

**Review by Elizabeth Derrington of a complaint by EGIS regarding
Her Majesty's Inspectorate for Education and Training in Wales
(Estyn)**

Final Report to the Welsh Assembly Government

Published May 2005

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I Remit and methodology

1. I have been asked to review, and report my findings on, a complaint that EGIS¹ have made to the Welsh Assembly Government regarding Estyn, Her Majesty's Inspectorate for Education and Training in Wales. My terms of reference as determined by the Welsh Assembly Government are set out in paragraph 1 of Annex A. An outline chronology of the matter is in Annex B.
2. In conducting the review I have:
 - Read the documents submitted by EGIS to the Welsh Assembly Government in support of their complaint
 - In consultation with the parties, identified the key issues for my review, and produced a stage 1 report including an agreed protocol and timetable for completion of the work (see Annex A)
 - Met both EGIS and Estyn
 - Considered additional documentary material from both EGIS and Estyn²
 - Written to both EGIS and Estyn to check my understanding of their perspectives and to seek comments and clarification on a number of points
 - Referred to the Estyn website, and guidance published by Estyn on the inspection and complaints processes, particularly the handbook "Guidance on the Inspection of Primary and Nursery Schools", the leaflet "Appeals and Complaints"
 - Considered the findings of a comparative study commissioned by Estyn of complaints and complaint procedures in a number of similar organisations³
 - Considered and commented on Estyn's proposed new feedback and complaints procedure, which was subject to recent public consultation (for my response see Annex C)⁴.
3. I have conducted the review with maximum transparency. I have copied all correspondence to both EGIS and Estyn as well as to the Welsh Assembly Government, and provided all parties with notes of the meetings that have taken place. Where additional documents have been submitted, they have been, in the main, copies of correspondence between EGIS and Estyn. I have notified each party of the items of correspondence provided by the other, and have, with the agreement of the parties, copied to the other party any correspondence with third parties or other documents that it appears have not previously been disclosed. I am grateful to both EGIS and Estyn for helping to make the review process as open as possible.
4. After my initial consideration of the complaint and supporting papers submitted by EGIS to the Welsh Assembly Government on 31 May 2004, I determined that there were three broad areas that my review should address:
 - a. EGIS's concerns regarding the school inspection system in Wales
 - b. EGIS's concerns about Estyn's complaints system

¹ Eirwen Griffiths Inspection Services, which is operated jointly by Mrs E Griffiths, Mr JD Griffiths and Dr JE Griffiths-Baker

² Both parties have commented that they believe that it would have been appropriate for me to consider further material. It has been necessary for me to ensure that I secured a firm grasp of the issues while also using my time effectively. I believe that I have succeeded in achieving this balance.

³ P Matthews and Associates 2005 ("Estyn's complaints study")

⁴ I understand that the new procedure was implemented on 1 April 2005

- c. EGIS's dissatisfaction with the way in which specific matters raised by EGIS have been dealt with by Estyn

I also determined that there was one issue that it would not be appropriate for me to address. This related to Estyn's system of awarding contracts. In accordance with my remit, I considered whether alternative methods of resolving this issue were available. I concluded that there were alternative methods (through reference to the Office of Fair Trading or through litigation) and that these would be more appropriate as they would result in a clear legal ruling, which I could not provide.

5. Correspondence between EGIS and Estyn on the issues raised in the documents submitted to the Welsh Assembly Government has continued since the submission of the formal complaint to the First Minister of the Welsh Assembly Government in May 2004, and since I agreed to undertake this review in October 2004. For obvious practical reasons, it was necessary to identify and fix the scope of the review before undertaking detailed analysis of the issues. This was determined as part of the first stage of the review in December 2004, and limited to the three areas mentioned in paragraph 4 above, which were in turn, based on a complaint submitted to the Welsh Administration Ombudsman in March 2003. I have not, however, placed the same time restriction on the range of information I have considered, and have taken into account continuing correspondence between EGIS and Estyn insofar as it is relevant to the three areas within the scope of the review. The correspondence has referred principally to eight school inspections conducted by EGIS, and, in three cases, to the involvement of the LEA. I shall refer to the schools by using the letters A – H and the three LEAs as “LEA C”, “LEA D” and “LEA E”.
6. It is appropriate to note at the outset that, prior to the start of my review, Estyn had not had sight of the documents submitted by EGIS to the Welsh Administration Ombudsman or the Welsh Assembly Government, and therefore had not been in a position to provide a response that reflected all the concerns raised. Accordingly the meeting I had with Estyn on 14 January 2005 was the first opportunity for Estyn to present its perspective on the matter as a whole.
7. The three strands of complaint to be considered in the review are closely connected and, in a number of respects, inter-related. However, they are also distinct, and I believe that it will assist the clarity of my report if I deal with each in a separate section. In the following sections, therefore, I will explore the three strands in detail, giving a chronological summary for each⁵, and discussing the perspectives of both EGIS and Estyn, before giving my conclusions and proposals.
8. In this report I shall use the description “EGIS” to signify one or all of the partners in EGIS, and “Estyn” to signify HMCI Wales or members of her staff. HMCI has statutory responsibility under the School Inspections Act 1996 for all the functions of her organisation and its staff. For this reason I take the view that it is not appropriate to refer to individual members of Estyn staff.

⁵ See annexes D, E and F

II EGIS's concerns regarding the school inspection system in Wales

Introduction

The concerns of EGIS

1. EGIS's concern regarding the school inspection system in Wales is that a culture has developed in which schools respond to critical inspection findings by complaining about the conduct of the inspection. Inspectors, EGIS believe, are under pressure (sometimes overt pressure) to produce favourable reports, and most, in EGIS's view, succumb. The adverse effect of the school inspection system in Wales, EGIS argue, is significant:
 - Inspection reports taken together do not accurately reflect school performance in Wales, and therefore analyses based on report findings presented, for example, in Estyn's annual report give a misleadingly positive impression
 - Inspectors who do not give in to the pressure to produce favourable reports, but report with appropriate rigour, are subjected to disproportionate numbers of complaints, and consequent expense and damage to their reputations.

