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Consultation outcome

Changes to Ofsted's post-inspection processes and complaints handling: report on the responses to the consultation

Updated 16 July 2020

Contents

Introduction
The consultation method
Summary of responses
Findings in full
Next steps
Equality, diversity and inclusion

Introduction

On 3 March 2020, Ofsted published a consultation on proposed revisions to post-inspection arrangements, including how we handle complaints about our work. The proposals were aimed at enhancing current arrangements to deal with any queries or concerns about an inspection quickly and before inspection reports are finalised and published. We extended the consultation period until 30 April 2020 to provide an additional opportunity for responses given the COVID-19 (coronavirus) situation.

The consultation method

We consulted widely on these proposals, including through an online external consultation. We invited responses directly from:

- providers we inspect
- service users
- those involved in the work that we carry out

In total, we received 622 online responses to the consultation from external bodies. This includes responses from provider-representative bodies, individual providers and other service users. We also received a small number of additional responses to the proposals from provider-representative bodies in correspondence. This response level is significantly higher than when we last consulted on proposed changes to our complaints-handling arrangements in 2012.

When responding, respondents could identify themselves as working in one or more of the remits that we inspect and regulate. If respondents identified themselves as working in multiple remits (for example, early years and schools), we have counted and considered responses once in overall figures and have also counted and considered responses under each of the separate remit areas for completeness. If respondents did not identify themselves as working in any remit (for example, a parent or a professional organisation), we have counted and considered responses as part of the overall figures. We considered fully all responses and comments that we received when deciding on the changes to be made.

Of the online responses received:

- 42% of those responding did so on behalf of an organisation
- 77% of those responding led a setting that Ofsted inspects or regulates, with a further 12% employed at a setting
- 3% of those responding did so on behalf of a professional organisation and 3% were parents of service users
- 54% of the responses identified as being from early years, 44% from schools, 3% from further education and skills, and 3% from social care; 12% of those responding did not identify themselves as being linked to a remit
- 27% of those responding had previously submitted a complaint about Ofsted

Most comments received in response to the consultation related specifically to the proposals. However, some comments were more widely about general complaints-handling and inspection processes.

In making the decision on how to proceed following this consultation, we have taken into account:

- the analysis of the responses to the consultation questions (both positive and negative)
- all free-text responses
- written responses received outside the consultation online forum,
- suggestions on alternative proposals
- our duties under the Equality Act 2010 with regard to the equality, diversity and inclusion impact of the proposal

As a result, we consider that the consultation exercise met the standards expected of a public body.

Summary of responses

Responses to the proposals were very positive. This was particularly the case in relation to proposals 1 to 3, in which around 90% of respondents agreed that more consistency in our post-inspection arrangements across remits was welcome, and that we should consider comments and complaints before we finalise and publish inspection reports.

There were more mixed responses in relation to proposal 4 regarding the current process for reviewing the handling of complaints, although over 50% of those responding supported this.

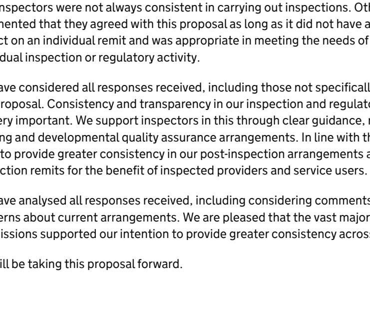
Support for the proposals was broadly consistent across all the remits that we inspect and regulate.

Findings in full

Proposal 1: To what extent do you agree or disagree with the proposal to provide greater consistency in post-inspection arrangements across our work?

Figure 1: responses to proposal 1

Change between chart and table



Responses to this proposal were overwhelmingly positive, with 92% in agreement that there should be greater consistency in our post-inspection arrangements. Some respondents commented that greater consistency would strengthen confidence in the inspection process, making the process more understandable, fairer and more transparent.

Although most respondents supported this proposal, some highlighted concerns about inconsistency in the inspection process based on their own experiences. They stated that inspectors were not always consistent in carrying out inspections. Others commented that they agreed with this proposal as long as it did not have an adverse impact on an individual remit and was appropriate in meeting the needs of each individual inspection or regulatory activity.

