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Changes to Ofsted Inspection Complaints Arrangements in 2024

At the end of November, Ofsted has published its [consultation outcome](#) in relation to “its changes to Ofsted’s post-inspection arrangements and complaints handling”.

You may recall our [article](#) a few months ago which summarised the proposed changes and provided our thoughts on some of the proposed amendments.

Ofsted has now announced that, following the consultation, it will be taking forward all 4 of its proposals and that it will update its inspection handbooks and other published guidance in due course. For now, substantive guidance as to how the proposals will work in practice is awaited.

Ofsted confirmed that in total, it received 1,567 online responses and that this was an increase of over 150% from the 622 responses it received from its previous consultation in 2020 on the same subject. It has been well documented in recent months that providers across the entire sector have held concerns about Ofsted’s inspection arrangements and their outcomes and findings.

Proposal 1: Enhancing on-site professional dialogue during inspections to help address issues

Ofsted proposed to formalise checks between providers and inspectors during the inspection itself. The proposal would require inspectors to initiate discussion with the provider about how the inspection is going. The inspectors would be expected to do so during the pre-inspection notification call or when the inspector arrives on site, at end-of-day meetings, and at the final feedback session.

83% of respondents agreed that Ofsted should enhance its on-site professional dialogue.

Given that some respondents commented that formalising the process will be helpful to ensure that it happens routinely, it remains unclear how the process will be formalised and what this will look like in practice. Some respondents commented that it was sometimes difficult to challenge the views of an inspector or inspection team. Some stated that they felt that their comments were disregarded.

Proposal 2: Introduce a new opportunity for providers to contact Ofsted

Ofsted proposed a new way for providers to raise potential concerns about inspections after the on-site visit but before receipt of the draft report. It proposed an opportunity for providers to call Ofsted the day after an inspection visit to raise any informal concerns, ask any relevant questions about next steps, and highlight any information which they feel was not fully considered during the visit.

87% of respondents agreed that Ofsted should introduce this opportunity. Some respondents commented that this opportunity should be allowed beyond the day after the end of the on-site inspection visit. Ofsted has stated that, having considered the respondents' views, its inspections cannot be open-ended and that allowing contact on the day after the end of an inspection visit is, in Ofsted's view, an appropriate approach.

Ofsted's response has not yet detailed specifically how the information raised in the telephone call will be used to find a resolution and, therefore, it is currently unclear as to how the proposal will benefit inspections in practice.

Proposal 3: Introduce new arrangements for finalising reports and considering formal challenges to inspection outcomes

Once a draft report has been received, Ofsted has proposed two ways to challenge it:

- For minor points of clarity or factual accuracy, Ofsted proposes to consider these before it finalises the report. Ofsted expects that most providers will utilise this process. Ofsted has said that by doing this, a provider will not normally be able to later raise a formal complaint or challenge; Or
- If providers want to seek a review of the inspection findings and judgements, they can submit a formal complaint. This kind of formal complaint will now be investigated by an Ofsted staff member who was not a part of the inspection. Ofsted proposed that a phone call take place between this member of staff and the provider in which the issues should be discussed. It is unclear and, perhaps of concern to providers, how these phone calls will be documented or recorded.

78% of respondents agreed that Ofsted should introduce the new proposed arrangements. Ofsted has recognised that some respondents were concerned that providers would not be able to make a formal complaint or challenge if they had already chosen to highlight only minor points of clarity. In other words, providers would not be able to take part in factual accuracy and a formal complaint (which they are currently able to do). Providers had requested clarity on this. They wanted to know when a provider might be able to make a complaint in these circumstances.

Some providers expressed concerns about Ofsted “marking its own homework” and commented that complaints should be investigated by an independent body.

Further, respondents stated that complaint responses should be clearer for providers about the findings of investigations and why decisions have been made.

Ofsted has stated that it notes the need for clarity in guidance so that providers can understand how the new arrangements will work. Ofsted has confirmed that this will be set out in policy documents in due course and that the addition of a telephone call as part of the investigation process and clearer outcome processes will help providers to better understand how Ofsted has handled the complaint.

We therefore do not know how the proposal will work in practice and Ofsted has not clarified whether providers will be able to lodge factual accuracy comments **and** a formal complaint thereafter or whether it can only undertake one of the processes. This was our primary concern in respect of the proposals and we remain, currently, without clarity on this.

Proposal 4: Direct escalation to the Independent Complaints Adjudication Service for Ofsted and adding a periodic review of closed complaints using external representatives

Ofsted proposed doing away with the internal review process. Rather than requiring providers to do this before contacting the Independent Complaints Adjudication Service for Ofsted ('ICASO'), (an external body that can review Ofsted's handling of a providers' complaint), Ofsted proposes that providers be able to raise concerns directly with ICASO.

84% of respondents agreed on introducing the direct escalation to ICASO with a periodic review of a sample of closed complaints. Some providers commented that the role of ICASO was to review whether the complaints process was carried out properly, not to review the inspection itself. Other respondents commented that there was no independent body reviewing Ofsted's inspection work.

Ofsted stated that it has considered the responses and by removing the current internal review process, it will reduce the burden on providers raising concerns.

Introducing the proposals and next steps

Phase 1: January 2024

From January 2024 proposals one and two will come into force. Ofsted has stated, simply, that it will give inspectors guidance on developing and formalising the important discussion and professional dialogue. It is

unclear as to when this guidance will take place, given the current timescales for introduction. It is also unclear as to whether this “formalised” process and the associated minutes/notes will be made available to providers as part of the factual accuracy and complaints process.

Phase 2: April 2024

From April 2024, proposals three and four will come into force.

In relation to proposal 3, Ofsted has stated, again, that when providers receive their draft report, providers will be able to highlight minor points of clarity or factual accuracy or raise a formal complaint to seek a review of the inspection findings and judgements awarded. It is unclear if providers will have access to both avenues of complaint, as they currently do. More guidance is expected but the consultation outcome document has provided clarity on this. When this further information becomes available we will provide a further update.

We strongly encourage providers to make contact if they are unhappy with their inspection so that we can assess what steps can be taken to protect the service.

If you are in receipt of a draft Ofsted report, please contact our experienced team as soon as possible to discuss your situation and the options available to you at alice.straight@la-law.com or 01202 786353.