

The Independent Complaints Adjudication Service for Ofsted



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Introduction



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

Dr Karl Mackie CBE
Chief Adjudicator

It is with great pleasure that I present the Annual Report for the Independent Complaints Adjudication Service for Ofsted (ICASO) for the period 1 January 2013 to 31 December 2013. This is our fourth 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.

We have seen quite a few changes take place over the years we have been in post. Trends are covered in this report. The most noteworthy change in this reporting period is the update in Ofsted's complaints handling policy, which took place in April 2013. Overall we are very pleased to report that we have seen an improvement in the quality of complaint handling from previous years.

The complaints handling team at Ofsted have been very cooperative in working with ICASO. I would like to extend my thanks to Her Majesty's Chief Inspector, Sir Michael Wilshaw, for his constructive responses to our recommendations and I would also like to thank the Department for Education for their part in overseeing the service and ensuring that it is running smoothly and effectively. It has been a pleasure working with you and we look forward to working together with you in the year ahead.

Facts and figures

Caseload

During the period 1 January 2013 to 31 December 2013 the ICASO issued 37 reports. The table below gives a breakdown of the main categories of complaints since the inception of the service.

	1 Jan 2013 - 31 Dec 2013	1 Apr 2012 - 31 Dec 2012	1 Apr 2011 - 31 Mar 2012	1 Apr 2010 - 31 Mar 2011	1 Jan 2009 - 31 Mar 2010
Early years and childcare					
Childminders	5	2	3	4	4
Childcare on non-domestic premises	16	8	13	16	7
Children's social care					
Children's homes	1	1	3	1	2
Fostering service	0	3	1	1	1
Schools					
Independent schools	1	3	0	2	1
Primary schools	5	8	4	8	11
Secondary schools	2	2	2	4	2
Other	4	2	0	0	0
Learning and skills					
Further education colleges	2	2	0	1	3
Work-based learning providers	1	0	0	1	0
TOTAL	37	31	26	38	31

The overall number of complaints we received this year is slightly higher than the number of complaints we received in the last reporting period. Although the case numbers appear to be higher, they represent a very small percentage of the actual complaints dealt with by Ofsted. To put things in perspective, the Ofsted Annual Report and Accounts 2013-14 indicates that Ofsted dealt with 2,449 complaints at Step 2 of the complaints procedure. The total number of complaints received by Ofsted this year represents 4% of the inspection and regulatory visits undertaken in 2013-14.

The largest proportion of complaints tends to relate to Early Years and Childcare, particularly regarding Childcare on non-domestic premises settings. This is not surprising, considering Ofsted inspects a higher number of childcare providers than other settings. It should also be noted that Ofsted changed the way in which it investigates concerns about compliance following a change in its early years' framework in September 2012.

This year, in 19% of all cases, the complaints were raised by individual parents of children attending a school or provider. The remainder of complaints came from representatives of inspected institutions (owner, governing body or head teacher). This is consistent with previous years.

Types of complaints

The table below shows the number of times each type of complaint has been raised over the last three reporting periods.

Complaint Heading	* Number of times raised		
	1 Jan 2013 - 31 Dec 2013	1 Apr 2012 - 31 Dec 2012	1 Apr 2011 - 31 Mar 2012
Alleged failure to follow procedures	14	12	10
Alleged failure to respond in a timely manner	4	4	5
Alleged discourtesy	3	0	3
Alleged failure to apologise or accept mistakes	8	4	3
Inspector/staff conduct	15	15	18
Outside remit of the ICASO	25	18	19

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

Consistent with the last reporting period, the highest number of complaints relate to the outcome of an inspection, which remains outside the remit of what the ICASO can deal with. This has been a recurring trend throughout the ICASO's time in post. The bulk of the complaints we received came from representatives of inspected institutions. Although we have put measures in place to ensure that prospective users of the scheme are provided with as much information as possible in respect of the remit of our service at the outset of their contact with us, this remains a main reason of referral to the ICASO.

It is not within the remit of the ICASO to review the professional judgements or decisions made by Ofsted. In step 1 of its complaints procedure, which is set out in the document entitled *Complaints about Ofsted: Raising concerns and making a complaint about Ofsted* dated April 2013, Ofsted makes it clear that if there is a concern about an Ofsted inspection or inspector, this should be raised with the lead inspector as soon as possible during the inspection visit. This includes concerns about the inspection process, how the inspection is being conducted, or the inspectors' judgements. Although in principle, providers should be fully aware of Ofsted's inspection frameworks as these set out what inspectors will be doing during a visit, in practice, it is unclear as to when a setting becomes aware of this timeframe. It is often the case that a complainant only reads the complaints procedure of an organisation at the point in time that they have a grievance. For complaints about an inspection or the conduct of an inspector, the complainant would likely check the complaints procedure after the inspection has already taken place. On this basis, the ICASO encourages Ofsted to advise the various institutions of this at the earliest opportunity. There is, however, a further opportunity to raise concerns about the accuracy of an inspection report as part of a provider's response to the factual accuracy check of the draft. Details of which can be found on page 9 of this report.

