

# A commentary on the Ofsted complaints procedure consultation

📅 22 June 2023    👤 Katie Michelin

At the start of this year, Ofsted acknowledged that its current complaint procedure was “not working” and suggested it would be consulting on changes. In the following months there was a wider debate about Ofsted’s role and practices, triggered predominantly by the inspection of Caversham Primary School and the tragic death of headteacher Ruth Perry.

Discussion around the effectiveness and fairness of the processes through which schools can raise concerns about inspection activity still featured heavily in this wider debate and, earlier this month, Ofsted launched its consultation entitled **Changes to Ofsted’s post-inspection arrangements and complaints handling**.

## The Ofsted consultation proposals

The consultation, which invites representations until 15 September 2023, outlines five key proposals:

1. Improving professional dialogue during the inspection to resolve issues before conclusion of the visit by prescribing check-ins at specific stages of the inspection.
2. A new option for schools to call Ofsted the day following an inspection if they have “unresolved concerns”. It is proposed that this post-inspection call would be handled by an inspector outside of the inspection team.
3. New arrangements for considering formal challenges to inspection outcomes and finalising reports which would offer two distinct routes depending on whether a school wishes to raise minor factual accuracy or clarification points or seeks a more extensive review of the inspection findings by way of a formal complaint. Where a formal complaint is made, Ofsted is proposing to re-introduce a telephone call with the school as part of the investigation process.
4. Removal of the existing internal review process (step 3 of the current complaints procedure) and instead allow for direct escalation to the Independent Complaints Adjudication Services for Ofsted (ICASO).
5. A new system of periodic review of closed complaints by a panel of external reviewers from the sectors Ofsted inspect to provide challenge and transparency.

[\*\*Further detail about the proposals can be found here\*\*](#) →

## Our views on the proposed amends

Having advised many schools and academies on raising complaints with Ofsted, we are familiar with the recurring gripes around the current procedure and the ways in which it repeatedly fails to offer a satisfactory remedy for genuine and valid concerns about inspection activity. Proposals to amend this system are therefore encouraging but we offer the following commentary:

### Reasons and transparency behind inspection decisions

A disappointing or unexpected Ofsted grade is one thing, but what often causes the most frustration and upset for schools is the failure of the inspectorate to adequately explain how judgements have been arrived at.

Of course, under the School Inspection Handbook, the lead inspector should be explaining to school leaders the key findings and details of how the judgements have been reached and the school should be kept informed as to how inspectors are piecing evidence together so there are “no surprises”. However, whether due to lack of time, adherence or otherwise, schools do not always come away from inspections with a full understanding of the findings and precisely how they have been arrived at.

The proposals for formalising check-ins may help with the point about communication during inspection, although the check-ins will need to be meaningful. In addition though, Ofsted needs to engage and properly explain its reasoning behind judgements where a school remains concerned post-inspection.

The tendency for Ofsted’s formal complaint responses to answer complaints with a circular, opaque and generic reference to “the evidence base” under the current system has become notorious. Equally the practice of lumping together elements of a school’s complaint so that key concerns and questions are not actually responded to in the complaint response letter adds to the sense of an unfairness.

As part of the new proposals, Ofsted has stated it will review complaint outcome letters “*to be clearer for providers about the reasons for the decisions made.*” Clear reasons and transparency around the evidence base in response to complaints will be vital to restoring faith in the procedure and the inspectorate generally.

## **Matters of inspector conduct: Ofsted response to complaints**

In some respects extending the point above, there is the issue of how Ofsted responds to complaints around conduct. Whilst the conduct of many inspectors is exemplary, we know that schools have cause to raise conduct concerns relatively frequently. The type and seriousness of such concerns varies significantly but given the nature of inspection visits (high stakes, intense, short, infrequent, people-led), the ability for even what may appear to be more minor matters of conduct to derail an inspection should not be underestimated.

It is therefore a source of frustration for schools that when it comes to raising matters of conduct with Ofsted, the stock response as part of a formal complaint is that the relevant concerns have been referred to the inspector’s line manager or similar. Whilst that is undoubtedly the correct course of action from an internal perspective and, of course, the school should not be entitled to details of an individual inspector’s performance management, it somewhat sidesteps the grievance raised by the school in relation to the inspection. Importantly, it entirely fails to factor in that such conduct may well have skewed the evidence and outcomes.

We therefore consider that, as part of its commitment to improving its complaint outcome letters, Ofsted should give greater thought to how conduct issues can be meaningfully addressed and resolved for providers.

## **Ofsted complaints procedure time limits**

Ofsted’s current complaints procedure for providers sets out time limits for raising complaints at different stages. These compel schools to act very quickly if they wish to raise issues. For example, schools are required to bring any formal (step 2) complaint within five working days of receiving the final inspection report. Ofsted has not indicated any changes to those timeframes as part of the new proposals, although neither does it expressly state how long a school will have to bring a formal complaint following receipt of the draft report.

We question why the timeframes, tight as they may be, cannot be calculated in accordance with school days, rather than working days. We have known a number of matters where headteachers have found themselves having to work on complaints during school holidays as the final report has arrived just prior to the end of term. On a similar theme, there are examples of schools who have been graded as inadequate receiving “notification of a moderation judgement” on the last day of term with the final report “to follow” after their break.