EGIS have advanced these arguments in correspondence with Estyn over a considerable period of time. Annex D contains a list of the main points made and the dates of the letters in which they were made. In support of their argument, EGIS have cited:

- Their own experiences of pressure and/or bullying at five schools (see references to schools A,B,C and H in annex D. The fifth was a school inspected in 1996, and the experience was related when I met EGIS on 7 January 2005)
- The difference between Wales and England in the numbers of schools found to require "special measures" (13 in Wales since 1996 compared with around 1800 in England over 12 years)
- Comments made by others in the education sector (see reference in EGIS's letter of 21.12.2002, annex D). EGIS have also quoted sections of letter from an individual described as a former HMI (see below paragraph 7).

The response of Estyn

2. Estyn's position, as summarised when we met on 14 January 2005, is that EGIS's broad concerns about the inspection system are unfounded because:
 - Analysis suggests that the inspection system in Wales is no less rigorous than that in England, and that the different numbers of schools in "special measures" in the two countries can be explained by reference to differences in socio-economic factors, particularly the fact that there are fewer schools in Wales operating in very deprived urban areas, and fewer schools with very low levels of attainment.
 - Estyn's complaints study found that Estyn's complaint rate (around 5%) was similar to that of similar organisations.
 - Evidence does not suggest a correlation between complaints and critical inspection findings (of a sample of 14 complaints from 2002/3, 9 were from schools that had received "favourable" reports).
 - Estyn has a combination of quality assurance arrangements, and training and assessment processes for inspectors, that assure the quality and consistency of inspections and inspection reports.
 - Estyn has sources of regular feedback, including four stakeholder forums with wide membership, and links with LEAs, and there has been no suggestion of a general lack of rigour.

In relation to EGIS's accounts of their own experiences during specific inspections, Estyn's response (presented in correspondence with EGIS and at our meeting on 14 January 2005) is that:

- It has supported EGIS's inspection judgements in almost all complaints
- That it has agreed with EGIS that they should discontinue feedback if headteachers or governors become abusive (letter of 3 November 2004, annex D)
- That issues of pressure and bullying have not been raised as an issue by inspectors and contractors (except EGIS) in recent years (letter of 3 November 2004, annex D)
- That, in the light of EGIS's experience, the next edition of "Inspection Matters" would include advice that inspectors should terminate a meeting if they felt threatened.

In commenting on the report in draft, Estyn submitted to me four letters from inspectors in Wales (apparently prompted by press coverage following a leak of the draft report) expressing strong disagreement with EGIS's criticisms of the inspection system in Wales.

My approach

3. I have had regard to all the points made by both EGIS and Estyn. I have also referred to the findings of Estyn's complaints study. In my discussion I will address separately the specific experiences that EGIS has reported and the more general arguments made by EGIS based on these experiences and other observations. In each case I will consider specifically
 - The nature of the concerns and the type of response that is appropriate to such concerns
 - The extent to which Estyn's response to the concerns has been appropriate
 - Any suggestions for further action that would be constructive.

I shall concentrate in this section on issues regarding the inspection system and its robustness. Issues relating to the impact of complaints on inspectors and contractors will be covered in section III.

Experiences of pressure and bullying

4. I have considered EGIS's reports of its own experiences during inspections of pressure and/or bullying. As already mentioned these go back as far as 1996 and have covered a period extending almost to the present. EGIS emphasised, when we met in January 2005, that the experience in 1996 was seminal, as it appeared to mark the start of the development of the culture which gives them concern. I note and accept the historical significance of the matter, but will not seek to explore the details in view of the period of time that has elapsed and the fact that it is not amongst the issues covered in the file submitted by EGIS to the Welsh Assembly Government. Accordingly I shall focus upon EGIS's experiences at schools A, B, C and H as summarised in annex D.
5. In the cases of schools A and B, EGIS's comments on pressure and/or bullying were made in the context of detailed responses to complaints made by the schools. They did not, it seems to me, raise the experiences as matters requiring a specific response from Estyn, but rather as observations on the relationship, perceived by EGIS, between critical inspection judgements and complaints. In the case of school C, EGIS were concerned to alert Estyn to the possibility of a complaint arising if inspectors did not agree to change certain judgements. EGIS's letter indicated an assumption that Estyn would support inspectors' decision to stand by their judgements and not give in to pressure to change them (as opposed to asking for Estyn's view of the matter). As far as I can see from the documents I have studied, Estyn did not respond to EGIS on the specific issue of pressure to change judgements in the cases of schools A and B. With regard to school B, is worth observing that correspondence about the inspection became very protracted, but this was not related to the issue of pressure on inspectors to change judgements, and I shall discuss this further in a later section. In the case of school C, Estyn's letter of 14 March 2003 (see annex D)

included an express statement that “inspectors may, from time to time, come under pressure to change their findings...however, it would be quite improper to do so unless it can be demonstrated that the findings were based on factual inaccuracies or insufficient or incomplete evidence”. The case of school H the situation was somewhat different in that EGIS’s letter was headed “Pressure on registered inspectors to alter judgements and findings”. It referred to EGIS’s broader concerns about the culture within the school inspection in Wales, but concentrated on the experience of feedback at school H, seeking the support of Estyn in dealing with aggressive feedback, and indicating EGIS’s intention to instruct inspectors to withdraw from meetings if they experience similar behaviour in future. Estyn’s response of 3 November appears to me to have dealt with EGIS’s points directly, agreeing with EGIS’s view that it was right for inspectors to withdraw if the conduct of school staff or governors became “uncontrolled or threatening”, describing the support Estyn provided during the inspection of school H, and referring to inspection guidance on calling and conducting feedback meetings.

6. I have reflected on whether, in the circumstances outlined in paragraph 5, Estyn could reasonably have been expected to have responded significantly differently from the way in which it did. It seems to me that there was no particular reason, in the case of schools A and B, to expect Estyn to respond to the specific points made by EGIS regarding pressure on inspectors to change judgements. The main subject matter for both EGIS and Estyn was how to deal with the complaints that the schools had made. As noted, in the case of school C, Estyn’s letter on the outcome of the complaint did (as implicitly requested by EGIS) confirm Estyn’s support for EGIS’s declared intention not to give way to such pressure. When similar issues were raised again in respect of school H, Estyn provided a direct response which appears to me to have covered EGIS’s specific concerns. I conclude that the way in which Estyn responded to EGIS’s specific concerns about instances of pressure on inspectors was in line with what could reasonably have been expected. I have already noted that, following EGIS’s experience at school H, Estyn undertook to issue guidance in “Inspection Matters” that inspectors should withdraw from meetings if they feel threatened. This action provides a further indication that EGIS’s concerns have been taken seriously.

