



**Browne
Jacobson**

November 2024

Challenging Ofsted inspections - a practical guide



When school inspections recommenced in 2021 following the pandemic, we observed and commented on the marked increase in complaints relating to inspection. We saw, amongst other things, repeated reports of inspectors failing to give genuine consideration to the impact of Covid, unacceptable inspector conduct and inconsistency in the application of what was then a new inspection framework.

In the time since, there has of course been tragedy and heightened campaigning for, as well as actual, change to Ofsted inspection. Today, we no longer have single-phrase overall effectiveness judgements (see further information here: [New Ofsted FAQs: the latest changes to inspection arrangements](#)) and there are further significant reforms on the horizon, including the introduction of report cards.

We are hopefully moving in a direction, both in terms of policy reform and cultural change, which reduces the likelihood of a school having cause for complaint about an inspection. However, there may still, unfortunately, be occasions when a school is unhappy with the inspection process and/or outcome. Below, leading education lawyers Browne Jacobson, in conjunction with the NAHT, have put together 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 both Ofsted's complaints procedure and the School Inspection Handbook. Any concerns raised should be recorded in the inspection evidence but, as well as verifying that the lead inspector has done that, we encourage schools to keep their own records of concerns which have been raised. This record can be helpful to go back to if a formal complaint or challenge is ultimately advanced. The NAHT guidance linked above also recommends that, if the problem cannot be resolved and the situation enables this, the school should set out the issue on headed notepaper in brief bullet points and ask for a meeting with the lead inspector to deliver this note. Where concerns cannot be resolved with the lead inspector, a senior leader of the school or academy trust is able to contact another senior Ofsted inspector using the number which should be provided as part of the inspection notification process.
- **The right to request a pause to inspection** School leaders will be aware that Ofsted's recent reforms have formally introduced the concept of pausing an inspection. Guidance on how a pause may be invoked, how this differs from a deferral situation and the duration of a pause, can be found here [Ofsted inspections and visits: deferring, pausing and gathering additional evidence - GOV.UK \(www.gov.uk\)](#) We advise school leaders to be familiar with this guidance as they go into an inspection. The guidance is clear that a formal pause to inspection activity will only occur in "exceptional circumstances", which could include where there are concerns about the wellbeing of leaders that compromise the integrity of the inspection. We have seen examples of the pause process being used in recent months.
- **Speak to Ofsted the day after the inspection** Ofsted's revised complaints procedure enables school leaders to speak to a senior inspector who is independent of the particular inspection the day after the close of the inspection visit. Ofsted states that this phone call is "an opportunity for the school to raise informal concern about the inspection process or outcomes, ask about next steps or highlight information that they feel was not fully considered during the inspection." Although the call itself may not result in immediate resolution of the issues, we encourage schools to take this

opportunity to lodge the areas of concern and place them on Ofsted's radar at this juncture.

- **Making a formal complaint** Where a school wishes to make a formal complaint about an inspection, it must now do so within five working days of receiving the draft inspection report. If the school only wants to raise minor points of clarity or factual accuracy then it can do so on receipt of the draft report. Note however that there will be no additional opportunity to raise a formal complaint once those minor points have been submitted. It is therefore important that the school takes the option to raise anything of more significance at this stage via the route of a formal complaint. The complaint needs to be submitted using Ofsted's online complaint form. It will be investigated and responded to by an Ofsted representative from a different region and a response will usually be provided within 30 working days. As part of the investigation into the formal complaint, Ofsted will arrange to speak to the school by telephone. This should give the headteacher a chance to highlight the key aspects of the complaint and hopefully express verbally elements which are not necessarily easy to bring alive on a written complaint form.
- **Publication of the inspection report** As long as the school submits a formal complaint using Ofsted's online form within five working (not school) days of receiving the draft report, Ofsted will not 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 does not publish reports during school holiday periods but its current policy is to send complaint responses once their investigation is complete, regardless of whether the school is open or closed.
- **Consider the outcome you are seeking** 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 will need to set out the outcome it is seeking to resolve the complaint. This could be, for example, a change to a certain part of the narrative of a report, a change to a judgement or perhaps re-inspection. Have in mind that the remedy being sought needs to align with the nature of your complaint. For example, if the school's position is that the whole of the inspection is fundamentally flawed because of a conflict or inspector conduct, seeking a judgement change in one isolated area is unlikely to be an appropriate remedy. Similarly, the issues may be such that the only way Ofsted can address them is to re-inspect, whether in part (under its gathering additional evidence guidance), or in full. In that scenario, school leaders need to make sure they are comfortable with the prospect of further inspection activity.
- **Securing an injunction to prevent publication of a report is not impossible, but it is difficult** If Ofsted, having responded to the formal complaint, opt to proceed with publication of the inspection report, the only way it can actually be prevented from doing so is through the school securing an injunction from the court. Ofsted has a statutory duty to publish inspection reports and there is also a public interest in the publication. As such, precedent case law demonstrates that 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 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 contesting the merit of judgement(s) alone. However, there have been cases where the court has accepted that Ofsted's decision-making and/or process has been flawed. In addition, there are

cases which have not ended up in court but in which, following the bringing or threat of legal proceedings, Ofsted has been prepared to acknowledge errors and has set aside reports and re-inspected accordingly. As such, whilst the formal complaint is not a legal document, 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. If the complaint is not upheld, legal advice can then be provided on potential judicial review proceedings, the first stage of which would normally be a pre-action letter.

- **ICASO** The formal complaint stage is now the final stage of Ofsted's internal complaints procedure but schools do have the option to refer their complaint to the Independent Complaints Adjudication Service for Ofsted (ICASO) if they are not satisfied with Ofsted's response. This service is external to Ofsted, so offers independence, but schools should be mindful that ICASO's remit and powers are limited. It can only review how Ofsted handled the original complaint; it will not be reviewing or making a determination around the substance or merit of the complaint itself. ICASO also has no powers to overturn or direct changes to inspection outcomes – the most it can do is make recommendations to Ofsted. With that in mind, and given that a referral to ICASO does not halt publication of an inspection report, only in certain limited circumstances is this review stage likely to be worthwhile.
- **Schools can take steps to control the messaging surrounding an inspection report** 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. With the removal of overall effectiveness judgements, there is arguably even more of a role for schools and trusts in this regard, as they have more scope to comment on the nuances of the individual judgements.
- Some **additional resources** which may be helpful are linked below:

[Complain about Ofsted \(for events that took place after 4 April 2024\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/complain-about-ofsted)

[Ofsted's code of conduct: collaborative inspection and regulation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/ofsted-code-of-conduct-collaborative-inspection-and-regulation)

[Ofsted inspections and visits: deferring, pausing and gathering additional evidence - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/ofsted-inspections-and-visits-deferring-pausing-and-gathering-additional-evidence)

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



Katie Michelin
Partner

Browne Jacobson

+44 (0)115 9766 189
katie.michelon
@brownejacobson.com



NAHT Specialist Advice

0300 3030 333
specialistadvice
@naht.org.uk