

Report to the Secretary of State for Education and Skills by the Independent Complaints Adjudicator for Ofsted and the Adult Learning Inspectorate



Elizabeth Derrington

Dear Secretary of State

I am pleased to be able to report a second successful year as Independent Complaints Adjudicator for Ofsted and the Adult Learning Inspectorate.

I have completed all investigations within a tight timescale of three months, and have secured acceptance of all my recommendations.

Feedback from complainants indicates high levels of confidence in the timeliness and transparency of the adjudication process.

I have helped to promote good practice in inspection and complaint handling by proactive recommendations in individual cases, and also by responding to requests from the inspectorates for comments on new policies and procedures.

Working relationships with Ofsted and the Adult Learning Inspectorate have continued to be very constructive. I am grateful both to David Bell HMCI and to David Sherlock, Chief Inspector of the Adult Learning Inspectorate for their personal interest in my work and commitment to sustaining a truly independent adjudication process.

I have agreed with the Department for Education and Skills a focused set of performance targets, and a process for annual review of my performance.

I have continued to work on making my procedures simple and accessible and to make sure that my role and contact details are as widely known as possible.

Yours sincerely

Elizabeth A Derrington

my remit

My remit, as agreed with the DfES, is:

- To review the inspectorates' handling of individual complaints, where the complainant remains dissatisfied after the internal complaints process has been exhausted
- To provide general advice and recommendations arising from the handling of complaints in order to improve the inspectorates' systems and procedures
- To mediate between complainants and the inspectorates to produce a resolution.

I cannot overturn the professional judgements of an inspector, and cannot deal with complaints from inspectorate staff and contractors, complaints about Government policy and legislation, or issues subject to court or tribunal proceedings.

principles of adjudication

I operate in accordance with a simple set of principles designed to maximise confidence in the adjudication process:

- To look for practical solutions to problems that have caused complaints, using a mediation based approach
- To demonstrate fairness, impartiality and independence
- To operate transparently
- To set and meet clear timescales.

targets

In my report last year I said that a key target for 2003 was to agree performance targets with the DfES. Table 1 sets out the targets that were agreed in June 2003 and the performance that I have achieved during the year.

I have met or exceeded all targets except the target for response to general enquiries. I am especially pleased to have produced all draft adjudications within three months, a great improvement on the 81% I achieved in 2002.

TABLE 1 Performance against targets

	Target	Achieved
Draft adjudication within 3 months	90%	100%
Response to enquiries within 3 working days	90%	80%
Response to other correspondence within 5 working days	90%	95%
Request written feedback from complainants	100%	100%
Secure acceptance of recommendations	95%	100%

workload

About 72% of my time during 2003 was spent investigating and reporting on individual complaints. The remaining 28% was divided between a number of other activities, including responding to consultations and enquiries, attending meetings and conferences, and general administration.

The workload was similar to the previous year, both in numbers and complaint types.

The next table gives the number and type of complaints I have dealt with during the year. 19 related to inspections or regulatory work carried out solely by Ofsted, 2 to Ofsted-led inspections of Further Education colleges, and one to an inspection of a work based training provider carried out by the ALI. The workload was similar to the previous year, both in numbers and complaint types.

TABLE 2 Analysis of workload

Types of complaint	Number completed
School inspection under section 10 of the School Inspections Act 1996	11
Inspection under section 3 of the School Inspections Act 1996 of a School Facing Challenging Circumstances	1
Independent school inspection	1
Further Education college inspection	2
Work based training provider inspection	1
Initial Teacher Training inspection	1
Early Years Ofsted	4
Other	1
TOTAL	22

outcomes of complaints

I use a mediation-based approach. I aim to demonstrate understanding of both perspectives on key issues, to shed light on how problems arose, help promote mutual understanding, and propose practical solutions. This means that it is not appropriate to analyse the outcomes simply in terms of whether complaints were “upheld” or “not upheld”. However, the number of recommendations made does provide an indication of the extent to which I judged corrective action to be necessary on the part of the inspectorates, either by way of an apology or explanation to an individual, or to prevent similar problems arising in the future. Table 3 shows that I made recommendations for action in two thirds of cases. Table 4 gives a breakdown of the types of recommendation.

