

THE INDEPENDENT COMPLAINTS ADJUDICATION SERVICE FOR OFSTED



CASELOAD	03
TYPES OF COMPLAINTS	04
RECOMMENDATIONS	05
OFSTED'S RESPONSES	06
COMPLAINTS PROCESS	07
ABOUT THE ICASO	12



ANNUAL REPORT 2019

INTRODUCTION

Graham Massie
Chief Adjudicator

I am pleased to present the Annual Report of the Independent Complaints Adjudication Service for Ofsted (ICASO) for 2019. This is our ninth report as the adjudication service provider for the Department for Education.

The Centre for Effective Dispute Resolution (CEDR) has operated this service for Ofsted since January 2009. Its purpose 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 independently of Ofsted. Our role is to provide recommendations, advice and guidance to Ofsted with a view to improving its complaints handling procedures.

Within the context of Ofsted's overall workload in the 2018/19 academic year of more than 26,700 inspections and visits to schools, colleges and providers of social care, early years and further education and skills, it is remarkable that only 13 of the inevitable complaints that arise from what can occasionally be stressful situations for inspected settings have resulted in referrals to the Independent Complaints Adjudication Service. This is a record low number, as is the fact that our adjudicators were minded to make recommendations for improvement in only five cases. These results bear testament not only to the quality of Ofsted's front line work but also to diligence and thoroughness of its complaints handling team, who continue to work very co-operatively with ICASO.

Of course, the significance of an Independent Complaints Adjudication process derives not just from the number of cases that it handles but, even more importantly, from the very fact of its existence and the underlying philosophy of the organisation that complaints are not about blame but instead provide valuable opportunities to learn from experience and identify improvements that will benefit future service users.

I would like to extend my thanks to Her Majesty's Chief Inspector, Amanda Spielman, for her constructive consideration of our recommendations, including responding personally to every one of our adjudicator's reports. We continue to be impressed by Ofsted's openness and the careful consideration which each of our recommendations receives at the highest level within Ofsted.

I would also like to thank the Department for Education for its part in overseeing the service and ensuring that it is running smoothly and effectively.

CASELOAD

During 2019 the ICASO issued just 13 reports, the lowest since the inception of the service in 2009. The table below gives a breakdown of the main categories of complaints in recent years.

	2019	2018	2017	2016	2015	2014	2013
EARLY YEARS AND CHILDCARE							
Childminders	2	4	1	5	6	13	5
Childcare on non-domestic premises	1	8	4	6	5	25	16
CHILDREN'S SOCIAL CARE							
Children's homes	0	5	3	1	0	1	1
Fostering service	0	0	0	1	0	0	0
Local Authority children's services	0	0	1	0	0	0	0
SCHOOLS							
Independent schools	3	0	2	2	1	2	1
Primary schools	4	6	3	1	2	10	5
Secondary schools	0	0	4	3	3	5	2
Other	0	0	0	0	2	1	4
LEARNING AND SKILLS							
Further education colleges	1	2	1	1	1	0	2
Work-based learning providers	2	0	0	0	0	0	1
OTHER							
Applicant for HMI position	0	0	0	1	0	0	0
School inspection service	0	1	0	0	0	0	0
TOTAL	13	26	19	21	20	57	37

Overall, the number of cases referred to the ICASO remains very small in the context of Ofsted's considerable workload.

The majority of complaints came from representatives of inspected institutions (owner, manager, governing body or head teacher), with a small proportion raised by members of the public, including 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 the ICASO is that the complainant does not agree with the outcome of an inspection. In the 15 cases on which we reported this year, eight included a complaint about the inspection judgements awarded or statements contained within the inspection report. These are not matters on which we can comment as it is not within the remit of the ICASO to review the professional judgements or decisions made by Ofsted.

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

	2019	2018	2017	2016	2015	2014	2013
Alleged failure to follow procedures	3	2	1	7	2	4	14
Alleged failure to respond in a timely manner	2	0	3	2	3	6	4
Alleged discourtesy	2	2	2	0	1	0	3
Alleged discrimination	3	3	0	0	3	0	0
Alleged failure to apologise or accept mistakes	0	2	5	0	0	2	8
Inspector/staff conduct	3	11	5	11	4	25	15
Alleged failure in complaint investigation	15	22	22	16	14	39	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 complainants generally appreciate that they can only come to the ICASO once Ofsted's internal complaints handling 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 the 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 eight cases that contained a complaint about an Ofsted professional judgement (outside our scope), six also included a complaint that Ofsted's complaint investigation had been insufficient insofar as it 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 the 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 able to make a choice about whether to uphold or reject a complaint. Nevertheless, it is appropriate for us to report that, across the 15 cases on which we reported, we did not encounter any serious failings.

