

Changes to Ofsted's Factual Accuracy and Complaints Process: April 2024

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In January 2024, we reported on the changes to the Ofsted post-inspection complaints arrangements following Ofsted's consultation on the proposed changes.

[Ofsted](#) has now published its new [guidance](#) about how those proposed changes would work in practice for Ofsted events/ inspections, which have taken place on or after 4 April 2024. For inspections which took place before 4 April 2024, the previous process remains in force.

Informally resolving concerns

Ofsted has stated that it expects providers to raise concerns about its work/ inspections as soon as they arise and directly with the individual Ofsted staff involved during the on-site visit, for example. If it is not possible for matters to be resolved this way, then senior leaders within the provider's organisation can telephone Ofsted to speak to a senior inspector during an inspection or on the next working day. Ofsted states that this allows them to clarify any misunderstandings and resolve matters of concern quickly and informally.

If there is a complaint to be made about safeguarding, providers are advised to telephone Ofsted as soon as possible to speak with a senior Ofsted inspector about any concern immediately.

Informally resolving concerns

Providers will be familiar with the ability to lodge a formal complaint to Ofsted after the factual accuracy stage. However, since 4 April 2024, inspection activity will be subject to the amended process.

The recently published guidance states that a provider can raise minor points about its report **OR** submit a formal complaint within 5 working days of receiving a copy of the draft report.

As providers will recall, previously, they could lodge a factual accuracy submission about all matters, including concerns about inspector conduct and process, as part of its factual accuracy concerns. If it was not satisfied with the changes made to the report or Ofsted's response, the provider could then lodge a formal complaint.

There were two separate steps which would both delay the publication of the inspection report. Now, under the new guidance, a provider can opt to raise minor points of factual accuracy **OR** submit a formal complaint. Providers cannot normally do both, one after the other, as they have been able to do in the past.

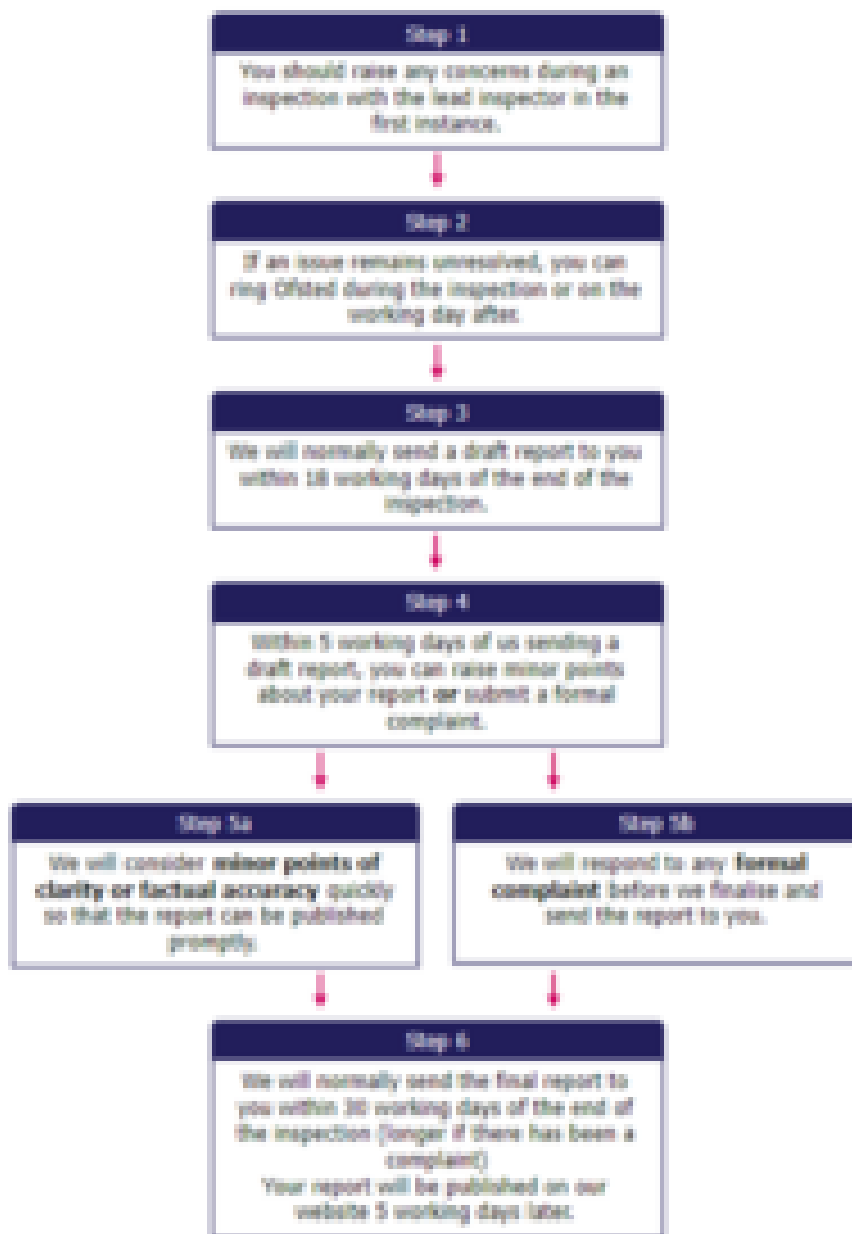
The guidance states that “*in most cases,*” a provider who has recently been inspected can seek a review of the inspection process, including inspector conduct and judgements made, by lodging a formal complaint when the draft report is received. A formal complaint will not normally be accepted before the draft report is sent.