We have considered all responses received, including those not specifically related to this proposal. Consistency and transparency in our inspection and regulatory practice are very important. We support inspectors in this through clear guidance, regular training and developmental quality assurance arrangements. In line with this, we also want to provide greater consistency in our post-inspection arrangements across all inspection remits for the benefit of inspected providers and service users.

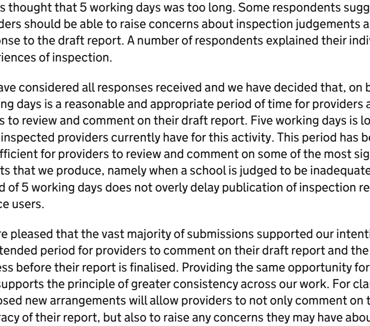
We have analysed all responses received, including considering comments highlighting concerns about current arrangements. We are pleased that the vast majority of submissions supported our intention to provide greater consistency across our work.

We will be taking this proposal forward.

Proposal 2: To what extent do you agree or disagree with the proposal to allow all inspected providers 5 working days to review their draft report and submit any comments regarding issues of factual accuracy and the inspection process for consideration by us before the report is finalised?

Figure 2: responses to proposal 2

Change between chart and table



Responses to this proposal were overwhelmingly positive, with 89% in agreement that providers should be given 5 working days to review their draft reports and submit concerns about factual accuracy as well as any comments about the inspection process. Some respondents commented that this longer review period would be useful and would support providers in considering the draft report more fully before it is finalised.

Although most respondents supported this proposal, some commented that 5 working days was not long enough for a provider to submit its response to a draft report, and others thought that 5 working days was too long. Some respondents suggested that providers should be able to raise concerns about inspection judgements as part of their response to the draft report. A number of respondents explained their individual experiences of inspection.

We have considered all responses received and we have decided that, on balance, 5 working days is a reasonable and appropriate period of time for providers across all remits to review and comment on their draft report. Five working days is longer than most inspected providers currently have for this activity. This period has been shown to be sufficient for providers to review and comment on some of the most significant reports that we produce, namely when a school is judged to be inadequate. Also, a period of 5 working days does not overly delay publication of inspection reports for service users.

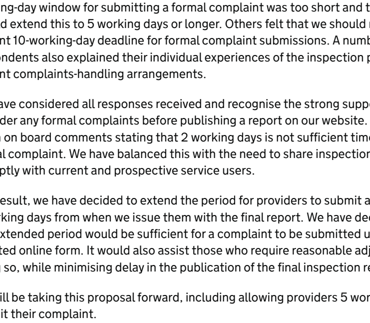
We are pleased that the vast majority of submissions supported our intention to allow an extended period for providers to comment on their draft report and the inspection process before their report is finalised. Providing the same opportunity for all remits also supports the principle of greater consistency across our work. For clarity, the proposed new arrangements will allow providers to not only comment on the factual accuracy of their report, but also to raise any concerns they may have about the inspection process, including the judgements awarded.

We will be taking this proposal forward.

Proposal 3: To what extent do you agree or disagree with the proposal to consider and respond to formal complaints from inspected providers before their inspection report is published, if these complaints are submitted promptly?

Figure 3: responses to proposal 3

Change between chart and table



Responses to this proposal were very positive, with 94% in agreement that we should consider complaints before publishing reports. Some respondents commented that this would be a positive move and would enable providers to feel that they are heard fairly before publication. They also commented that should a complaint be upheld, there would be no miscommunication with the stakeholders of the inspected provision.

Although set out clearly in the consultation document, several respondents did query what we meant by a complaint being submitted 'promptly' and felt that this should have been clarified. Also, several of those responding commented that the proposed 2-working-day window for submitting a formal complaint was too short and that we should extend this to 5 working days or longer. Others felt that we should retain the current 10-working-day deadline for formal complaint submissions. A number of respondents also explained their individual experiences of the inspection process and current complaints-handling arrangements.

We have considered all responses received and recognise the strong support for us to consider any formal complaints before publishing a report on our website. We have also taken on board comments stating that 2 working days is not sufficient time to submit a formal complaint. We have balanced this with the need to share inspection findings promptly with current and prospective service users.

