

THE INDEPENDENT COMPLAINTS ADJUDICATION SERVICE FOR OFSTED



ANNUAL REPORT 2022



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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 2022. This is our twelfth 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.

It is important to note that 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. Nor can we overturn individual Ofsted inspectors' professional judgements.

After a period in which referrals for Independent Review were reduced as a direct consequence of lower inspection levels during the pandemic, we saw a pick-up in activity this year, and our workload was back to around the 2020 level, with 18 adjudication reports issued in the year. This figure remains remarkably low when viewed in the context of Ofsted's overall workload.

A high proportion of the complaints that do reach us include concerns about judgements and other information included within inspection reports. Whilst such matters fall outside our remit, we are able to consider the quality of Ofsted's complaint-handling responses, including the clarity of explanations provided, and our overall view is that they demonstrate thorough consideration of concerns and set out clear analyses of the evidence and Ofsted's approach to the underlying issues.

My thanks and congratulations go to all those involved in complaints handling work as well as to His Majesty's Chief Inspector, Amanda Spielman. 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.

ABOUT INDEPENDENT REVIEW

Independent Review represents the final stage of Ofsted's complaints process for complaints about Ofsted's work. In the first instance, concerns about Ofsted's service should be raised directly with the individuals involved (step 1). If concerns cannot be resolved informally, a formal complaint can be raised (step 2), and there is an opportunity to request an internal review of the handling of a complaint (step 3) for concerns that remain unresolved.

Only complaints which have been through this process and remain unresolved may be referred for Independent Review.

- 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 Ofsted's complaints procedures;
- alleged failure to respond to complaints in a timely manner;
- alleged discrimination in complaints handling;
- alleged discourtesy in complaints handling;
- alleged failure to apologise or accept mistakes in complaint responses; 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. We cannot overturn individual Ofsted inspectors' professional judgements, nor can we award any financial damages or compensation.

CASELOAD

During 2022 calendar year, the ICASO issued 18 reports.

The table below gives a breakdown of the main categories of complaints in recent years.

	2022	2021	2020	2019
Childminders	5	2	5	1
Childcare on non-domestic premises	2	0	4	3
Children's homes	1	0	1	0
Fostering service	1	0	0	0
Independent schools	3	2	3	1
Primary schools	1	0	1	3
Secondary schools	2	0	1	0
Other	0	0	1	5
Further education colleges	3	2	1	2
TOTAL	18	6	17	15

We have analysed the geographic spread of settings across Ofsted's various regions.

	2022	2021	2020	2019
North East, Yorkshire and Humber	3	0	1	1
North West	2	0	3	1
West Midlands	3	1	4	2
East Midlands	0	0	1	1
East of England	2	1	2	2
London	0	0	2	2
South East	4	3	2	5
South West	4	1	2	1
TOTAL	18	6	17	15

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

All of this year's complaints came from representatives of inspected institutions (owner, manager, governing body or headteacher), whereas in previous years we have seen 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. Every one of the 18 cases on which we reported this year included a complaint about the inspection judgements awarded or statements contained within the inspection report. These are not matters on which we can comment.

There were also four complaints relating to the handling of requests for disclosure of information held by Ofsted under the Freedom of Information Act 2000 or Data Protection Act 2018. These matters fall outside our scope as the appropriate body is the Information Commissioner's Office.

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

	2022	2021	2020	2019
Alleged failure to follow procedures	13	1	4	3
Alleged failure to respond in a timely manner	0	0	1	2
Alleged discrimination	1	1	2	3
Alleged discourtesy	0	0	5	2
Alleged failure to apologise or accept mistakes	0	0	0	0
Inspector/staff conduct	13	5	6	3
Alleged failure in complaint investigation	23	5	14	9

There can be several grounds of complaint in any given case

As is evident from the above table, this year we have seen a significant increase in the overall number of matters complained about even though the overall number of reports issued, at 18, is consistent with historic levels. This issue was first commented on in our 2020 report which noted that complainants are tending to put more detail into their complaints.

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 18 cases that contained a complaint about an Ofsted professional judgement (outside our scope), 15 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 & OFSTED'S RESPONSES

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 18 cases on which we reported, we did not encounter any serious failings.

In 14 cases, our 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.

We are pleased to report that every one of our adjudication reports was responded to personally by His Majesty's Chief Inspector, Amanda Spielman, or in her absence by her Deputy, Matthew Coffey. 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.

As for the specific details of our recommendations and Ofsted's responses, the four cases on which we did make recommendations yielded three case-specific recommended actions and one suggestion for a general procedural improvement:

- One case-specific recommendation identified some aspects which had not been fully explained in Ofsted's complaints responses, and therefore our adjudicator recommended clarification. Ofsted's view was that any uncertainty had already been addressed in the course of its complaints process. The final response letter from Amanda Spielman, a copy of which was provided to the complainant, also provided a further summary of their analysis. We accept that this letter satisfactorily meets our recommendation.
- A second case-specific recommendation was that, following a number of complaints-handling shortcomings which been identified by Ofsted, and for which they had apologised, specific feedback should be given to the individuals/teams involved so as to avoid any recurrence. This recommendation was accepted by Ofsted.
- The remaining recommendations arose out of a complaint that an Ofsted inspector was perceived to have had a conflict of interest. Our adjudicator considered that, in order to maintain the standing of the Ofsted inspection process, it was appropriate for the setting to be re-inspected notwithstanding that the conflict had been properly reported, the original inspection fully quality assured and no shortcomings identified. In their response, Ofsted have declined to commission a re-inspection, noting that there was no actual conflict of interest for the inspector. They did, however, agree a related recommendation that Ofsted clarify its guidance material about how to respond to concerns about perceived conflicts.

The following table provides a historic summary of our reports, recommendations and Ofsted's responses.

	2022	2021	2020	2019
Reports with no recommendations required	14	6	13	11
Reports issued containing recommendations	4	0	4	4
TOTAL REPORTS	18	6	17	15
Case-specific recommendations made	3	0	6	3
General recommendations made	1	0	2	5
TOTAL RECOMMENDATIONS MADE	4	0	8	8
Case-specific recommendations accepted	2	n/a	4	1
General recommendations accepted	1	n/a	2	4
TOTAL RECOMMENDATIONS ACCEPTED	3	n/a	6	5

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.

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.

PRIVACY NOTICE

We will use the personal data you give us to handle your complaint. We will share information from your complaint with people whose actions you have complained about, relevant Ofsted staff who need it to do their job and other Ofsted teams and/or external agencies as appropriate. Apart from these exceptions, the complaints process is regarded as private and Ofsted will maintain the privacy of anyone who makes or is referred to in a complaint as far as possible.

For more information on how we use personal data and our data retention policy, see our 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.

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The ICASO adjudicators can investigate complaints into:

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- 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
- Tony Cole
- Eisei Higashi
- Graham Massie

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. Overall, we are pleased to note that the team met the Key Performance Indicators during the period.



Independent Complaints Adjudication Service for Ofsted

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