The inspection system in Wales

7. I have also considered EGIS’s broader concerns regarding the culture of the inspection system in Wales, and Estyn’s responses. As mentioned in paragraph 3 above, it is apparent that these concerns had their origins in EGIS’s own experiences of inspections and complaints arising from inspections. EGIS have, however, also quoted a number of other factors in support of their concerns, principally the difference between Wales and England in the numbers of schools judged to require special measures, and a perceived link between critical inspection judgements and complaints. EGIS have also referred to:
 - o Extracts from a letter from an individual described as a former HMI regarding a perceived change of approach to inspection grading, resulting in schools receiving better grades than they would have received in the past, and standards in Wales appearing much higher than they really were
 - o A remark by a headteacher at an Estyn conference regarding his school in spite of weakness in one area having received a “satisfactory” grade “like everyone else”.

EGIS have confirmed to me that their view, following their correspondence with Estyn is that Estyn “refuses to acknowledge the problem let alone deal with the situation”.

8. Estyn has responded to EGIS (as recorded more fully in annex D) by providing information about the numbers of schools in Wales found to require special measures, and commenting on the difficulty of making direct comparisons between Wales and England. It has produced information on complaint numbers, and has done some work on analysing the relationship between inspection

judgements and complaints. It has also assured EGIS that Estyn works with Ofsted on matters of consistency and reliability. However, its overall response to EGIS's general concern about the rigour of the inspection system has been to say that it will take EGIS's points into account along with feedback from all other sources to inform future thinking, and Estyn has indicated that, having given this undertaking, it does not regard itself as under a duty to enter into further correspondence on the issue. It has also, as noted in paragraph 2 above, highlighted the checks and balances of its quality assurance processes, and its arrangements for regular feedback from a range of sources.

9. My task is to consider whether in all the circumstances it was appropriate for Estyn to respond in the way that it has done. It is evident that EGIS have not been satisfied. In fact it is probably fair to say that EGIS's concern has increased rather than diminished over time. I have reflected on the concern itself, the potential for a definitive answer to be given, and other possible avenues by which it could have been addressed. I should stress that it is not within my remit to offer any view on the culture and rigour of the inspection system in Wales. My focus is strictly on EGIS's concerns and the way in which Estyn has addressed them.
10. It is hardly necessary to say that EGIS's concerns relate to the very core of an inspection system. For inspectorates and inspectors there are obvious tensions between maintaining the rigour of the inspection process and securing acceptance of, and action in response to, inspection judgements. As recognised in Estyn's complaints study (paragraph 30) the duty to report without fear or favour on the quality of work done by others places an "exceptional onus upon inspectors to observe their codes of conduct, both to the letter and in the spirit of the values that the codes represent". Estyn's review also acknowledges (paragraph 50) "a perception by some inspectorates that retrospective complaints are used as a mechanism to try to challenge or erode critical inspection findings". The imperative for inspectorates is to establish a combination of procedures, training and guidance, and quality assurance that, in spite of these known tensions, is effective in securing a balance of sensitivity, consistency and robustness, and so maintain the confidence of all stakeholders in the process.
11. When EGIS started to express general concerns about the inspection system, Estyn was faced with an apparent loss of confidence, by an inspection contractor, in the system within which they were working. I have reflected on the range of options available for responding to the situation. These extend from, at one extreme, immediately initiating a basic review and overhaul of all inspection systems, and at the other, doing nothing at all. In the middle ground, options could have included consulting other stakeholders to see if the concern was widespread, carrying out analysis to see if there was evidence that tended to support the concerns expressed, seeking to reassure the individual contractor, and considering whether any new checks and balances should be introduced to address the concerns. EGIS regard Estyn's response as tantamount to doing nothing. However, I do not think that this view is fair. Estyn did, in my view, try, in January 2003, to explain to EGIS why it did not regard it as worrying that there should be a difference between Wales and England in the number of schools judged to require "special measures". It also told EGIS, in February 2003, that it would take EGIS's concerns, together with those of other stakeholders, into account in its future thinking. In later correspondence Estyn went further, giving additional explanation (March 2003) of its view that it was difficult to make direct comparisons between Wales and England, offering assurance (March 2003) that it co-operated with Ofsted on issues of consistency and reliability, referring to quality assurance arrangements (February 2004) and rejecting the suggestion that there was a "culture of saying nothing really critical for fear of repercussions and complaints" (February 2004).
12. With regard to complaint numbers and the question of links between critical judgements and complaints, Estyn responded to questions from EGIS (letters of 20.1.2003 and 7.2.2003, see annex D) by providing a breakdown of complaint numbers as a proportion of inspections, both overall and for each registered inspector. Estyn said that it was not possible to give the numbers of

complaints made by schools that had received “favourable” reports as it did not normally categorise reports in this way. Similarly it said that it could not give numbers of complaints upheld and not upheld as Estyn did not use these terms in responding to complaints. It is apparent (as mentioned at our meeting of 14 January, see paragraph 2 above) that Estyn has subsequently carried out some analysis of the relationship between “favourable” inspection reports and complaints, and found that 9 out of 14 studied came from schools that had received “favourable” reports. These headline figures have only recently been shared with EGIS as part of my review and it is fair to say that they have responded with scepticism. I suggest that Estyn should consider whether it is possible, without breaching the confidentiality of the inspectors involved, to share with EGIS any more detailed information about this analysis.