The short timeframes have previously been justified on the basis of Ofsted’s statutory duty to publish the report of their inspection and the strong public interest in publication. However, under the proposed procedure, the process should automatically be speeded up anyway as schools would be raising their formal complaint at draft report stage, rather than having to have made comments on the draft report first of all and awaited the final report.

In a climate where there is undisputed stress around Ofsted inspections, it would seem reasonable for the system (both the complaints procedure and the wider process around creation, finalisation and publication of the report) to accommodate school leaders not having to deal with inspection activity during their holiday period. More generally, we believe that clearer information in the School Inspection Handbook about post-inspection activity and what will or will not occur outside of term time would be sensible and welcomed by the sector.

## **A human experience: Inspection process communication**

As well as the regular check-ins during inspection, the changes being consulted upon include proposals for a call both the day following the inspection and, where a formal complaint is subsequently made by a school, for the investigation process to include a telephone conversation with the school “to explore their concerns fully”.

We know from speaking to trusts who run multiple schools that currently there can be a stark contrast between how collaborative and communicative an inspection process is and that the “how” can be as crucial as the “what” in terms of evidence gathering and explaining judgements. We expect that schools will broadly welcome the opportunity to discuss their experience directly with someone outside of the inspection team and are hopeful that this will help make the process more “human”.

## Independence and the role of ICASO

A core and consistent grumble with the existing complaints process is that “Ofsted is marking its own homework”. Indeed under the current process, it is the lead inspector who will review any comments on the draft report (potentially extending to matters of conduct, as well as concerns around judgements), a formal complaint will be reviewed by an inspector from outside the inspection team but probably still in the same region and even a review under step 3 is now conducted by a complaints officer within Ofsted as opposed to a panel with any external representation (as was the case a year or so ago).

The proposals out for consultation improve this position in some respects by offering immediate post-inspection contact with someone from outside the inspection team, allowing the school’s position to be heard ahead of the draft report. In addition, the compromised situation of the lead inspector being expected to review and respond objectively to concerns which extend beyond points of clarity or factual accuracy is removed, as this would now be dealt with as a formal complaint. The formal complaint itself however will still be dealt with by someone within Ofsted and presumably in many cases still someone from the same region.

Ofsted’s intended overarching theme is a “right first time” approach and a focus on any formal complaint being dealt “once, and thoroughly”. As part of this it has been suggested that there is a complete removal of its step 3 “internal review” stage; instead, if the school is not satisfied with the outcome of the formal complaint, they can raise it directly with the Independent Complaints Adjudication Service for Ofsted (ICASO).

ICASO itself is not new – it already has a place in the existing complaints procedure. Where a school has exhausted step 2 (formal complaint) and step 3 (internal review), ICASO is the next port of call. Under the new proposals, ICASO’s independent role is simply invoked sooner. This is welcomed in principle. However, it must be remembered that ICASO has no power to overturn inspection judgements or decisions made by Ofsted. It is there to offer an independent view on complaints and provide recommendations, advice and guidance to Ofsted, but Ofsted does not have to comply with its recommendations.

The toothless nature of this stage may therefore offer limited reassurance to providers and they may still find it necessary to resort to legal action to at least have the prospect of a meaningful and effective remedy.

**[More information about ICASO can be found here](#) →**

## Publication of Ofsted inspection reports

Once an inspection report enters the public domain via Ofsted publication, the stakes become much higher for schools. They will need to account to their stakeholders for the inspection outcome and, where the overall effectiveness grade leaves them in a category of concern, the published report will usually trigger intervention action by the Department for Education.

Under Ofsted’s latest proposals, where a school raises a formal complaint having received the draft report, publication will be withheld until the complaint has been investigated and responded to. Once the complaint response has been sent to the school, together with the final report the report will then be published. Ofsted does not state how soon after the issuing of the response the final report publication will take effect but under the current process it is usually five days. This means that it is likely the school will have a matter of days to review the response and final report for the first time before it goes live on Ofsted’s website.

As explained above, if the school remains unhappy with the report or how Ofsted has handled its formal complaint it then has the option of direct escalation to ICASO but Ofsted offers no assurance that, where a school does go to that next stage, it will agree to withhold publication of the report. This is in contrast with the existing procedure where, although publication of a report will not normally be withheld following conclusion of a formal complaint, Ofsted may agree to extend the delay to publication whilst a step 3 complaint is considered.

Under the proposals, for the school to prevent publication of the report following the outcome of the formal complaint, it seems likely therefore that it would need to resort to legal action.

# Conclusion

After a turbulent year, changes to the complaints procedure form an essential part of restoring trust in Ofsted. No one expects every Ofsted inspection to run perfectly but they do expect principles of natural justice to reign when resolving those inspections that don't. Whilst we have highlighted some areas of the proposals which (excuse us) "require improvement", we believe from our own practice that Ofsted is now listening.

It is important to reiterate that these proposals are now open to consultation and not set in stone. There will be many in the schools and academies sector who will be able to use their inspection experiences to provide valuable feedback and it will be extremely interesting to read the outcome report on the consultation next academic year.

We will comment on this further once the consultation is concluded and the reformed procedure confirmed.

## Key contact

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