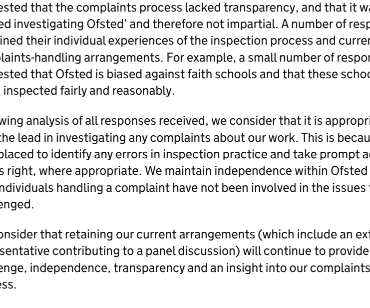
As a result, we have decided to extend the period for providers to submit a complaint to 5 working days from when we issue them with the final report. We have decided that this extended period would be sufficient for a complaint to be submitted using an updated online form. It would also assist those who require reasonable adjustments in doing so, while minimising delay in the publication of the final inspection report.

We will be taking this proposal forward, including allowing providers 5 working days to submit their complaint.

Proposal 4: To what extent do you agree or disagree with our proposal to retain current arrangements for reviews into complaints handling, including the scrutiny panel?

Figure 4: responses to proposal 4

Change between chart and table



Responses to this proposal were more mixed. Although 51% of respondents supported retaining existing internal review arrangements, 28% did not support this. Some commented that the internal review process was clearly good practice and should continue, and that including a neutral sector representative is a vital element of the process. One respondent stated that they had sat on a review panel and commented that the process is an excellent way to review complaints and should be retained.

Some of the comments submitted against this proposal were critical of the complaints process in general, rather than directly being in relation to the specific proposal. Some suggested that the complaints process lacked transparency, and that it was still 'Ofsted investigating Ofsted' and therefore not impartial. A number of respondents explained their individual experiences of the inspection process and current complaints-handling arrangements. For example, a small number of respondents suggested that Ofsted is biased against faith schools and that these schools were not being inspected fairly and reasonably.

Following analysis of all responses received, we consider that it is appropriate that we take the lead in investigating any complaints about our work. This is because we are best placed to identify any errors in inspection practice and take prompt action to put things right, where appropriate. We maintain independence within Ofsted by ensuring that individuals handling a complaint have not been involved in the issues that are being challenged.

We consider that retaining our current arrangements (which include an external sector representative contributing to a panel discussion) will continue to provide important challenge, independence, transparency and an insight into our complaints-handling process.

Complainants who remain dissatisfied after the internal processes will still be able to escalate their concerns to the Independent Complaints Adjudication Service for Ofsted (ICASO) and the Parliamentary and Health Service Ombudsman (PHSO), as appropriate. These steps add further independent scrutiny to how we handle complaints about our work.

There is no evidence, either from inspection grades or from within complaints information, that Ofsted is biased against faith schools and that these schools are not inspected fairly and reasonably. In fact, the inspection grade profile is more positive for faith schools than for non-faith schools. Latest inspection outcomes show that 88% of faith schools are graded good or better compared with 85% of non-faith schools.

We will be taking this proposal forward.

We strongly refute any assertions of systemic bias of any sort in our inspection or regulatory work. We carry out rigorous evaluations to check the quality of our work. If an allegation has been made through a complaint in relation to any aspect of our work, we deal with this fairly, thoroughly and efficiently, and we take prompt action to put things right if an error has been made.

We take complaints very seriously and seek to continually learn lessons and improve our practice. We work closely with the ICASO and always carefully consider any recommendations made. The latest ICASO Annual Report states:

'Within the context of Ofsted's overall workload in the 2018/19 academic year of more than 26,700 inspections and visits to schools, colleges and providers of social care, early years and further education and skills, it is remarkable that only 13 of the inevitable complaints that arise from what can occasionally be stressful situations for inspected settings have resulted in referrals to the Independent Complaints Adjudication Service. This is a record low number, as is the fact that our adjudicators were minded to make recommendations for improvement in only five cases. These results bear testament not only to the quality of Ofsted's frontline work but also to diligence and thoroughness of its complaints handling team, who continue to work very co-operatively with ICASO.

I would like to extend my thanks to Her Majesty's Chief Inspector, Amanda Spielman, for her constructive consideration of our recommendations, including responding personally to every one of our adjudicator's reports. We continue to be impressed by Ofsted's openness and the careful consideration which each of our recommendations receives at the highest level within Ofsted.'