13. My view is that Estyn has made a serious attempt to respond to the broad concerns about the inspection system raised by EGIS. However, because of the fundamental nature of the concerns, it seems to me that there was no single obvious way of responding, and no possibility of a simple definitive response. The responses charted above appear to me to indicate a serious and continuing attention to the concerns, and a wish to respond to them. I would agree with the view put forward by Estyn in its letter of 24 February 2003 that, having undertaken to take EGIS’s views into account, it was not under a specific duty to engage in further correspondence. The fact that it did so suggests a genuine will to make progress. As already noted EGIS’s concerns appear to have grown rather than diminished as a result of the exchanges but I am not sure what steps Estyn could reasonably have been expected to take that might have prevented this. As I have mentioned, Estyn has emphasised to me the comprehensive nature of its arrangements for quality assurance and feedback. I cannot express a view on the rigour and consistency of Estyn’s inspection system. As already explained, this is beyond the remit set for this review by the Welsh Assembly Government.
14. Similarly, I find that Estyn made a serious attempt to respond to EGIS’s concerns about the causes and impact of complaints, initially by providing a breakdown of complaint numbers, and subsequently by carrying out some analysis to investigate the possibility of a link between critical inspection reports and complaints. It also provided support in individual cases, as discussed in paragraphs 5 and 6 above. I have noted that Estyn’s complaints study expressly examined Estyn’s complaints rate, and found it to be similar to that of other organisations. While Estyn has not attempted to explain the fact that one of EGIS’s inspectors does appear to have been involved in significantly more complaints than other inspectors, it has observed that in almost all cases the inspection judgements have been upheld following investigation by Estyn. On this point is interesting to note that Estyn’s complaints study (paragraph 50) found that investigations undertaken by both Ofsted and Estyn in relation to the judgements of registered inspectors who have acquired a reputation for harshness do not support the perception that their judgements are unfairly critical. It seems fair to say that the causes of complaints are complex (and I will touch on them again in paragraph 5 of section II), and there are no easy answers to the points that EGIS raised. For the reasons given, however, I take the view that Estyn made an appropriate attempt to respond to EGIS.

Conclusion

15. Taking all the circumstances into account, I am satisfied that Estyn has seriously considered EGIS’s concerns in this area, and offered some relevant observations in response. I have made a suggestion regarding disclosure of information about Estyn’s analysis of the relationship between complaints and “favourable” or “unfavourable” reports. This might provide some assurance for EGIS that complaints are generated by “favourable” as well as critical inspections.
16. As I have concluded that Estyn responded appropriately to their concerns, but left EGIS very far from satisfied, I have reflected on whether EGIS’s approach to Estyn was the best way of raising such issues, or whether some other method might have been more effective, given that they were

very much issues of opinion and perception rather than actual complaints about particular actions or omissions on the part of Estyn. A number of possible channels have occurred to me. EGIS could have responded to relevant public consultations; they could have raised the issues at Estyn's meetings for contractors and inspectors; they could have submitted written evidence when the work of Estyn was being publicly scrutinised, for example by the National Assembly Wales. EGIS may indeed have pursued these options, but their main attention appears to have been given to raising them with Estyn. The issues are clearly important and merit regular consideration and open discussion by all those with an interest in maintaining confidence in the inspection process, but the correspondence between EGIS and Estyn did not produce useful results. This may have been partly at least because it was not the most appropriate way of conducting such a debate.

17. Overall, therefore, with regard both to EGIS's specific reports of pressure on inspectors, and to its general concerns about the inspection system in Wales, I am satisfied that Estyn made reasonable and appropriate attempts to respond. The fact that the correspondence was difficult and protracted and failed to resolve the matters was, in my view, more the result of the nature of the issues than a sign that Estyn had not given them serious consideration.

III EGIS's concerns regarding Estyn's complaints procedures

Introduction

The concerns of EGIS

1. EGIS have expressed concern that Estyn's inspection complaints process is unfair and onerous for inspectors, does not offer them appropriate support and lacks rigour in evaluation. There are clear links with the issues discussed in section II. EGIS's argument is that their inspectors have been more rigorous than others in applying inspection criteria, and have not given way to pressure to change their judgements, and as a result, have become targets for complaints. This, EGIS say, has meant that they have had to spend much more time and resources on providing responses than other contractors who have not been similarly targeted. Like the issues raised regarding the inspection system in Wales, the concerns stem originally from EGIS's experiences in a number of cases of complaints by schools.
2. As with EGIS's concerns about the inspection system in Wales, these concerns have been the subject of protracted correspondence between EGIS and Estyn. Many letters refer to both issues. Annex E gives a chronological summary of the main points made by EGIS, and responses given by Estyn, in correspondence about the complaints process. I shall begin by attempting to list the different aspects of EGIS's concern:
 - a. Complaints, even if unfounded, damage inspectors' reputations, whereas schools that complain appear to escape with impunity.
 - b. Estyn allows schools to complain many months after an inspection by means of the post inspection questionnaire, rather than insisting that concerns are raised promptly, and there is no provision for conciliation or local resolution. Contractors and inspectors, on the other hand, are expected to respond urgently, even to very late complaints.
 - c. The style of Estyn's responses to complainants suggests an assumption that the complainant is right and the inspector wrong.
 - d. Estyn is acting unfairly in not paying contractors and inspectors for the time spent responding to complaints.
 - e. Letters of complaint and related evidence from third parties are not always disclosed to contractors and inspectors.
 - f. Third parties, for example LEAs, are allowed to complain even where they had no direct involvement in an inspection.
 - g. Estyn, when investigating complaints, has refused to obtain evidence that would support EGIS, but has sought evidence from other third parties, for example LEAs.
 - h. Estyn has claimed the authority to require EGIS to send in inspection documentation to Estyn when this was onerous, unreasonable, and outside the terms of its contract.
 - i. Estyn has gone to unnecessary expense by using solicitors in connection with access to inspection documentation, and has wrongly accused EGIS of wilfully obstructing Estyn in relation to the same matter.
 - j. Estyn has changed its complaints process without consulting contractors and inspectors. Specifically EGIS have complained that Estyn has
 - Abandoned its former practice of paying contractors and inspectors for responding to complaints
 - Abandoned its former practice of sending draft responses to contractors and inspectors for comment
 - Changed its post inspection questionnaire so as to invite schools to ask for their responses to the questionnaire to be treated as a complaint.