TABLE 3 Analysis of complaints by number of recommendations

0 recommendations	7
1-3 recommendations	11
More than 3 recommendations	4
TOTAL	22

TABLE 4 Analysis of recommendations

To acknowledge failures re conduct of inspection	5
To review presentation of the report/addendum	8
To review inspection procedure/guidance	6
To review/improve response to the complaint	9
To review complaints procedure	4
Other	3
TOTAL	35

issues arising from complaints

Change of judgement

In one case, the overall judgement on the effectiveness of a school was changed between the final feedback to governors and the presentation of the draft report. This was the result of the contractor’s quality assurance processes identifying a mismatch between the original overall judgement and the detailed findings of the inspection. The change was not discussed with the school, and caused considerable surprise and distress. I recommended that Ofsted

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should take steps to provide guidance to inspectors on how to deal with such situations should they arise in future. I am pleased to note that Ofsted published guidance to inspectors in Update 42 on the procedure to be followed, including the need to secure a team decision, to discuss the situation with the school, and to alert Ofsted’s Subjects and Quality Assurance Division to the situation.

Change of leadership

I have considered a number of complaints from a headteacher or former headteacher who was not present in a school at the time of an inspection, and felt that he or she had not been given the opportunity to contribute to the inspection, and that the report presented an unfair account of his or her leadership. I discovered that Ofsted has not issued express guidance to inspectors on how to deal with this situation, but has left it to the discretion of individual registered inspectors to decide whether to make contact with staff who have left a school or are absent for some other reason. It was apparent to me, when I considered the cases, that there are risks in such an approach. A new or acting headteacher may not be well placed to give the best account of events during the leadership of a predecessor.

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There will be a natural tendency for such an individual to focus on his or her own achievements. Inspectors may receive incomplete information. They may, in giving an account of recent changes, appear to imply negative judgements about the past. I suggested to Ofsted that it should take the opportunity to address this matter when issuing guidance to inspectors. I am pleased to note that guidance published in Update 43 warned inspectors to take care to avoid criticising previous senior managers, and more generally, to avoid reference to individuals who do not, or are not able to, participate in an inspection.

Confidentiality

In my 2002 annual report, I urged Ofsted to consider adopting a more flexible policy with regard to the confidentiality of the evidence base for inspections. In several cases I dealt with during 2002 Ofsted provided me with extracts of the inspection evidence on the understanding that I would not disclose it to the complainant (Ofsted taking the view that inspectors' raw notes are primarily for their own reference, and that they must be able to write these in a "shorthand" way without fear of misinterpretation by others). I found that there was little point in my seeing evidence if I could not share it with a complainant, and could not refer to it in explaining my findings. I am pleased to report that Ofsted has shown a much more flexible approach during 2003, and has, on a number of occasions, agreed to disclose evidence or other confidential material where I have suggested that this would be useful. However, I am aware, from complainants' feedback, that a number of complainants feel that neither Ofsted nor I have gone far enough in examining and disclosing inspection evidence. I recognise that there remains scope for more transparency in this area, and undertake to continue to explore opportunities for productive disclosure of evidence, balancing the general principle of transparency against the need for inspectors to be able to record evidence fully and freely. I am confident that Ofsted will co-operate in this exploration.

Disputes about events during inspections

Complainants frequently express frustration that, where there is a conflict about what actually happened during an inspection, inspectorates appear to accept the account given by inspectors and dismiss the version given by the complainant. This is a real practical difficulty, both for the inspectorates and for me, especially when there are different recollections of oral exchanges (for example oral feedback). Without access to a court or tribunal there is often no way of resolving conflicting accounts of past events. It is important that all available evidence from both the complainant and the inspection team should be taken into account and considered seriously. It is also important that, if a clear determination cannot be made, the reason for this should be clearly explained in the inspectorate's response to the complaint. If there are several areas of

factual dispute, this may point to a more general failure of communication. As long as an inspectorate demonstrates that it has considered a complainant's account of events seriously and with an open mind, even though it fails to make a clear determination, I am unlikely to be in a position to take the issue further.