Additional comments received

Separate to comments about the specific proposals, over 190 additional comments were submitted. Many of these were in relation to the complaints process overall, with some previous complainants highlighting ongoing concerns linked to their individual inspection and complaint experiences. Some respondents commented very positively in favour of the proposals and that Ofsted consulting on the process was welcome news. Some also stated that the proposed changes were a positive move forward.

Some respondents took the opportunity again to challenge our approach to handling complaints about our work. They suggested that an external body should investigate complaints. It was also stated that inspectors are inconsistent and that some providers feel unable to raise concerns during an inspection for fear of an adverse inspection outcome. We have considered all the additional comments received and their links to the proposed changes to post-inspection and complaints-handling arrangements. As appropriate, we have shared additional comments within Ofsted to support policy development and inspector training.

Next steps

After thoroughly considering all consultation responses received and based on an analysis of all relevant factors, we will take forward the following changes to our post-inspection and complaints-handling arrangements.

Note that although we intend to implement these changes from September 2020 as planned, this may be deferred because of the COVID-19 situation. We will update you on this in the coming weeks.

We will implement a new and consistent post-inspection timeline across all inspection remits

As a result, all providers, regardless of which sector they work in, should expect to see their draft report within 18 working days of the end of their inspection. Also, we will aim to issue all final reports to providers within 30 working days of the end of the inspection.

We will give all providers 5 working days to review their draft report

These 5 working days will give providers time to submit comments including issues of factual accuracy and any comments on the inspection process for us to consider before we finalise the report. We will also consider all submitted comments before we issue the final inspection report to a provider.

We will consider and respond to formal complaints from inspected providers before we publish their inspection report

We had proposed that inspected providers should submit any formal complaint within 2 working days of their final report being issued to them and that we would withhold publication of the inspection report until we had considered and responded to a complaint. However, on considering consultation responses, we will now ask that providers submit any formal complaint within 5 working days of their final report being issued to them and we will withhold publication of the inspection report until the complaint has been investigated.

We will retain current arrangements for internal reviews into complaints handling

This includes retaining the scrutiny panel to allow external sector representatives to contribute to a final internal review of escalated complaints cases, ensuring that the complaints-handling process remains independent, thorough and transparent.

Equality, diversity and inclusion

As part of the consultation, we published a draft equality, diversity and inclusion (EDI) statement. Through the consultation process, we received limited feedback on this and the detail within the proposals, with less than 10% of responses explicitly commenting on equalities issues.

We have carefully considered this feedback and reviewed every response and free-text comment for EDI concerns. We have published a revised EDI statement alongside this consultation outcome. Below, we have set out the most common issues that respondents raised through the consultation, grouping these under the relevant 'protected characteristic' as defined in the Equality Act 2010.

Religion or belief

There were a small number of comments citing concerns about how our inspection process unfairly disadvantages faith schools. Some respondents commented that inspectors are not always aware of, or respectful towards, faith communities. Others commented that there was a bias towards increased secularisation of schools.

We reject these assertions and that there is any systemic bias in our work with faith settings. Inspections and regulatory activities are subject to a range of rigorous quality assurance steps. If an allegation has been made through a complaint in relation to any aspect of our work, we will deal with this fairly, thoroughly and efficiently, and we will take prompt action to put things right if an error has been made. Our decision to extend the period in which a provider can comment on their draft report, and the extension through the consultation process to the period in which a provider can raise a formal complaint, will support those who might not be operating on normal 'working days' due to religious festivals.

No explicit comments were raised that implied that individuals or groups would be disadvantaged by the new arrangements in any way because of any other protected characteristic. However, our decision to extend the period in which providers can comment on their draft reports, and the extension through the consultation process to the period in which a provider can raise a formal complaint, will support all individuals. This includes those who might struggle to access our processes for whatever reason.

The public sector equality duty (PSED) requires public bodies to carry out their functions with due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it

By actively seeking views from providers that we inspect and regulate, service users and those involved in the work that we carry out, we have demonstrated transparency in our proposals for change and a willingness to engage positively with all regarding our work.

All responses received have been fully considered and have helped to shape our thinking regarding these changes, most notably by extending the period in which a provider can submit a formal complaint to us. In doing so, this will support those with protected characteristics who might have found it difficult to meet the deadline initially proposed.

Through this process, we consider that we have met the aims of the PSED and we will continue to do so as we implement these changes.

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