The response of Estyn

3. Estyn's broad view, as outlined in section II, is that the inspection system in Wales is both rigorous and consistent, and accordingly Estyn regards as mistaken EGIS's concern that they have unfairly become a target for complaints. Estyn's response to the detailed concerns raised by EGIS can be summarised as follows (unless indicated otherwise, these responses are based on my meeting with Estyn on 14 January 2005 – as mentioned (section I paragraph 6) this meeting provided the first opportunity for Estyn to present a comprehensive response to the issues raised by EGIS):
 - a. In almost all complaints involving EGIS, the inspection judgements have been upheld following investigation by Estyn.
 - b. Estyn's complaints leaflet stresses the importance of raising concerns when they occur, but if a school does express significant concerns in a post inspection questionnaire, this may be treated as a complaint. The questionnaires may, but do not usually, come in months after an inspection.
 - c. It is not accepted that Estyn's responses to complainants suggest any preconceptions or bias.
 - d. It is unsustainable for Estyn to pay contractors and inspectors for responding to complaints, and this has not been normal practice for approximately 6 years.
 - e. Estyn (on legal advice) always seeks the agreement of a complainant before disclosing a complaint letter to a contractor or inspector.
 - f. LEAs may have legitimate grounds for complaint about inspections, and it is not possible for the validity of a complaint to be assessed when it is initially received (letter of 12 February 2004 – see annex E).
 - g. Estyn takes into account evidence from HMI monitoring reports when available. It is not unusual for Estyn, when investigating a complaint, to contact third parties for information. It did not follow EGIS's suggestion that it should do so in the case of school F because EGIS themselves had not provided a response to the complaint.
 - h. Estyn does not understand why there were problems with EGIS sending in the inspection evidence for schools B and C. Estyn arranged for the evidence for school C to be viewed at EGIS's premises, but the evidence for school B has still not been seen.
 - i. Estyn has had recourse to lawyers because of the volume of correspondence and the legal nature and threatening tone of some of it. With regard to the question of wilful obstruction, Estyn has pointed out that the allegation was made by its solicitors rather than by Estyn itself.
 - j. With regard to changes to the complaints process, the practices of paying inspectors and contractors for time spent responding to complaints, and of sending draft responses to contractors and inspectors were discontinued several years ago. The post inspection questionnaire was changed as a direct result of EGIS's concerns (to remind schools to raise issues when they occur, and to give them the opportunity to indicate if they do **not** wish their post inspection questionnaires to be treated as complaints).

My approach

4. I have had careful regard to all the points made by both EGIS and Estyn. I have also had regard to the analysis of complaints processes in Estyn's complaints study, and shall begin with some general observations on inspection-related complaints, which may help set the later discussion in context. I shall then address each of EGIS's concerns in turn, considering specifically
 - o The nature of the concerns and the type of response that is appropriate to such concerns
 - o The extent to which Estyn's response to the concerns has been appropriate
 - o The extent to which Estyn's proposed new complaints procedure, based on the findings of the complaints study, will address the issues.

I shall concentrate in this section on general points regarding the fairness of Estyn's complaints process. Three specific matters of complaint raised by EGIS will be considered in section IV.

5. As mentioned, I should like to begin by recognising some general points about inspection complaints, based on the findings of Estyn's complaints study. First, complaints are an integral part of the business of inspection. This is well expressed at paragraph 4 of Estyn's complaints study

"Inescapably, inspection – as external evaluation - is an intrusive activity, however well it is undertaken. It is almost inevitable that it can generate anxiety and on occasion, dissatisfaction or more strongly-voiced concerns. All but the most recently established inspectorates, therefore, have policies and procedures for handling the dissatisfaction that surfaces as a complaint. Inspectorates give considerable attention and significant resource to responding to complaints in what aims to be a fair, transparent and timely manner."

It is clear that inspectorates and their staff, as well as contractors and inspectors, must expect their work to produce complaints from time to time, and must be prepared to respond in a way that demonstrates willingness, where appropriate, to recognise failings and to make amends.

Second, there are some features of the inspection process that are likely to have an impact on complainants' decisions to complain and the timing of that complaint. In a perceptive section on the psychodynamics of complaining about inspections, Estyn's complaints study (paragraphs 49-50) considers the factors in operation, both from the perspective of potential complainants, and from the perspective of inspectors, contractors and inspectorates.

"For some providers, a tension exists between voicing concerns and bearing them in silence while the inspection is in progress. Examples abound in the inspection of educational providers, where concerns about the conduct of the inspection are not raised at the time for fear of antagonising inspectors or receiving a more critical report. Such attitudes tend to reflect on leadership that lacks confidence or is apprehensive about the likely inspection findings. They may be accompanied by perceptions that a particular reporting inspector is reputedly harsh. Investigations undertaken by both Ofsted and Estyn in relation to the judgements of registered inspectors that have acquired such a reputation do not support the perception that their judgements are unfairly critical. But many schools, particularly primary schools in England and Wales, remain apprehensive about the forthcoming inspection and hesitate before raising concerns about an inspector's behaviour. One result is that complaints about the conduct of inspectors are frequently deferred until after the report has been received. This precludes informal resolution of the complaint by proceeding immediately to the formal complaint stage. "

"The issues can be complicated further by the perception of some inspectorates that retrospective complaints about the inspection process are sometimes used as a mechanism to try and challenge or erode critical inspection findings that emerge at the oral or written reporting stages."

The quoted observations make clear that there are perceptions, on the part both of schools and of inspectorates, about the relationship between complaints and inspection judgements that may hamper the effective and open operation of a complaints process. They may cause schools to delay raising concerns promptly, and inspectorates (and contractors and inspectors) to have preconceptions about the motivation of complainants. I have already referred in section II to EGIS's views on the motivation of complainants.

Third it is important to note that complaints involve "external" stakeholders (in the case of inspection complaints, schools and parents) and "internal" stakeholders (in the case of inspection complaints inspectorate staff, inspectors and inspection contractors). Because of the statutory arrangements for school inspection in Wales, contractors and inspectors fall into a rather different category of "internal" stakeholders from staff employed directly by Estyn. The practical implications of the "arm's length" relationship between Estyn and its inspectors and contractors are relevant to the design of complaints procedures, but not within the scope of this review. Suffice to say that inspectors and contractors have a clear stake in the inspectorate's complaints process, and perspective quite distinct from that of external complainants. It is essential that the complaints process should take into account the need to demonstrate that both perspectives have been fully and fairly considered.

6. Turning, then, to deal with EGIS's concerns as listed in paragraph 1 above, I shall discuss each of the ten points in turn.

