




AUTHOR / KEY CONTACT

Ofsted complaints consultation

A headshot of Alice Straight, a woman with blonde hair, wearing a black blazer over a red top.

Alice Straight
Associate

✉ Alice.Straight@LA-Law.com
☎ 01202 786353

At a time when Ofsted has been under the media spotlight, it has recently published details about its open consultation entitled [“changes to Ofsted’s post-inspection arrangements and complaints handling: proposals 2023”](#).

The purpose of the consultation has been characterised by Ofsted as a process to enhance professional dialogue during inspections, introduce a new opportunity for providers to contact Ofsted the day after an inspection, introduce new arrangements for finalising reports, and replace its current internal review process with direct escalation to the Independent Complaints Adjudication Service for Ofsted (ICASO).

Summary

In summary, the four proposals, making up the consultation, are as follows:

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

Ofsted proposes 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. Ofsted hopes that issues can then be resolved during, rather than after, the on-site inspection.

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

Ofsted proposes a new way for providers to raise potential concerns about inspections after the on-site visit but before receipt of the draft report. It proposes 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. These issues will be heard by an Ofsted inspector who is relevant to the type of inspection, but *not* the actual inspector themselves. The proposal does not detail specifically how the information raised in this way will be used to find a resolution and, therefore, it is unclear as to how the proposal will actually benefit inspections in practice.

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

Once the draft report has been received, Ofsted proposes 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. This essentially could beg the question of whether this process, in effect, removes an avenue for providers to challenge a draft report given that they can now lodge a factual accuracy submission and thereafter a formal complaint; 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 would now be investigated by an Ofsted staff member who was not a part of the inspection. Ofsted proposes that a phone call takes 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. Complaint investigations can have four potential outcomes:
 - no change to the report is made;

- the report's text is changed;
- the report's grade is changed; or
- the inspection is deemed as incomplete and a further visit to the provider is to take place.

Complaint outcome letters received with the final report are proposed to become clearer about the reasons for the decisions made, although Ofsted has remained silent on how this will look in reality or how it will be any different from what takes place now.

- Proposal 4: Direct escalation to ICASO and adding a periodic review of closed complaints using external representatives from the sectors we [Ofsted] inspect:

Ofsted proposes 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. This is proposed to reduce the administrative burden on providers and also increase the timeliness with which complaints are investigated and resolved. Ofsted also proposes to facilitate new, independent, and external reviews of their complaint handling procedure at regular periods with a sample of closed complaints.

Comments and thoughts

Our main observations relate to proposal 3. Currently, providers can lodge a factual accuracy submission challenging any type of factual inaccuracy including judgements and inspector conduct. The factual accuracy process is unlimited in word count and providers are able to lodge as much evidence as they like with the factual accuracy. They can, additionally, then lodge a formal complaint thereafter, speaking to inspection judgement and inspector conduct etc (which is limited to 10,000 words per box and only 5 documents can be

uploaded with the complaint). Whilst the factual accuracy and formal complaints processes are ongoing, the draft report is not published.

With Ofsted's new proposals, it appears that Ofsted is essentially proposing that the provider will only have the option of one of the mechanisms for complaint. It appears that option 1 (factual accuracy) is going to be reserved for "minor points of clarity". I.e. matters such as typographical errors, minor points of error. Whereas, the formal complaint will be the mechanism for challenging ratings. We do not know if the formal complaint process will change from its original form or how this will be amended (i.e. will it still have word and document upload limitations). It is not clear if the reports will be published whilst a formal complaint is being undertaken – we would expect not, but Ofsted has not commented on this.

We were aware that Ofsted had been piloting this new scheme throughout 2022 and have seen examples of providers being asked to make a choice about which course of complaint they wish to take. Some providers did not understand the difference and were essentially "caught out" as they only had one mechanism for complaint before their report was published. This pilot was being rolled out prior to Ruth Perry's tragic death and was therefore in the pipeline well before the media backlash against Ofsted's fitness to regulate. It appears that Ofsted could have framed these changes as a response to recent provider concerns about Ofsted's ability to respond to complaints in more recent months. This is perhaps a little disingenuous.

It appears that proposals 1 and 2 are likely to have limited impact, as providers are already able to communicate with Ofsted inspectors during inspections and make contact after an inspection (indeed, many already have a Teams call with their lead inspector after an inspection to raise any further points of concern etc).

Proposal 4 relates to Ofsted's "stage 3" complaint. Providers rarely undertake this step as the report is usually published by this time. Often reputational damage is already done by this time and the provider has usually exhausted the other avenues for complaint. Providers often choose to focus, sometimes limited, resources on driving improvements and morale within the service and with staff than pursuing yet another form of complaint, with no guarantee of a positive outcome.

We envisage that Proposal 3 is likely to be the one of most interest to providers and would encourage all providers to engage in the consultation if you haven't already.

We also note that Ofsted has remained silent on proposed timescales for submission of factual accuracy comments or a complaint – it is perhaps an opportunity to also share your views on what amount to a reasonable timescale to submit factual accuracy comments or a complaint.

The consultation is due to close on Friday 15 September 2023.

For now, the current process of challenge against draft Ofsted inspection report remains and we strongly encourage providers to make contact if 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 call 01202 786135.