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Guidance on hospitality

One complaint about a school inspection raised an issue regarding hospitality during inspections. I discovered that there was no formal Ofsted guidance on the giving and receiving of hospitality. It seemed to me that, for the benefit of both inspectors and school staff, to ensure consistency of approach, and to promote confidence in the objectivity of the inspection process, clear guidelines were desirable. In response to my recommendation, Ofsted has agreed to issue formal guidance on the issue.

Early Years

In spite of the very large volume of work carried out by Ofsted as regulator of day care providers and childminders, the number of complaints referred to me continues to be very small. And there was no common pattern to the complaints I investigated during 2003. Each raised a different and very individual issue.

... Ofsted now has in place a policy on financial redress...

I am pleased to report that, following a recommendation I made at the end of 2002, Ofsted now has in place a policy on financial redress where providers have suffered loss as a result of administrative failures by Ofsted.

Complaints and internal review procedures

Both the Adult Learning Inspectorate and some divisions of Ofsted invite complainants, at the outset, to say whether they are seeking a review of inspection judgements or making a complaint about the conduct of inspectorate staff. The choice made determines the procedure followed, and also whether there is the option of adjudication if the complainant remains dissatisfied (if the issue relates purely to inspection judgements, the matter is outside my remit).

... complaints do not always fall neatly into one category.

This approach clearly aims to encourage complainants to be focused and specific in raising their concerns, and seems logical and reasonable. I have, however, noted in a number of cases during 2003 that complaints do not always fall neatly into one category. They may relate both to the inspection judgements and to the conduct of staff. In such cases it is important that the procedure followed should cover both aspects of the complaint, and provide clear answers to each. It is apparent, from the cases that I have considered, that complainants become frustrated if an inspectorate appears to make assumptions that a complaint relates only to inspection judgements when specific issues relating to conduct have also been raised.

Delay

Last year I reported my concern about the age of some of the complaints that were referred to me, and described action taken by Ofsted to address the issue of delay by reducing the time limits for submitting complaints. It is somewhat disappointing to report that, of the 22 complaints I investigated during 2003, 6 (all relating to Ofsted) were referred to me over 12 months after the events complained of. Some delays were caused by complainants waiting until the last minute to complain and/or being slow to decide whether to escalate the matter, and others by inspection contractors or Ofsted, often in an attempt to resolve the matter by carrying out a further review.

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However good the reason for delay, there is no doubt that the longer the time that has passed since the cause of complaint arising, the more difficult it is to make clear findings and productive recommendations. It is not in the interests of either complainants or the inspectorates that the complaint process should be unduly protracted. I hope that Ofsted will maintain its efforts to complete its internal complaints processes within a reasonable period. The Adult Learning Inspectorate operates within very short timescales for both submission and response to complaints and does not appear to experience similar problems. I shall keep the issue under review during 2004 and look for opportunities to identify room for improvement.

feedback from complainants

I ask all complainants to provide feedback by giving scores to indicate their level of satisfaction with five key aspects of the process, and also to provide comments and suggestions for improvement. I was very pleased to receive feedback from 75% of all complainants (16 out of 22). The scores are shown in Table 6 and some of the comments in Table 7. Levels of satisfaction, especially with the quality of the adjudication itself, are naturally related to the extent to which a complainant perceives that I have agreed with his or her point of view. Some complainants are frustrated that my remit does not extend to reviewing the professional

judgements of inspectors, and some feel that I should go further in collecting evidence from individuals (while I take careful note of these comments, I have already mentioned the difficulties surrounding disputed facts). It is, however, satisfying to be able to report that some complainants who were dissatisfied with the outcome were complimentary about the professionalism of the process. It is also good to note that complainants were particularly satisfied with the timeliness and transparency of the process.