Complaints damage inspectors' reputations whereas schools escape with impunity

7. EGIS have expressed the view that there is a lack of balance in the positions of schools and inspectors with regard to the impact of unfounded complaints. This concern was raised in 2000 with regard to School A (see Annex E, EGIS's letter of 20.10.2000), where EGIS expressed the view that "Mud always sticks and damages reputations. However distorted, untrue or malicious an accusation may be, the school always seems to escape with impunity".
8. It is fair, I think, to say that the concern featured as an "aside" in EGIS's letter, the main focus of which was the actual inspection of school A. Estyn does not appear to have made a specific response, but it is not clear that one was called for. I have expressed the view in section II (paragraph 16) that it is appropriate to distinguish between a general expression of opinion and a specific complaint, and suggested that there are several ways in which opinions can be aired depending on the nature of the opinion and the context in which it is put forward. EGIS's concern seems to me to have been an expression of opinion, not linked to any proposal or request for action, and, as such, in the context of the correspondence, not to have demanded a direct response from Estyn.
9. I would observe that, as mentioned in paragraph 5 above, it is important to recognise that inspections are bound to generate complaints, that some will be strongly expressed, and that some may be used as a mechanism to try to erode critical findings. Complaints are, therefore, a fact of business life for inspectorates, contractors and inspectors. It is also probably true to say that there are rarely penalties for complainants who make unfounded or mischievous complaints. It is relevant, though not particularly comforting to EGIS to note the comments of Estyn's complaints study that inspectors can acquire a reputation for severity even though analysis shows that their judgements are not unfairly critical.

Schools can complain late, but contractors and inspectors are required to respond promptly

10. EGIS have pointed to specific cases (notably schools B and F) where complaints were made a considerable time after an inspection in spite of no concerns having been raised at the time. (see annex E, EGIS's letters of 2.12.2002, 7.12.2002 and 29.1.2004). EGIS have expressed concern that schools are permitted to complain late, whereas contractors and inspectors are required by Estyn to respond urgently. They have also referred to the absence of arrangements for conciliation or local resolution. In the case of school F, EGIS further complained about the length of time between Estyn receiving the post inspection questionnaire and requesting a response from EGIS. EGIS have suggested (see annex E, letter of 2.12.2002) that the complaints procedure should be changed to impose a limit for submission of complaints of 28 days from publication of the inspection report, and that there should be a prohibition on complaints where no concerns were raised with the registered inspector during the inspection. EGIS explained to me, when we met on 7 January, that, in their own pre-inspection communication with schools, because of what they see as Estyn's failure in this respect, they go to great pains to stress the importance of discussing any difficulties with the registered inspector during the inspection.
11. As far as I can see, Estyn did not make a specific response to the concerns and suggestions raised by EGIS in 2002 regarding the complaint by school B. The correspondence regarding school B became focused on the issue of access to inspection documentation, which will be discussed in later paragraphs. With regard to the concerns relating to school F that were raised by EGIS in January 2004, EGIS's letter of 12.2.2004 (see annex E) explained that Estyn's view was that "a complaint is still a complaint even if made some time after the event", but assuring EGIS that where a complaint was submitted late, the reasons for this would be investigated. Estyn did

not, however, deal with EGIS's more general point about the matter of fairness as between schools and inspectors in the time allowed for complaints and responses respectively.

12. In addition to the specific response with regard to the lateness of the complaint by school F, it is apparent that Estyn has given further thought, in the light of EGIS's concerns, to the matter of timeliness, and the desirability of problems being discussed and resolved informally as they arise. Estyn has, as mentioned in the final bullet point of paragraph 2 above, added a section to the post inspection questionnaire emphasising the importance of dealing with problems when they occur. The added paragraphs also require schools who wish their responses to the post inspection questionnaire to be treated as complaints to indicate whether their concerns were raised during the inspection, and if not, why not. In addition, Estyn's recent review of complaints processes has addressed the question of time limits, and has proposed that the new procedure will require complaints to be submitted within three months of receipt of the inspection report, unless there are exceptional circumstances. As indicated in paragraph 3 of my response (annex C) to Estyn's consultation, I assume that this will necessitate revision of current practice with regard to post inspection questionnaires. The proposed procedure also clearly includes an "informal resolution" stage as the first option when a problem occurs. Finally, I note that the new procedure includes target times for initial and final responses to complaints, which will clearly have a major effect on the time available for contractors and inspectors to investigate and respond. I shall consider this aspect of the matter further in paragraph 31 below.
13. It seems to me that the totality of Estyn's response, in correspondence with EGIS and in reviewing and adjusting its procedures has properly recognised EGIS's concerns and gone a significant way to address them, by introducing time limits and introducing a discrete "informal resolution" stage. As mentioned I shall return in paragraph 31 to reflect, in the light of EGIS's concerns about balance between complainants and inspectors/contractors, on the times allowed under the proposed new complaints procedure for investigation and response.

Estyn's letters of response to complainants

14. EGIS's letter of 3 February 2004 (see annex E), in the context of general concerns about the fairness of Estyn's complaints process, complained about the style of Estyn's responses to complaints, citing the use of the expression "I am sorry that you have had cause to complain" as appearing to indicate an assumption that every complaint was made for good cause. Estyn's response of 12 February 2004 did not reply on the expression quoted, but recognised that EGIS were "unhappy with the way that Estyn responds to complaints"...and undertook to take the issues raised into account in its "periodic review of complaints procedure and policy".
15. The point was raised in the context of general concerns rather than in the course of correspondence on a specific case, so the general response by Estyn seems to me to have been appropriate. However, EGIS did take the opportunity, when we met on 7 January 2005, to quote further phrases from Estyn's responses to complainants, for example, "I have been unable to substantiate your complaint..." and an undertaking to "keep the complaint and related papers on file". I have therefore followed the matter up with Estyn both at our meeting on 14 January and in correspondence.
16. Estyn's view is that "I am sorry that you have had cause to complain..." is a normal and neutral way to start a letter of response to a complainant, and implies nothing about Estyn's opinion of the complaint. With regard to the expression "I have not been able to substantiate your complaint..", Estyn has pointed out that this has only rarely been used, and, as far as retention of papers is concerned, Estyn has observed that there are many reasons why it might wish to keep complaint papers on file.

