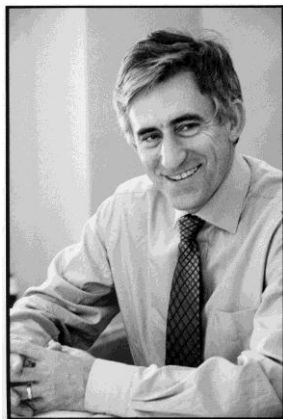


The Independent Complaints Adjudication Service for Ofsted



Annual Report: 2012

Introduction



It is my pleasure to present the Annual Report of the Independent Complaints Adjudication Service for Ofsted (ICASO), for the period 1 April 2011 to 31 March 2012.

Our role remains unchanged, namely to serve as an independent reviewer available to anyone who has previously made a complaint to Ofsted and remains dissatisfied with the response. We cannot overturn inspectors' professional judgements, but 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.

Last year I commented on the positive impact of Ofsted's new complaints handling procedures which were introduced in 2010 following public consultation, and I am pleased to report that this progress has been continued. We have seen a marked reduction in our caseload, with just 26 reports issued in the year, a very small proportion of the 31,939 inspections that Ofsted carries out across the education, children's services and skills sector.

Once again, 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.

There have been three holders of the post of Her Majesty's Chief Inspector during the year, Christine Gilbert, Miriam Rosen and now Sir Michael Wilshaw; and I would like to thank each of them for the close personal interest which they have taken in our work, including responding personally to each of our reports.

Similar to last year, I am pleased to report that the vast majority of our recommendations have been accepted by Ofsted.

These are all symptoms of a healthy and effective complaints procedure, which has improved considerably over the years. Much of the credit for this goes to the work of Ofsted's Quality Assurance National Team and the wider complaints handling team.

A handwritten signature in black ink, appearing to read 'Karl Mackie', written over a horizontal line.

Dr Karl Mackie CBE

Chief Adjudicator

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Facts and figures

Caseload

Between 1 April 2011 and 31 March 2012, the ICASO issued 26 reports, compared to 38 issued in the previous year. The table below gives a breakdown of the main categories of complaints:

	2011/12	2010/11
Early years and childcare		
Child-minders	3	4
Childcare on non-domestic premises	13	16
Children's social care		
Children's homes	3	1
Fostering agencies	1	1
Schools		
Independent schools	0	2
Primary schools	4	8
Secondary schools	2	4
Learning and skills		
Further education colleges	0	1
Work-based learning providers	0	1
TOTAL	26	38

In about a fifth of this year's cases, complaints were made by individual parents of children attending a particular school or provider, slightly lower than the proportion of complaints made by parents last year. One complaint was received from a whistle-blower, whilst the remainder came from registered providers or their representatives (i.e. owner, governing body or head teacher).

Types of Complaints

It is quite common for complainants to raise multiple issues in their referrals to ICASO, and for this reason the number of matters complained about will usually far exceed the number of reports that we have issued.

Issues raised by complainants this year are shown within the table below:

Complaint Heading	Number
Alleged failure to follow procedures	10
Alleged failure to respond in a timely manner	5
Alleged discourtesy	3
Failure to apologise or accept mistakes	3
Inspector/ staff conduct	18
Outside remit of ICASO	19

Although the service has been running since 2009, it is evident from the number of complaints we have received which are outside the remit of the ICASO, that there remains a significant proportion of complainants who apparently do not understand the purpose of the service, or choose to proceed with their complaints knowing that we are not in a position to investigate such matters. Most of these cases arise, in one form or another, from an attempt by a complainant to challenge an Ofsted inspector's professional judgement, the most common situation being a disagreement over an inspection grading.

It was also notable that most of the complaints about the conduct of Ofsted inspectors were closely connected to complaints about the grade of inspection received, and the evidence looked at by the inspector to reach the grade awarded.

The remaining headings are clearly within ICASO's remit, dealing largely with procedural concerns in relation to the complaints handling process. Quite a few of these related to complaints that Ofsted had failed to provide a full and accurate response, particularly at the first stage of its complaints procedure.

Recommendations

This year there were no occasions on which complaints were upheld in full, as compared to last year's record of three such cases, all of which pre-dated Ofsted's new complaints procedures.

There have, however, been many occasions on which our adjudicators have been able to make recommendations to Ofsted, either suggesting a possible way forward in relation to a specific case or proposing changes to general policies and procedures.

In the last year, our Adjudicators made a total of 45 such recommendations, of which 18 related to the specific cases and 27 to Ofsted procedures generally. These figures are markedly below the total of 99 recommendations made by our team last year, a variation which bears testament to the preparedness of Ofsted to take on board so many of the recommendations which we have previously made.

Case specific recommendations

Of the 18 case specific recommendations that were made, 8 covered situations where we considered that Ofsted had not provided clear or full explanations to complainants at various stages of the process. In each instance our recommendation was that further explanations be provided.

The remaining case specific recommendations covered a range of suggested actions, as follows:

- give feedback to an inspector on the inappropriate use of personal anecdotes;
- enquire further into discussions that had taken place during an inspection;
- publish an amended inspection report, to reflect agreed changes;
- clarify the wording within a published summary of complaint about a provider;
- engage further with a view to reconciling conflicting accounts of an event.
- apologise that a report had been issued late;
- revisit a complaint, taking into account new evidence that only came to light during the ICASO adjudication process;
- clarify procedures in a case where a fresh complaint was raised during the investigation of an existing complaint.