In 11 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 four cases on which we did make recommendations, two yielded three case-specific recommended actions, whilst in four instances we suggested a total of five general procedural improvements.

CASE SPECIFIC RECOMMENDATIONS

Within our three case-specific recommendations, all arose from instances in which our adjudicators identified matters within the detail of complaints which had not been fully addressed in Ofsted's complaints responses. In two cases, further clarification to the complainant was recommended whilst, in one of those two, our adjudicator also recommended that Ofsted re-visit its assessment of whether a complaint was filed out of time.

GENERAL RECOMMENDATIONS

Our adjudicators made a total of five general recommendations in relation to four cases this year. All of these recommendations were suggestions for slight refinements to the wording of Ofsted's policies in order to provide greater clarity for complainants. None identified any significant concerns with the policies concerned.

Two suggested refinements concerned the wording of Ofsted's policy that any requests for internal review had to be submitted within 15 working days unless there was adequate justification for late submission.

A further two suggestions related to the articulation of Ofsted's approach where there is conflicting evidence about an incident such that it is not possible for them to draw a definitive conclusion as to what actually transpired.

The final recommendation dealt with Ofsted's approach to complaints received from third parties, particularly as regards the circumstances in which Ofsted would refer the complainant to the inspected provider rather than investigate a concern directly.

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. We have not, however, identified any concerns in this regard and it remains our view that our recommendations are taken seriously by Ofsted and are appropriately acted upon.

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, Amanda Spielman. 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.

	2019	2018	2017	2016	2015	2014	2013
Reports with no recommendations required	8	17	8	12	5	25	19
Reports issued containing recommendations	5	9	11	9	15	32	16
TOTAL REPORTS	13	26	19	21	20	57	37
Case-specific recommendations made	3	10	13	9	28	47	30
General recommendations made	5	7	15	2	13	35	18
TOTAL RECOMMENDATIONS MADE	8	17	28	11	41	82	48
Case-specific recommendations accepted	1	8	9	9	28	46	30
General recommendations accepted	4	3	14	2	12	31	14
TOTAL RECOMMENDATIONS ACCEPTED	5	11	23	11	40	77	44

Of the three individual case-specific recommendations, the one that was not accepted by Ofsted related to a suggested re-visiting of an issue about an individual's assessment of suitability to working with children. Ofsted considered this was no longer necessary as the complainant had since ceased to work in the childcare sector.

The only general matter that was not accepted by Ofsted was the above-mentioned recommendation for a clarification of the circumstances in which Ofsted might refer the complainant to the inspected provider rather than investigate a concern directly. Ofsted's view was that the circumstances of the particular case did not justify a broader policy change.

The role of the ICASO is to provide advice and recommendations to improve Ofsted's complaints handling practice but we acknowledge that ultimately it is for Ofsted to adopt procedures that work best for its organisation. Our recommendations are not binding on Ofsted, but where it has been decided not to comply with any recommendation, we have received a detailed response and explanation from Her Majesty's Chief Inspector. In each instance, we can report that we have found the explanation to be well reasoned so we have not regarded it as necessary to pursue matters any further. This judgment would not, however, preclude us from repeating a recommendation in relation to another case should we encounter a similar situation.

OFSTED'S COMPLAINTS PROCESS

The following is the text of the *Complaints about Ofsted* document updated by Ofsted in May 2018.

INTRODUCTION

- 1 Ofsted aims to carry out all of its work to a high standard but recognise that, occasionally, concerns may arise about its actions or the conduct of its staff. This policy sets out its approach and procedures for handling complaints about Ofsted.
- 2 Our definition of a complaint is an expression of dissatisfaction about our actions that requires an investigation. We take complaints seriously and do what we can to resolve issues of concern promptly.
- 3 However, importantly, we will not change our inspection judgements or regulatory decisions simply because they are disappointing to the provider or user of a service, or because improvements in provision have been made since the inspection or are promised in the future.

PRINCIPLES

- 4 If you complain to us, we will:
 - deal with your complaint fairly, thoroughly and objectively
 - where appropriate, acknowledge if our work has not met our usual high standards and take steps to remedy the situation
 - learn from complaints to improve the way we work and how our staff carry out their roles
 - respect confidentiality as far as possible, both for those who complain and those who are the subject of a complaint. However, the identity of complainants will be revealed to the persons complained about when their response is essential in order for us to investigate and respond fully and fairly to your concerns
 - aim to resolve your complaint without the need for you to seek advice from third parties.