17. There are clearly different perspectives and perceptions here. The area is one where there are no obvious right and wrong answers but where perceptions are very important. I know from my own experience that the language used in a letter or report can have a different impact from that intended or expected, especially when the subject matter is sensitive and where fairness and balance are paramount. I expect that, as part of introducing its new complaints procedure, Estyn will be looking at the style and presentation of its responses. I would suggest that it should take the opportunity, in the light of EGIS's concern, to examine proposed wording for balance and impartiality, perhaps with the help of some individuals who could give reactions from different perspectives.

Payment for responding to complaints

18. EGIS have raised on a number of occasions (for example their letters of 22.11.2000 regarding school A and 7.12.2002, regarding schools B and C, see annex E) issues relating to payment for time spent responding to complaints. The letter of 7 December 2002 argued that Estyn's practice of not making payment was particularly unfair to some contractors and inspectors (if, as EGIS have suggested, inspectors who inspect rigorously, and produce critical reports, attract a disproportionate number of complaints). On the assumption that this was the case, EGIS suggested, inspectors who inspected rigorously were financially penalised compared with those who inspected less rigorously and did not attract complaints.
19. Estyn responded on 7 December 2000, regarding school A, that its contract specifically provided that contractors were required to respond to complaints at their own expense. It did not as far as I can see provide further specific written responses on the point following EGIS's return to the issue in December 2002. As noted in paragraph 2 above, Estyn commented when we met on 14 January 2005 that it had found it unsustainable to pay contractors and inspectors for responding to complaints and that this had not been normal practice for about 6 years.
20. It seems to me that Estyn gave a direct and clear response to the point raised by EGIS in 2000. The concern expressed in 2002 was more general, and was predicated on the assumption of a direct relationship between rigorous and critical reporting and complaint numbers (I have already commented, in paragraphs 12 and 14 of section II, on information which suggests that there may not be such a clear relationship). In my view, once the contractual position had been clearly stated, as it was in Estyn's response of 7 December 2000, EGIS's situation was that it was arguing for a change of policy, rather than putting forward a "complaint". The most it could expect was that Estyn should consider the argument. Estyn made clear at our January meeting it had a firm view on the matter of paying contractors for responding to complaints, and this was that it was unsustainable. I note that Estyn's proposed new complaints procedure provides for all school inspection complaints to be directed to the inspection contractor in the first instance, to be referred to Estyn only if not resolved by the contractor. It seems that Estyn wishes to move to delegating greater responsibility for complaint handling to contractors. Contractors and other stakeholders will have had the opportunity to comment on this as part of the recently concluded consultation process. This should give Estyn access to a range of views on the issue, and enable it to take these into account before finalising its plans.

Disclosure of letters of complaint and other correspondence

21. EGIS have expressed concerns, for example, in relation to the complaint by school C (letter of 15.1.2003, see annex E), and in relation to school E and LEA E (see letter of 27.5.2003 in annex F(b)) about the transparency of Estyn's complaints processes. They have drawn attention to the apparent unwillingness of Estyn to disclose all the information on which it bases its decisions (in complaints and other matters) and expressed the view that this is unfair and unreasonable to those, like EGIS who will be affected by the decisions.

22. I have not seen any specific responses from Estyn on this issue. I have, however, noted that some documents requested by EGIS have been disclosed to them after Estyn requested and obtained permission from the author, for example, the exchanges between LEA E and Estyn (see Estyn's letter of 11.11.2003 in annex F(b)). At our meeting of 14 January 2005, Estyn, as already mentioned, confirmed that, following legal advice, its practice is to seek the express agreement from complainants before disclosing their letters of complaint to contractors and inspectors. As I understand it, the same approach is used in the case of other third party communications.
23. I have referred to Estyn's current⁶ complaints leaflet which indicates that Estyn will forward all complaint letters to the relevant registered inspector, unless the complainant expressly requests that this should not be done. This appears slightly at odds with the practice described in the last paragraph. I have also taken into account the proposals for Estyn's new complaints procedure. These provide (page 6) that the person whose work or inspection is being complained about will be shown the letter of complaint and asked for a view. It seems clear that complainants will no longer be able to ask that their letters should not be disclosed, and that the practice of seeking express agreement from complainants will cease.
24. All my experience in this area suggests that maximum transparency in complaint procedures is best. Individuals complained about must know the detail of the complaint to be able to respond. Any lack of openness tends to create suspicion that something is being hidden and to undermine confidence in the fairness of the process. It is, of course, crucial, that the rules on disclosure should be made clear at the outset of the complaints process. Estyn's proposed new complaints procedure appears to meet this requirement. In respect of other types of decision, it would, I think, be dangerous to generalise. While transparency may be generally desirable, there may also be circumstances in which confidentiality is appropriate.
25. My view is that Estyn's current complaints process could be a good deal clearer and firmer on transparency. If it had been, it might have assisted both EGIS and Estyn in dealing confidently and consistently with inspection complaints. It does, however, appear likely that this weakness will be addressed for the future by the new complaints procedure. With regard to other third party communications (such as that regarding LEA E, see annex F) the situation is less straightforward, but appears to have been resolved in the case of LEA E by the LEA's agreement to its correspondence being disclosed to EGIS. For the future, it is certain that decisions of the Information Commissioner in respect of the Freedom of Information Act will help to steer and develop practice.

Complaints from third parties

26. EGIS have objected (letter of 3.2.2004, see annex E) that LEAs appear to put forward complaints of which they have no knowledge, for the purpose of offering "comfort and support" to schools. EGIS have argued that this should be prevented.
27. Estyn has responded (letter of 12.2.2004, see annex E) that, in its view, LEAs may have good reason for raising issues or complaints about inspection. It also commented that it is not possible to comment on the validity of any complaint when it is initially received.
28. I have no hesitation in expressing the view that Estyn has responded appropriately. It is important that complaints processes should not have in-built assumptions about who may have a legitimate basis for complaint. The nature of a complainant's interest in the subject matter of a complaint will affect the nature of the investigation conducted, and the presentation of the response, but should

⁶ By "current" complaints leaflet or "current" complaints procedure, I refer to the leaflet and the procedures that were current up to 1 April 2005.

not prevent the complaint being given any consideration at all. I do not think that I can comment further.