There has been an increase in the number of complaints raised which relate to Ofsted's alleged failure to apologise or accept mistakes, while all other categories of complaint were similar in the number of times raised as reported in previous years.

It should be noted that this is simply the number of times that the issues above have been raised and is by no means a reflection of actual concerns about the complaints handling service provided by Ofsted over this last reporting period.

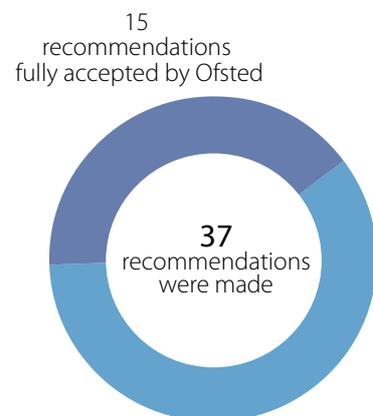
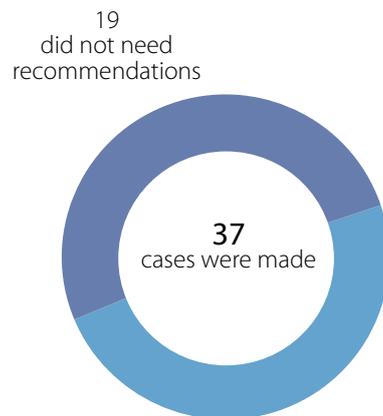
Findings

We are pleased to report that the overall quality of Ofsted's complaint handling service has improved on previous years. In a total of 19 out of 37 cases, the adjudicators found that Ofsted had dealt with the complaint in accordance with its published complaints procedure and therefore did not have any advice or recommendations to make in improving the service. This is the highest number of cases where the adjudicator felt that no recommendations were required since the ICASO took on the role. Recommendations were made in just under half of the cases that were referred to the ICASO in this reporting period.

There were two instances reported where there was a dispute raised between Ofsted and the complainants about whether or not a case had been brought to the ICASO within the prescribed timescale of three months from the date of the response letter. In both cases, the complainants claimed that they had in fact complained within the timescale whereas Ofsted asserted that the complainant had not. The role of the adjudicator is to investigate the manner in which Ofsted

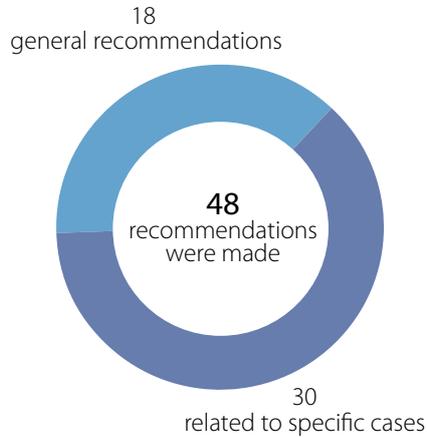
has dealt with a complaint and to provide advice and recommendations to improve Ofsted's complaints handling. As the ICASO was unable to determine whether or not these cases had been dealt with in accordance with Ofsted's complaints procedure without investigating the complaint, the decision was taken to accept both applications. The discretion as to whether or not a case falls within the remit of the ICASO at the application stage rests with the ICASO. However, it was encouraging to note that Ofsted agreed with our approach and commented that this was a good way to investigate whether or not there were any issues with the referral of complaints to the ICASO following the changes to the complaints procedure. Whilst issues surrounding the referral of complaints through the complaints process were raised, no particular trends were noted in the investigation of these complaints.

Another common issue that continues from the last reporting period is the matter of Ofsted failing to fully address the complaint. As noted before, when a complaint investigator groups issues together or narrows them down in order to deal with them in a more efficient manner, they run the risk of missing or failing to fully address the full complaint. In 15 out of 37 cases the adjudicator made a recommendation in relation to fully addressing the complaint and on each and every occasion this was recommended, the recommendation was fully accepted by Ofsted.



Highest number of cases not needing recommendations since the ICASO took on the role.

Recommendations



Case specific recommendations

During this reporting period, our adjudicators made a total of 48 recommendations: 30 related to specific cases they handled and the remaining 18 were general recommendations that related to Ofsted procedures. As noted earlier within this report, there were a total of 19 cases where no recommendations were made at all, as the adjudicator felt that Ofsted had dealt with the complaint appropriately or did not have any general recommendations for future improvement.