TABLE 6 Analysis of feedback from complainants

Score	1 (v poor)	2	3	4	5 (v good)	Don't know	Average
Timeliness of response	1	1	1	9	4		3.9
Understanding of issues	1	2	3	6	4		3.6
Thoroughness of analysis	1	3	2	7	3		3.5
Transparency of process	1	1	3	5	6		3.9
Quality of adjudication	3	2	4	5	1	1	2.9

Table 7 Examples of feedback from complainants

- “The whole process was carried out in a very professional way and was very different to the earlier stages. I felt that our concerns were taken very seriously”

- “Very empathetic and determined to understand the issues”

- “Very clear in explanation of process and parameters”

- “I am satisfied with what you have done on the information provided – you have been fair and thorough. I do feel, however, that if you had spoken to some of the individuals concerned it would have provided an additional dimension that may well have led to a different outcome”

- “Thank you for the way in which you have conducted your adjudication. I am only sorry that your terms of reference do not allow you to pass judgement on my central complaint that inspectors’ judgements were not based on the facts”

- “I think your report will facilitate putting mistakes right, though in itself it only partly achieves this”

- “I am pleased with the outcome, and pleased that the ICA has not been swayed by Ofsted’s angst at the term ‘unfortunate’ ”

feedback from ofsted and the adult learning inspectorate

It is vital that I should be, and be seen to be, independent of the two inspectorates. It is also important for me to maintain good communication with both organisations and a sound professional working relationship. I have therefore continued to meet on an occasional basis with

I have already reported that all 35 recommendations made during 2003 were accepted.

In only one case have Ofsted and the Adult Learning Inspectorate raised concerns about the adjudication process. I arranged a meeting to explore and understand the concerns, and this produced a useful agreement on the way forward.

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senior Ofsted and Adult Learning Inspectorate staff to receive and give general feedback. This has been very valuable in building mutual respect and a constructive approach to resolving any difficulties.

external scrutiny

Three cases on which I adjudicated during the year have been referred to the Parliamentary Ombudsman. I welcome this external scrutiny of my work. I have received the result in only one case, and am pleased to report that the Ombudsman took the view that I had dealt fully with the complaint and that there were no grounds for further action by the Ombudsman.

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responses to consultation

I welcome the opportunity to comment, during the development process, on policy and procedure developments within the inspectorates. I can offer an informed external perspective particularly on issues of presentation and user-friendliness. During 2003 I have responded to requests for comments on:

- A review by Ofsted of its internal complaints procedures
- A revised Ofsted internal review/complaints information leaflet for post 16 providers
- A revised Ofsted framework for inspecting independent schools.

access to adjudication

I continue to work to increase awareness of my role and improve the accessibility of the service I provide.

Complainants can refer cases to me by telephone, email or in writing.

My website, launched in January 2003, provides information about the service I provide, and also has a facility for complainants to contact me. There is a link to my website from the Ofsted website, and I am assured that a link will shortly be arranged from the Adult Learning Inspectorate website.

Ofsted complaints leaflets, apart from one which predates my appointment, include my name, address and email address. The Adult Learning Inspectorate leaflet refers to my role but does not provide contact details. Complainants are advised to contact the Adult Learning Inspectorate to request them. I have no evidence that this has been a barrier to access to the adjudication service.

I continue to work to increase awareness of my role and improve the accessibility of the service I provide.

However, I understand that the Adult Learning Inspectorate leaflet is currently being revised and that the new version will include my contact details. This is a welcome move from the point of view of both openness and consistency.

During 2003 I have written two articles on my role for specialist publications, Teaching Today and the Local Government Association Education and Lifelong Learning Bulletin.

I have also submitted written evidence on Ofsted to the Education and Skills Select Committee.

value for money

The costs of the different aspects of my work are set out in Table 8. I spent 571 hours investigating and reporting my findings on 22 complaints. They varied significantly in complexity, but the average time taken was 25.9 hrs, giving an average cost just over £1000 per adjudication. This is a modest increase on last year, but I believe that it continues to represent very good value for money.

TABLE 8 Costs

Activity	Cost
Adjudications	£25,725
Post adjudication correspondence	£1700
Enquiries	£1700
Website	£472
Annual report	£1312 +
Meetings, conferences	£1425
Meetings with Ofsted and the ALI	£840
General administration	£550
Travelling and other expenses	£180

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