General Recommendations

Of the 27 general recommendations that were made last year, the majority of them were clarification and refinement of existing Ofsted policies and procedures. They included recommendations to:

- provide clearer explanations about what evidence is taken into account when Ofsted is investigating a complaint;

- encourage complainants to narrow the focus of their complaint where a large number of issues have been raised;
- consider arranging face to face meetings or telephone calls when investigating emotionally charged cases;
- develop a clear policy on the use of CCTV evidence;
- ensure that anyone who is unhappy with how an inspection is being or has been conducted is encouraged to contact the helpline at an early stage;
- ensure that deadlines on acknowledgement of correspondence are met;
- consider developing and publishing guidance on the use of audio recordings submitted as evidence during inspections;
- ensure that inspectors have clear guidance on the use of using technical terms and jargon;
- when responding to complaints, number response points in line with the complainant's letter so as to prevent accidentally overlooking any major points raised.

Ofsted Response

I am pleased to report that we received a response from Her Majesty's Chief Inspector to each and every one of our adjudication reports, including those in which no recommendations were made. I am impressed by the level of detail and attention that has gone into each response, and feel that the responses we have received show the extent of Ofsted's commitment to effective complaint handling.

As was the case last year, the vast majority of adjudications made by our team were accepted in full, with 37 out of the 45 recommendations being accepted unequivocally by Ofsted. In each of these instances, we also received an explanation of the actions that were already being or would be taken by Ofsted. There were also several instances where Ofsted went a step beyond our recommendations, taking further action as they felt appropriate in bringing the matter to a close. This is a pleasure to see in any complaint handling setting, as it shows a willingness to resolving problems effectively.

Of the 8 occasions on which Ofsted did not accept our adjudicators' recommendations, 2 were on the basis of practicality (on one occasion a recommendation to issue an amended report had been overtaken by events as a fresh inspection had already taken place; on another involved issues of potential disclosure of evidence which was exempt under the Freedom of Information Act).

In the remaining 6 instances, Ofsted disagreed with our recommendations, in each instance providing detailed reasoning:

- The adjudicator had recommended that Ofsted provide the complainant with an explanation of four issues that the adjudicator felt had not been adequately addressed during the complaints procedure. Ofsted accepted this recommendation overall. However, Ofsted felt that for two aspects of the explanation recommended, the latest published guidance already provided a sufficient explanation.
- The adjudicator recommended that inspectors be reminded to alert Ofsted about potential conflicts of interest. However, Ofsted did not accept this recommendation on the grounds that all inspectors are already provided with guidance to ensure that conflicts of interest are identified and reported.
- The adjudicator recommended that Ofsted re-investigate a complaint, taking into account new evidence that had been provided to the adjudicator. However, Ofsted's view was that the complainant had already had every opportunity to submit all the evidence they wished to be considered as a part of both stages of Ofsted's complaints procedure, but had chosen not to do so. They also considered that it would not be appropriate for new evidence to be looked at so long after the inspection.

- The adjudicator recommended that Ofsted suggest to parties who were in conflict that they hold a facilitated meeting before any formal referral to Ofsted. Ofsted acknowledged the merits of this recommendation, but felt that people should be able to raise their concerns directly.
- The adjudicator suggested that, where there were conflicting accounts about a situation, it would be helpful to invite the parties to explain and hopefully reconcile their conflicting accounts. However, Ofsted's view was that its present approach was already sufficient.
- The adjudicator recommended that it might be appropriate to provide inspectors with guidance on the length that an inspection might be expected to take. However, Ofsted disagreed with this recommendation, stating that inspectors are already clear about the length of time allocated.

There is one additional case which we would wish to highlight. This case, which involved disputed evidence following a complaint by a member of the public, did not result in any formal recommendation being made by the adjudicator as it appeared that Ofsted had fully complied with all of its complaints and investigation procedures. As, however, the case involved the important issue of the safety of young people in care, the adjudicator suggested that there would be no harm in Ofsted checking the accuracy of their information just one more time.

In the event, this last check revealed that an error had in fact been made, and that the member of the public was correct. It is to Ofsted's credit that, when this situation did come to light, they acted quickly, including apologising for the error and amending the published report, and Her Majesty's Chief Inspector undertook to write personally to the complainant. They have also considered the question of why it was that the error was not discovered at an earlier stage in the complaints handling process.

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, details of which were explained in last year's report. We are pleased to report that these changes have been implemented in large, further demonstrating Ofsted's commitment to improving its complaint handling process.

About ICASO

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:

- 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 all stages of the complaints review process operated by Ofsted. The complaints procedure is summarised later in this report.

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 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 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.

In late 2011, CEDR acquired IDRS Ltd, one of the UK's leading dispute resolution providers, from the Chartered Institute of Arbitrators. In doing so, our adjudication team expanded to include a number of highly experienced adjudicators.

The ICASO adjudication team currently comprises of:

- Dr Karl Mackie CBE (Senior Adjudicator)
- Abigail Jennings
- Andy Grossman
- Eisei Higashi
- Gina Shim
- Graham Massie
- Gregory Hunt
- Joanna Cavell
- Justine Mensa-Bonsu
- Uju Obi