STEP 1 RESOLVING CONCERNS QUICKLY AND INFORMALLY

- 5 We expect that all concerns about our work will be raised, wherever possible, as soon as they arise and directly with the individuals involved. This provides an opportunity to clarify any misunderstanding or to resolve matters of concern quickly and informally.
- 6 If your concern is about an Ofsted inspection or inspector, you should raise it 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.
- 7 If your concern cannot be resolved directly with the individuals involved, you should ask to speak with an Ofsted manager about it.
- 8 There is an opportunity for providers to comment on the factual accuracy of an inspection report before it is finalised and published.

STEP 2 MAKING A FORMAL COMPLAINT

- 9 If your concerns about an inspection or other area of our work have not been resolved at step 1, you can raise a formal complaint with us.
- 10 You should submit your full complaint online as soon as possible and no later than 10 working days following the incident of concern. If your concern is about an inspection, we recommend that you wait until you have received the final version of the report before submitting a formal complaint. This is because we will not normally accept additional information after the complaint process has begun. In this case, a complaint should be submitted no more than 10 working days following the publication of the report. We consider a 'working day' to be any weekday other than a public holiday, not the days on which an inspected provider may operate. We will not normally consider complaints submitted after the 10-working-day period because they will be deemed 'out of time'. This is to ensure that concerns can be investigated promptly.
- 11 For Ofsted to consider a complaint, you must:
 - submit your full concerns using the online form at contact.ofsted.gov.uk/online-complaints-ofsted, which enables you to set out your concerns clearly and enables us to handle your complaint effectively
 - provide a concise account of your concerns, details of any actions already taken to resolve these, and what you expect should happen as a result of your complaint
 - provide contact details and indicate your availability for an investigating officer to contact you. If you give the inspected provider's telephone number for us to contact you on, please also provide an alternative contact number in case the provider is closed when we call.
- 12 You will receive a formal acknowledgement from us to confirm when the investigation of your complaint will be completed and who to contact if you have any queries.
- 13 We will normally only investigate one complaint from each inspected provider. If more than one complaint is received, we may choose to undertake a single investigation of all complaints, which may result in a single response.

- 14 We will not normally investigate a complaint about an inspection (or any other action we have taken) that we receive from a third party not directly involved, such as a parent or other user of the service. This is because we do not explain our inspection findings to third parties other than by publishing the inspection report. So if you are a third party, you should raise any queries about an inspection directly with the inspected provider. Those involved in the inspection are best placed to explain the inspection process, the findings of the inspectors and the action that they intend to take.
- 15 We do not normally withhold publication of an inspection report or withdraw a published inspection report while we investigate a complaint, unless there are exceptional circumstances. This is because there is a public interest in the prompt publication of all reports. 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 our published timescales. Her Majesty's Chief Inspector (HMCI) also has a legal duty to publish or report the findings of certain inspections and investigations. We consider whether to withhold publication or to withdraw a published report on a case by case basis. A challenge to the inspection process or disagreement with the inspection findings alone are not normally considered to be exceptional circumstances.
- 16 If your complaint is about the inspection of a school that was judged to have serious weaknesses or to require special measures, the judgements made will not be reconsidered under step 2 of this policy. This is because all such judgements are subject to extended quality assurance procedures before being authorised on behalf of Her Majesty's Chief Inspector. The school contributes to this process and may comment on the inspection findings as well as factual accuracy before the report is published. One or more of Her Majesty's Inspectors who are independent of the inspection scrutinise the judgements and consider any comments received from the school. 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 then request a review of the process for confirming the inspection judgements under step 3 of this policy, after the step 2 complaint investigation is complete.
- 17 When carrying out the investigation, the investigating officer will consider the information that you have submitted and the issues that you have 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. We will not normally consider any additional concerns or documentation that we receive after you submit your complaint.
- 18 The investigating officer will try to contact you by telephone to discuss your concerns and to establish if any, or all, aspects of your complaint can be resolved quickly. Wherever possible, we will attempt to resolve complaints through professional dialogue as part of this telephone discussion. Investigating officers will confirm to you the agreed main aspects of your complaint that will be subject to investigation. If they are not able to speak with you, they will base their investigation on your online complaint submission and any supporting documents you have provided.
- 19 We will provide written responses to all complaints investigated. The response you receive 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. If there are conflicting accounts and it is not possible to independently verify either of them, it may not be possible to reach a firm conclusion. For an account to be considered independent, it 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 this will be explained.