Formal complaints will only be accepted from the most senior leader at the provider’s provision or the person named on the draft report as the Responsible Individual.

Providers are required to submit a formal complaint within 5 working days of receiving the draft report. Like before, Ofsted will withhold publication of an inspection report whilst it considers the complaint if lodged within the deadline.

If a provider had previously chosen to highlight minor points of clarity or factual accuracy when it received the draft inspection report, Ofsted would not normally accept a formal complaint addition.

Ofsted has provided the following diagram within its guidance, setting out its post-inspection and complaints arrangements:



Providers will note that, at step 4, a choice will have to be made as to whether a provider considers that its concerns about the report relate to “minor points” of factual inaccuracy or whether a formal complaint should be lodged.

There is no further guidance about the distinction between the two steps or what the “minor points of clarity or factual accuracy” process will look like. For example, it remains to be seen if providers can still fill out the existing factual accuracy form (if they opt to send in “minor points of clarity or factual accuracy” – usually sent with the draft report).

Formal complaint

The formal complaint form appears to remain unchanged from the existing formal complaint functionality, with the same headings on the web form being available for providers to complete. Each heading also has the same word limit of 10,000 words, as it did before. Here, providers can raise concerns about inspector conduct, the inspection process and inspection judgements, for example. Additionally, five files can be uploaded to Ofsted via the web form.

In the pre-existing factual accuracy check, a provider was not limited to the amount of information it could send by way of evidence. Now, it appears that if a provider opts to undertake a formal complaint, and complain more generally about Ofsted inspector conduct together with the accuracy of the inspection judgements, it will be limited to lodging only 5 files at 5 MB per file. It is unclear if the provider can email further evidence to Ofsted by email.

Ofsted’s response to a formal complaint

Ofsted has stated that providers will receive an acknowledgement from it when the complaint has been received. The acknowledgement should state when Ofsted will aim to respond to the formal complaint.

An Ofsted investigating officer will attempt to contact the provider by telephone to discuss concerns. Wherever possible, Ofsted will seek to resolve complaints through professional dialogue as part of the telephone discussion.

The Ofsted investigating officer will explore the scope of the formal complaint during the discussion and will agree with the key aspects of the investigation. Ofsted will not normally accept further information about the complaint or enter into further dialogue once the first conversation has occurred.

Ofsted will then provide a written response to the formal complaint as quickly as possible, and normally within 30 working days of receiving the online form.

As is currently the case, the response will link together similar issues for conciseness and clarity and will provide a conclusion on whether each main aspect of the complaint has been upheld.

If Ofsted withheld publication of an inspection report while considering the complaint, Ofsted will normally issue a final version soon after sending the response letter. The final inspection report will be published on Ofsted’s website 5 working days later.

Thoughts

As per our previous article, after the publication of Ofsted's consultation, we remain concerned that the amendments to Ofsted's process have actually removed an avenue of redress for providers. Previously providers could opt to undertake a factual accuracy check and then a complaint thereafter. Now, this appears to be no longer possible.

At the time of writing, Ofsted has not produced any guidance about what "minor points of factual accuracy" consist of and how a provider should distinguish between lodging a formal complaint (as per step 5b) or undertaking a "minor" factual accuracy check at step 5a.

Arguably, most factual accuracy errors, beyond basic typographical errors are usually significant to providers and can have far-reaching consequences to the rating of a service. This is particularly so, given the brevity of Ofsted inspection reports. This change could, therefore, mean that providers would perhaps be more minded to undertake a formal complaint at step 5b and incorporate its factual accuracy comments together with comments about the inspection process.

It is unclear whether Ofsted would accept this process or criticise the provider for having picked the wrong step if it introduced factual accuracy comments to its formal complaint submission.

Following on from this updated guidance, 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 and to provide advice as to the most suitable step to take in challenging a draft Ofsted inspection report.

Contact

If you receive a draft Ofsted report, please get in touch with our experienced team of [Ofsted lawyers](#) as soon as possible to discuss your situation and the options available to you at alice.straight@la-law.com or [01202 786353](tel:01202786353).