The vast majority of the 30 case specific recommendations related to Ofsted apologising for failing to address all of the concerns raised or provide the complainant with a fuller explanation. Other recommendations included:

- Recommending that the complaint investigation findings from the complaints procedure were fed back to the investigating officer for training and development purposes.
- Apologising for an error in an inspection report.
- On more than one occasion the adjudicator felt that it would have been helpful to have sight of the notes taken during a telephone call between the Ofsted complaint investigator and the complainant.

Each and every case specific recommendation that was made by an adjudicator was accepted by Ofsted in this reporting period.

General recommendations

Most of the general recommendations related to Ofsted making reasonable endeavours to follow its current complaints procedure. The majority related to responding to complaints within the stipulated timeframes, acknowledging and addressing every complaint made during the complaints process. Other general recommendations included the following:

- Publish a definition on what constitutes an exceptional circumstance to allow publication of a report to be delayed if challenged.
- Consider providing copies of the call notes to the adjudicator.
- Ensure that someone with no prior involvement with an incident contacts the complainant directly to discuss cases where issues have been raised about the inspector's treatment of staff.

Ofsted's response

Once again it is our pleasure to report that virtually every one of our adjudication reports was responded to by Her Majesty's Chief Inspector, Sir Michael Wilshaw. On only three occasions, the response was issued by Ofsted's Chief Operating Officer, Lorraine Langham. Sir Michael Wilshaw was not available to provide a response to these three cases as he was on leave.

All but four of the general recommendations made by the adjudicators were outright accepted by Ofsted.

In one case where the recommendation was not accepted, the adjudicator recommended that Ofsted considered clarifying its guidance to inspectors on expressing comments on previous inspections. Ofsted did not accept this recommendation because it felt that further guidance was not needed for inspectors.

In another case, the adjudicator recommended that where discussions have taken place and/or agreements have been made during an inspection, reasonable endeavours should be made to obtain agreement or written submissions from the other party on the day. Ofsted felt that it was not appropriate to ask providers to sign to confirm that they agree with a finding on the spot. Ofsted further noted that there might be challenges later and providers would not want to put their name to something they disagreed with. This is because outcomes are finalised, written up and quality assured in the days following an inspection.

In the third case the adjudicator recommended that where Ofsted narrows a complaint either during a phone call or otherwise, it should confirm it in writing before issuing a response. Ofsted disagreed with the recommendation, as it felt that the existing process already allowed for sufficient clarification to be given. It felt that adding further correspondence would only serve to delay the investigations.

There was one instance where Ofsted accepted the general recommendation made by the adjudicator in part. The adjudicator recommended that Ofsted should acknowledge all allegations made and address them in full. Ofsted accepted the recommendation in part, but did not fully accept it on the basis that complaint responses often pull together common or similar issues where appropriate. The example provided by Ofsted related to instances where there are allegations made concerning inspector conduct. Ofsted commented that it is often the case when allegations are made concerning inspector conduct that the allegations are refuted by the inspector. In the absence of corroborative evidence they assert that it is not possible to reach a firm conclusion, and rather than repeat this every time, collating the issues makes it easier to explain this all at once.

The ICASO will continue to provide advice and recommendations to improve Ofsted's process but acknowledge that it is up to Ofsted to find the process that works best for its organisation.

Ofsted's complaints process

Ofsted's policy applies to the handling of complaints about its work, including the inspection and regulation of:

- providers registered on the Early Years and Childcare Registers
- children's centres
- social care services for children
- children's homes
- family centres
- adoption and fostering services and agencies
- the Children and Family Court Advisory and Support Service (Cafcass)
- children's services in local authorities
- maintained schools including academies
- independent schools
- initial teacher training
- further education colleges and provision for students aged 14 to 19
- work based learning and funded training
- education and training in prisons and other secure establishments, and adult and community learning.

Principles

Ofsted applies the following principles to its complaints handling:

- Complaints will be handled speedily and with rigour.
- Complaints will be handled in a fair and even-handed way, treating all parties in similar circumstances equitably and respectfully.
- The investigation of complaints will be thorough and objective. Where we investigate a complainant's dissatisfaction with the judgements awarded at an inspection, the outcome of the investigation may result in no change or a movement of a grade upwards or downwards.
- A written response will be provided for all formal complaints considered by Ofsted.
- Confidentiality will be respected as far as possible, both for those who complain and those who are the subject of a complaint. However, the identity of complainants may be revealed to the persons complained about where their response is essential in order for us to investigate and respond fully and fairly to the complainant's concerns.
- Where appropriate, we will ensure that complaint responses include a suitable apology for any aspects upheld, and details of any corrective action or other redress that will be undertaken.
- Our handling of complaints will be monitored and quality assured regularly to ensure it is effective and leads to improvements in the way we work.

