ofsted in our Manchester office. This review will be able to change inspection judgements when necessary. In response to the comments made by participants in the public online consultation and members of the Parents' Panel, we will give careful consideration to how we might provide an even greater level of independence and objectivity to the internal process for reviewing complaints handling. This would be in addition to the existing process through which complainants may make representations to the Independent Complaints Adjudication Service for Ofsted	Yes - second stage review process now established in the Quality Assurance National Team, separate from Ofsted's National Complaints Team	
Publish an annual report on lessons we have learned from complaints on our website www.ofsted.gov.uk.	Not yet	

I am, of course, aware that the group of complaints that progress all the way through to ICASO is not necessarily a representative sample of all the complaints that Ofsted receives. Nevertheless, even from the very small proportion of cases that we see, it is clear that the above changes, and particularly the development of the second stage internal review process, represent a significant advance in the overall effectiveness of Ofsted's complaints processes.

We sometime hear that complainants feel that investigators unfairly support inspectors (a common lament is that "they would say that wouldn't they"), particularly where the original complaint involves one of Ofsted's inspection service providers. However, the provision of a second stage review process, in which cases are reviewed by an independent senior inspector and responses signed off by a Director, offers complainants a clear opportunity for a fair and unbiased re-examination of their concerns. The second stage review also provides a separation of roles, while still allowing the chance to change inspection outcomes. Indeed, even on the cases which have progressed to ICASO, it is notable that in many cases the stage tworeview results in further action being taken (e.g. further clarification provided, apologies given, changes made to reports, new issues considered etc.).

# ABOUT ICASO

### Remit

ICASO is entirely independent of Ofsted and 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:

- failure to follow procedures;
- failure to respond in a timely manner;
- alleged discrimination;
- alleged discourtesy;
- 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 the entire 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.

In the period where comments are due, the ICASO Adjudicator will review the papers and

begin to formulate their recommendations. If the ICASO Adjudicator feels that the complaint is complex or relates to a matter of public interest it will be passed to the Senior ICASO 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 parties 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 appointed in 2009.

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 17,000 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:

- Dr Karl Mackie CBE (Senior Adjudicator)
- Andy Grossman
- Fiona Colquhoun
- Gina Shim
- Graham Massie
- Gregory Hunt
- Joanna Cavell
- Lisa Drake

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