

THE INDEPENDENT COMPLAINTS ADJUDICATION SERVICE FOR OFSTED



ANNUAL REPORT 2020



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INTRODUCTION

Graham Massie
Chief Adjudicator

I am pleased to present the Annual Report of the Independent Complaints Adjudication Service for Ofsted (ICASO) for 2020. This is our tenth 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.

The major proportion of the year's work was undertaken in the context of the disruption caused by the COVID-19 pandemic. Ofsted paused some of its regular work but was able to adapt and continue other activities through remote inspections and other measures. As government guidance evolved, Ofsted published regular updates on its website so as to ensure that all providers and the public were kept aware of all changes to its approach as well as its view that there should be no lowering of the standards to which providers were expected to work.

The figures in this report are consistent with previous years, with the proportion of Ofsted's workload that results in a referral for independent complaint adjudication remaining remarkably low, and there are no signs of any lowering of the standards which Ofsted sets for itself.

This same approach of striving to maintain standards was adopted within our own and Ofsted's complaint handling teams and I am very pleased to report their considerable achievement in this regard. My thanks and congratulations go to all those involved in complaints handling work as well as to Her Majesty's Chief Inspector, Amanda Spielman, who continues to respond personally to every one of our adjudicator's reports.

During the course of the year, Ofsted undertook a consultation on proposed revisions to its post-inspection arrangements, including how it handled complaints about its work. Overall, we feel that the consultation process was open, inclusive and helpful in shaping final arrangements to support providers and complainant; and the resultant changes, implemented in September 2020, are appropriate, although unlikely to vary the nature of our work other than that there may, in due course, be a slight reduction on what is already an extremely small caseload.

Finally, I would 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 2020 calendar year, the ICASO issued 17 reports. The table below gives a breakdown of the main categories of complaints in recent years.

	2020	2019	2018	2017	2016
Childminders	5	1	4	1	5
Childcare on non-domestic premises	4	3	8	4	6
Children's homes	1	0	5	3	1
Fostering service	0	0	0	0	1
Local Authority children's services	0	0	0	1	0
Independent schools	3	1	0	2	2
Primary schools	1	3	6	3	1
Secondary schools	1	0	0	4	3
Other	1	5	0	0	0
Further education colleges	1	2	2	1	1
Community learning and skills providers	0	0	0	0	0
Applicant for HMI position	0	0	0	0	1
School inspection service	0	0	1	0	0
TOTAL	17	15	26	19	21

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 17 cases on which we reported this year, 14 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:

	2020	2019	2018	2017	2016
Alleged failure to follow procedures	4	3	2	1	7
Alleged failure to respond in a timely manner	1	2	0	3	2
Alleged discourtesy	5	2	2	2	0
Alleged discrimination	2	3	3	0	0
Alleged failure to apologise or accept mistakes	0	0	2	5	0
Inspector/staff conduct	6	3	11	5	11
Alleged failure in complaint investigation	14	9	18	11	16

There can be several grounds of complaint in any given case

As is evident from the above table, this year we have seen a near doubling in the overall number of matters complained about even though the overall number of reports issued has risen only slightly from 15 to 17. We will review the position over the coming year, but our initial analysis is that, possibly due to the unusual circumstances of the past year, complainants have put more detail into their complaints. We have not, however, seen any change in the nature of complaints that might be attributed to the COVID-19 situation other than that we received two complaints about Ofsted's procedural adjustments in the light of the pandemic. However, in both of those cases, we were satisfied that Ofsted's actions were not only reasonable but had no adverse impact on its service.

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 14 cases that contained a complaint about an Ofsted professional judgement (outside our scope), ten 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 17 cases on which we reported, we did not encounter any serious failings.

In 13 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. The remaining four cases on which we did make recommendations yielded six case-specific recommended actions and two suggestions for general procedural improvements.

CASE SPECIFIC RECOMMENDATIONS

Within our six case-specific recommendations, five 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, and therefore they recommended clarification. The remaining recommendation was that Ofsted re-visit its assessment of whether a complaint was filed out of time.

GENERAL RECOMMENDATIONS

Our adjudicators made just two general recommendations this year. These both suggested slight clarifications 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.

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.

	2020	2019	2018	2017	2016
Reports with no recommendations required	13	11	17	8	12
Reports issued containing recommendations	4	4	9	11	9
TOTAL REPORTS	17	15	26	19	21
Case-specific recommendations made	6	3	10	13	9
General recommendations made	2	5	7	15	2
TOTAL RECOMMENDATIONS MADE	8	8	17	28	11
Case-specific recommendations accepted	4	1	8	9	9
General recommendations accepted	2	4	3	14	2
TOTAL RECOMMENDATIONS ACCEPTED	6	5	11	23	11

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 latest *Complain about Ofsted* document, as published on its website in September 2020 following a consultation process. This revised policy only applies to any new complaints linked to inspections (or other activity) from September 2020 onwards and, therefore, did not apply to any of the cases considered by the ICASO this year. However, we can confirm that, if they had been in force at the time, none of the changes would have had any impact on the outcomes of our work as detailed in this report.

COMPLAIN ABOUT OFSTED

We welcome comments and suggestions about our work, using feedback to improve what we do and how our representatives carry out their roles. If you complain to us, we will:

- deal with your complaint fairly, thoroughly and efficiently
- acknowledge if we have made a mistake and take steps to put matters right
- learn from complaints to improve the way we work

STEP RESOLVING CONCERNS QUICKLY AND INFORMALLY

- 1 We expect that, where possible, you will raise any concerns about our work as soon as they arise and directly with the individuals involved.