- 20 Our complaints process sits outside the other procedures for disclosure of information held by Ofsted under the Data Protection Act 2018. Details of these procedures are at www.gov.uk/make-a-freedom-of-information-request/thefreedom-of-information-act. We will not normally suspend a complaint investigation while a request for information is considered, or make a formal disclosure of any inspection evidence before or during a complaint investigation. However, complaint responses will include reference to inspection evidence when appropriate to explain inspection outcomes.
- 21 Our complaints process also 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 at: <http://www.gov.uk/government/collections/ofsteds-compliance-investigationand-enforcement-handbooks>. We will not normally carry out a complaint investigation while an appeal is ongoing and will not investigate issues that have previously been settled by a tribunal.
- 22 We aim to respond to all complaints investigated under step 2 of this policy as quickly as possible. We will send a written response to you as soon as is practicable and normally within 30 working days of the date that we received your complaint. The response will include an explanation of any steps that we will take as a result of the investigation outcome.

STEP 3 REQUESTING AN INTERNAL REVIEW

- 23 If you are dissatisfied with the way in which your complaint has been handled, you can request an internal review. This must be submitted within 15 working days of the date of the response to your original complaint.
- 24 The review will not be a re-investigation of the issues raised in your original complaint: it will consider how we handled your original complaint. The review will be based on information from the original investigation and is unlikely to require further telephone contact with you. New concerns raised or new evidence presented will not normally be considered as part of this review.
- 25 For us to consider a request for an internal review, you must:
- submit your request using the online internal review form (contact.ofsted.gov.uk/online-complaints-review), which enables you to set out your concerns about the original investigation clearly and enables us to undertake the review effectively
 - be clear on which parts of the original investigation and response you want us to review and why.
- 26 If your complaint is about an inspection of a school that has been judged to have serious weaknesses or to require special measures, any requests for a review of the process for confirming these judgements will be carried out under step 3 of this policy.
- 27 A scrutiny panel, including a sector representative external to Ofsted, will normally consider the findings of the review before they are finalised. The panel considers whether, based on the findings of the internal review, our policy and procedures on handling complaints were followed correctly to address your original concerns. The panel adds further independence to the complaints process.

- 28 We aim to provide a written response as soon as is practicable and normally within 30 working days of the date that we received your request for an internal review. The response will include an explanation of any steps that we will take as a result of the internal review.
- 29 The review outcome will be our final decision on whether or not your original complaint was investigated fairly and properly in line with our published policy. This is the final step within our internal complaints handling procedure. After we have completed the internal review, we will not normally take any further action.

INDEPENDENT AND EXTERNAL REVIEW OF OFSTED'S COMPLAINT HANDLING

- 30 We aim to resolve your complaint to your satisfaction. However, if you remain dissatisfied with the responses we have provided, you can request an external review of the handling of your complaint from the Independent Complaints Adjudication Service for Ofsted. You must do this within three months from the date of the internal review response letter.
- 31 The role of the adjudicator is to investigate the way we dealt with a complaint and to provide advice to improve our complaints handling. Details of the process for submitting concerns to the adjudicator can be found at: www.ofstedadjudicationservice.co.uk. Please note that the adjudicator cannot overturn our inspection judgements or decisions.
- 32 If you are not satisfied with the outcome of the review by the adjudicator, you can refer your concerns to the Parliamentary and Health Service Ombudsman. Details of the process for submitting concerns to the Ombudsman can be found at: www.ombudsman.org.uk.

COMPLAINTS FEEDBACK

- 33 We take all complaints very seriously and try to handle concerns objectively, fairly and efficiently. You are invited to provide feedback on how your concerns were handled using an online feedback form, details of which are provided in response letters following complaint investigations and internal reviews. Feedback will be used to improve our complaints handling process and improve the quality of our investigations and responses where appropriate.

PRIVACY NOTICE

- 34 Ofsted will use the personal data you give us to handle your complaint. This includes sharing information from your complaint with:
- people whose actions you are complaining about
 - relevant staff or contractors in Ofsted who need it to do their job
 - other Ofsted teams and/or external agencies may see information from your complaint if necessary.

For more about how we use personal data, and our data retention policy, see our [Contacting or Working with Ofsted: privacy notice](#).

ABOUT THE 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
- alleged failure to handle concerns about 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 internal complaints 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 complaints 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 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 their report and brief written recommendations. These will be sent to both Ofsted and the complainant within 21 working days of the ICASO Adjudicator being in receipt of all information.

PROVIDER ORGANISATION

ICASO is run by CEDR, the Centre for Effective Dispute Resolution.

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 300,000 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:

- Claire Andrews
- Joanna Cavell
- Tony Cole
- Eisei Higashi
- Graham Massie
- 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. Unfortunately, due to staffing difficulties, there were a number of occasions last year where reports were not completed within the agreed timetable. These issues have since been addressed and all reports were delivered on time this year.



Independent Complaints Adjudication Service for Ofsted
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