

# Challenging Ofsted inspections - A practical guide

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This academic year has seen the return of a full schedule of Ofsted inspections for schools, albeit with a slight interruption in December owing to Omicron. The majority of the autumn term, however, was a busy period for Ofsted and included the targeted inspection of formerly exempt schools.

Outstanding schools will certainly have been feeling the heat. Amanda Spielman has spoken of halving the number of schools with this grade and statistics from last term broadly reflect this figure.

As legal advisors to schools, Browne Jacobson have noticed a marked increase in the number of instructions from schools seeking advice on their recent Ofsted inspection and the NAHT also continue to receive enquiries on this topic through their helpline.

One recurring complaint is that there is a lack of genuine consideration by Ofsted of the impact of COVID-19. Despite the additional text within the School Inspection Handbook and the standard lines added to reports which suggest the impact of the pandemic is taken into account, many schools' experience is that the actual practical repercussions of operating a school in such times are not being fairly acknowledged as part of the inspection process.

For schools seeking advice following a particularly drastic grade change, a judgement of ineffective safeguarding has been a noticeable theme.

Clearly, no school wants to find itself in a position where it is necessary to challenge an Ofsted inspection. In general terms, we encourage schools to:

- approach an inspection with a view to purposefully building a relationship with the lead inspector, which is usually partly established by the initial phone call;
- give some thought to how they want to position their school, what their narrative will be and how staff can be supported to show the school in the best light. The role of governors also remains important in this context;
- review the school website – it will probably be the first piece of evidence that the inspector considers. It is therefore critical that it complies with current regulations and policy and that there is accessible information about the school's curriculum, including subjects, sequencing of knowledge, learning and assessment;
- think carefully about the way in which they talk about the effect of the pandemic. We do have reports of inspectors who regard the pandemic as being over and we would advise challenging that view immediately. However, the inspection team's main focus should be the present and the future. The school should therefore seek to demonstrate how, despite the historic and continued challenges, it has responded and will continue to respond – for example, in terms of effective blended learning, adapted curriculum and evidence of careful assessment of its most important priorities going forward.

There will unfortunately still be occasions when schools are unhappy with the inspection process and/or outcome. Below are some practical pointers for members who find themselves in this position.

- **Raise any concerns as early on as possible during the inspection process and record the response given by the lead inspector or Ofsted's central team.** Although in the midst of an inspection, especially one which isn't necessarily going as expected, this can be easier said than done, it is an expectation of Ofsted's complaints procedure and it can be helpful to go back to if a formal complaint or challenge is ultimately advanced. The NAHT's separate advice on Ofsted inspections also reiterates this point.

- **Make full use of the right to comment on the draft report.** This stage was previously typically referred to as the “factual accuracy check” but it now goes wider than this, regardless of the school’s overall effectiveness grade. The school will have five working days to comment on any aspect of the draft report, inspection process or findings. The School Inspection Handbook states that it will consider all comments and respond to them on issuing the final version of the report. Note that it is the lead inspector who will be providing the response and our experience is that the comprehensiveness of those responses varies and is often quite limited. However, it is a worthwhile exercise to try to draw out the lead inspector’s position on areas of complaint and it is not uncommon for the school’s comments at this stage to result in changes to the narrative of the report.
- If, on receipt of the final report, you remain unsatisfied, there is the option of **issuing a formal complaint in accordance with step 2 of Ofsted’s complaints procedure.** Ofsted updated its complaints procedure following consultation in 2020. As a result of those updates, where a school submits a formal complaint within five days of receiving the final report, Ofsted will not now publish the report until the complaint has been investigated and a complaint response provided. As such, the school does not have to be immediately concerned about a potentially flawed report entering the public domain. Ofsted expects schools to use its online form to submit the complaint. This is divided into sections relating to process, judgements and conduct. In addition, the school needs to set out the outcome it is seeking; for example, a change to a certain part of the narrative of a report or partial re-inspection. Beyond step 2 of the complaints procedure, Ofsted will only continue to withhold publication of a report in exceptional circumstances. The only other way to prevent Ofsted publishing would be to seek an injunction from the court.
- **Securing an injunction to prevent publication of a report is not impossible, but it is difficult.** Ofsted has a statutory duty to publish inspection reports and there is also a public interest in the publication. As such, a judge will expect compelling reasons to be provided as part of any such case, as well as evidence of irreparable damage to the school if the report were to be published.
- **It is sensible to exhaust Ofsted’s complaints procedure as far as is possible before resorting to formal legal action against Ofsted, both from a cost perspective and because the court will have expected you to do so.** Successful judicial review cases against Ofsted are quite rare and particularly challenging where a school is looking to challenge the merit of a judgement alone. However, there have been cases where Ofsted’s decision-making and/or process has been flawed, including those that have not ended up in court as Ofsted has been prepared to acknowledge the errors and re-inspect accordingly. As such, whilst a school’s comments on a draft report or formal complaint are not legal documents, there is value in seeking legal advice at these stages to focus the approach and understand prospects. Many schools also welcome the objectivity of a third party advisor given the inevitable personal impact that an unfair Ofsted inspection can cause.
- Where an unfavourable report is upheld and is to enter the public domain, there are steps and strategies available to manage the potential fall-out and the overarching messaging to stakeholders.

## Additional resources:

- [Gathering additional evidence to secure an incomplete inspection](#)
- [Conduct during Ofsted inspections](#)
- [Deferring Ofsted inspections](#)
- [Complaints procedure - Ofsted](#)
- [Ofsted inspections from September 2021 \(naht.org.uk\)](#)

If you have any questions or require specific advice following a recent Ofsted inspection, please get in touch:

- [Katie Michelin](#), +44 (0)115 976 6189, [katie.michelon@brownejacobson.com](mailto:katie.michelon@brownejacobson.com)
- [NAHT](#), +44 (0)300 30 30 333, [info@naht.org.uk](mailto:info@naht.org.uk)

## Contact

Katie Michelin

Partner

[katie.michelon@brownejacobson.com](mailto:katie.michelon@brownejacobson.com)

+44 (0)115 976 6189