For concerns about inspections or regulatory events, this means raising them with inspectors before the inspection or regulatory event ends. This gives us an opportunity to clarify any misunderstanding or to resolve matters of concern quickly and informally.

If you have recently been inspected, in most cases you should raise any comments or concerns about the process within the timeframe specified once you have received your draft inspection report. We will consider any concerns you have raised when we finalise your report. This process is set out in our guidance for each different type of inspection.

STEP MAKING A FORMAL COMPLAINT

- 2 If your concerns about Ofsted's work have not been resolved informally as set out in Step 1, you can raise a formal complaint using our online form.

Please do not use this form to complain about a provider that Ofsted inspects or regulates. There are separate steps for this: please see the first section of this guidance.

We will base our handling of your complaint on what is submitted in the form. We will not normally accept further complaint information or enter into dialogue with you once the form has been submitted. If you cannot access the form, we will make reasonable adjustments for you.

THE PROCESS FOR THOSE WE HAVE INSPECTED RECENTLY

In most cases, if we have recently inspected your provision, you can raise any concerns when commenting on the draft inspection report. Therefore, we will not normally accept any formal complaint submission before we send you the final report.

We will only accept complaints about an inspection from the most senior leader in your provision, or the individual named in the inspection report as the responsible person (or their representative).

You should submit any formal complaint within 5 working days of us issuing the final report (we define a 'working day' to be any weekday other than a public holiday, not the days that an inspected provider might operate). We will not normally consider any complaint submitted after this deadline.

We will withhold publication of an inspection report while we consider your complaint, if you have submitted it within this deadline.

THE PROCESS FOR ALL OTHERS

If you are complaining about a regulatory event or a joint inspection we have carried out with other agencies, you should submit your online complaint within 5 working days of either:

- the outcome being published (if there is one)
- the regulatory event (if there is no published outcome)

If you are complaining about anything else (such as the conduct of an Ofsted representative), you should submit your online complaint within 5 working days following the incident of concern.

We will not normally consider any complaint submitted after these deadlines.

We will not normally consider a complaint about an inspection (or any other action we have taken) from a third party who is not directly involved, such as a parent or other user of the service. This is because we do not explain our inspection/regulatory findings to third parties, other than by publishing our reports or outcomes. If you are a third party, you should raise any queries directly with the provider. Those directly involved in the inspection or regulatory event are best placed to explain the process, the inspectors' findings and any action that the provider intends to take.

WHAT TO EXPECT FROM US

You will receive a formal acknowledgement from us when we receive your complaint. This will confirm when we aim to respond to your complaint and who to contact if you have any queries. If we receive multiple complaints about the same issue, we may consider these together and provide a single response.

We will provide a written response to your complaint as quickly as possible, and normally within 30 working days of receipt of your complaint.

The response will link together similar issues for conciseness and clarity, and will provide a conclusion on whether each main aspect of your complaint has been upheld. If it has not been possible to reach a firm decision on an issue, we will explain the reasons for this. The response will also include an explanation of any steps that we will take as a result of your complaint.

If we withheld publication of an inspection report while considering your complaint, we will normally publish the report soon after sending you the response letter.

HOW THIS PROCESS WORKS ALONGSIDE OTHER PROCEDURES

Our complaints process sits outside the other procedures for disclosure of information held by Ofsted under the Freedom of Information Act 2000 or Data Protection Act 2018. We will not normally suspend a complaint while we consider a request for information, or disclose any inspection/regulatory evidence while a complaint is ongoing. However, complaint responses may include reference to evidence, when appropriate, to explain the inspection or regulatory outcomes.

Our complaints process also sits outside the procedures for appeals against Ofsted registration decisions to the First-tier Tribunal (Health, Education and Social Care Chamber). We will not normally accept a complaint while an appeal is ongoing and will not consider issues previously settled by a tribunal.

STEP REQUESTING AN INTERNAL REVIEW

3

If you are dissatisfied with the way we have handled your complaint, you can request an internal review using our online form. You should submit your request within 15 working days of the date of the response to your complaint. We will not normally consider any request for an internal review submitted after this deadline.

We will not normally withdraw a published inspection report while we consider a request for an internal review. The internal review will consider how we handled your complaint and whether we followed our policy and procedures for complaints about Ofsted.

The internal review will be based on information that was available to Ofsted when we dealt with your formal complaint. New concerns or new evidence in relation to your complaint will not normally be considered as part of the internal review. If your complaint is about an inspection or regulatory event, the internal review will normally include a scrutiny panel with a sector representative external to Ofsted.

We will provide you with a written response as quickly as possible, and normally within 30 working days of receipt of 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.

The review response is the final step in our internal complaints-handling process. After the internal review, we will not normally take any further action.

INDEPENDENT AND EXTERNAL REVIEW

If you remain dissatisfied after our internal review, you can refer your complaint externally to the Independent Complaints Adjudication Service for Ofsted (ICASO). The adjudicator will review our handling of your complaint. You must do this within 3 months of the date of the internal review response letter.

If you are not satisfied with the outcome of the review by the ICASO, you can refer your concerns to the Parliamentary and Health Service Ombudsman.

COMPLAINTS FEEDBACK

If you want to give feedback on how we handled your complaint, please refer to the details provided at the end of our complaint response letters.

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 operational difficulties associated with the COVID-19 lockdown, there were a few instances this year where reports were not strictly completed within the agreed timetable. This was temporary and I am pleased to note that performance has been restored in line with the agreed standards.



Independent Complaints Adjudication Service for Ofsted

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