STEP

1

Resolving concerns quickly

Ofsted expects that in the first instance all complaints about its work will be raised, wherever possible, directly with the individuals concerned as soon as these arise. If a concern cannot be resolved immediately, the complainant should ask to speak with a manager to ensure that their concerns are considered and resolved promptly.

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 concerns about the inspection process, how the inspection is being conducted, or the inspectors' judgements. If a complainant feels unable to raise concerns directly with the lead inspector during the inspection, the complainant can telephone Ofsted's national helpline and request to speak with the inspection service provider.

There is a further opportunity to raise concerns about the accuracy of an inspection report as part of a provider's response to the factual accuracy check of the draft. Concerns will be considered as part of this quality assurance process prior to the finalised report being published. If considered necessary, a reviewed draft copy is sent to providers for a final factual accuracy check.

Ofsted recognises that from time to time, a complainant may choose to escalate their concerns to Step 2 of this policy without following Step 1.

STEP

2

Making a formal complaint

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 Step 2 of this complaints policy.

For Ofsted to consider a complaint:

- Unless there are special circumstances, complainants must send their concerns using the online complaints form available on the Ofsted website at <http://www.ofsted.gov.uk/contact-us/how-complain>.
- 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 the investigating officer to make contact as part of the complaints investigation process.

If there are special circumstances that prevent the submission of a complaint online, they can be sent in writing to the National Complaints Team by post or email.

Complaints should be submitted to Ofsted within 10 working days of 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. Complaints sent after this period would not normally be considered, as they would be deemed 'out of time'.

Where a complaint is about an inspection where a school is judged to have serious weaknesses or to require special measures, these judgements are not reconsidered under Step 2 of this policy. After the inspection, all such judgements are always subject to moderation procedures prior to authorisation of the judgement by Her Majesty's Chief Inspector. The school contributes to this moderation process and may comment on the inspection findings prior to publication of the report. The moderation 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, any complaints about inspector conduct and inspection process are considered under Step 2 of this policy. Providers can request a review of the moderation of judgements process under Step 3 of this policy.

As part of all complaint investigations, the investigating officer contacts the complainant by telephone to discuss the concerns and to establish if any, or all, aspects can be resolved quickly. Investigating officers will confirm to complainants the agreed main areas of complaint that will be subject to thorough investigation.

No additional documentation received after the submission of the complaint would normally be considered. Written responses are provided for all complaints investigated at Step 2.

Responses may include reference to inspection evidence as appropriate to explain inspection outcomes. On occasions, where the evidence is inconclusive because of differing opinions that cannot reasonably be resolved through independent corroboration, the outcome will be recorded as 'no decision could be reached'.

Where multiple complaints are received about the same incident or issue of concern, Ofsted may choose to undertake a single investigation covering a similar complaint from different individuals. This would lead to a single investigation response which would be communicated to all complainants.

A written response is sent to the complainant as soon as is practicable and normally within 30 working days of the date of receipt. The complaint response will include an explanation of any steps that Ofsted will take as a result of the investigation.

STEP 3

Requesting an internal review

If a complainant is dissatisfied with the way their complaint has been handled, a review of the complaint process can be requested using an online form. This should be submitted within 15 working days of the date of the response to the original complaint.

The review will consider whether Ofsted's policy and procedures on handling complaints were followed correctly to address the complaint. The review will be based on available information from the original investigation. No new concerns or evidence will normally be considered as part of this review.

When an inspection has judged a school to require special measures or to have serious weaknesses, requests for a review of the moderation of judgements process are carried out under Step 3 of this policy.

The internal review is carried out by a senior manager in Ofsted with no previous involvement in the investigation of the complaint and so is independent of the original investigation outcomes. Based on available evidence, the reviewing officer will come to a final view on whether or not the original complaint was investigated fairly and properly in line with Ofsted's published policy. Ofsted provides a written response as soon as is practicable and normally within 30 working days of the receipt of a request for an internal review.

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

If a complainant remains dissatisfied with the responses Ofsted has provided, an external review can be requested from the ICASO. This must be done within three months from the date of the response letter following an internal review by Ofsted.

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.

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.

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 30,000 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
- Eisei Higashi
- Abigail Jennings
- Graham Massie
- Justine Mensa-Bonsu
- Uju Obi
- Gina Shim