Complaint investigations

29. EGIS's letters of 1 April 2004 and 1 December 2004 (see annex E) raised questions about the fairness and thoroughness of Estyn's complaint investigations. The first expressed concern that Estyn had not contacted an individual whom EGIS believed had information relevant to the complaint investigation regarding school F. The second questioned whether Estyn had contacted LEAs to get their perspectives on individual complaints.
30. Estyn responded on the point regarding school F (though not, as far as I can see until January 2005), that it had not contacted the third party suggested by EGIS because Estyn's main concern was to get a response from EGIS themselves, and this had not been provided. With regard to contacting LEAs, Estyn accepted that it was not unusual for it to seek information from third parties when investigating complaints.
31. I recognise that Estyn has responded directly to EGIS's questions, but there are three observations that I should like to make in the context of Estyn's plans for a new complaints procedure⁷. First, I note that the proposed new complaints procedure implies that an investigator may follow up evidence or witnesses put forward by the complainant. It does not, however, indicate whether other witnesses (either witnesses proposed by inspectors or independent witnesses such as LEAs) may be approached. I would suggest that, in the light of the issues raised by EGIS about third party evidence, it would be appropriate for the procedure to make clear what the investigation might or might not include in terms of evidence gathering. Otherwise there is a risk, I think, of creating unrealistic expectations (or fears) on the part both of complainants and of those complained about. Second, it seems to me that it would be helpful for the procedure to indicate the level of transparency that can be expected (i.e. whether evidence gathered will be disclosed to the parties). This suggestion is prompted by my consideration of the issues raised by EGIS with regard to disclosure of evidence. Third, as indicated in my response to the consultation (annex C) I have reflected on whether the target time envisaged for a full response (20 working days) will be adequate to allow enough time for the scale of investigation that appears to be proposed. I mention this particularly in the light of EGIS's concerns about the imbalance, under the current procedure, between the time allowed for complainants to complain and the time allowed for contractors/inspectors to investigate and respond. As noted in my response (annex C, paragraph 4) the proposed procedure clearly flags up the principle that "a person who is the subject of a concern must be told about it, have the opportunity to respond and, if appropriate, put matters right, and have access to support". This appears to reflect recognition of the concerns that EGIS have expressed to Estyn, and the clear statement of principle will, I imagine, be welcome to EGIS. It is clearly important, as Estyn's complaints study emphasises, that complainants should receive timely responses to their complaints. I would, however, raise the question of whether, given the proposed procedure's express commitment to those complained about, and the indications given of the scale of investigations that will be conducted, the target response times may be too ambitious⁸.

Access to inspection documents

32. There was intensive correspondence during the period December 2002 to February 2003, mainly between EGIS and Estyn's solicitors, regarding access to the inspection documents for the inspections of schools B and C. As noted in annex E, this culminated in arrangements being made for a visit on 1 March 2003 by Estyn staff to EGIS's premises. On that occasion, Estyn staff

⁷ I understand that the observations which follow have been taken into account in finalizing the new procedure now introduced from 1 April 2005

⁸ Estyn, in commenting on the report in draft, has indicated that the response times have been extended.

examined the documents relating to school C. EGIS remain dissatisfied that Estyn, in their view, asserted rights in respect of inspection evidence that it did not possess, and made requests documents to be sent when such requests were unreasonable and onerous for EGIS. Estyn's view, as explained at our meeting on 14 January 2005, is that it does not understand why there should have been problems regarding the evidence for the inspections of schools B and C as its contract provided for access by Estyn to inspection evidence, and EGIS had always allowed access previously. Estyn also commented that, though the evidence for school C was inspected at EGIS's premises, the evidence from school B has still not been seen.

33. This concern, like the two that follow, was first expressed as complaint in these terms in EGIS's letter to the Welsh Administration Ombudsman of 9 March 2003. It was not explicitly addressed to Estyn therefore until shortly after the start of this review, when Estyn first received a copy of the documents that EGIS had submitted to the Welsh Assembly Government, including the letter to the Welsh Administration Ombudsman. My meeting with Estyn on 14 January 2005 was therefore the first opportunity for Estyn to respond. Accordingly, my observations cannot cover Estyn's response to this aspect of EGIS's complaint, but are necessarily limited to the nature of the dispute and any action that might assist resolution.
34. The dispute related specifically to access by Estyn to the inspection evidence for schools B and C. It is clear from the correspondence that it focused on points of interpretation of the standard contract for school inspections as it was at that time. I understand that the standard contract has been revised, to clarify the ownership of information and to set out detailed requirements regarding the production of inspection documents to Estyn, and so the same issues are not likely to arise again. I also note that the difficulties do not appear to have arisen with regard to other cases dealt with at about the same time. For example, the correspondence that I have read appears to indicate that the inspection evidence in respect of school D (to be discussed further in the next section) was requested by Estyn on 1 October 2002 and provided by EGIS on 17 October 2002.
35. It appears that the dispute could have been avoided had the terms of the contract operating at the time not been susceptible to different interpretations. I am not sure why EGIS decided to take a stand on the matter when it did, having not done so in other cases. The dispute appears to have consumed a large amount of time and energy for both EGIS and Estyn, but I do not think any purpose would be served by analysing it now, as events have moved on (though it is clearly still a matter of concern to Estyn that the inspection documents for school B have still not been seen). Most significantly, the contract terms have been revised, and the issue has not arisen since. Also, Estyn's proposed new complaints procedure provides for all complaints to be dealt with by contractors in the first instance and this should reduce the number of cases in which Estyn needs to consider inspection evidence. I assume that steps will have been taken to make clear the requirements for access to evidence in the event of a complaint proceeding to internal review by Estyn (as described at page 5 of the consultation on the new procedure).

Estyn's use of solicitors and allegations of wilful obstruction

36. On a related point, EGIS have expressed the view that Estyn has gone to unnecessary expense in using solicitors to pursue specific issues, principally the issue of access to inspection evidence for schools B and C. Estyn's view, as noted in paragraph 2 above, is that it was appropriate to seek legal advice in view of the volume of correspondence and the legalistic tone of some of the correspondence with EGIS. EGIS have also objected strongly to the suggestion by Estyn's solicitors that EGIS have "wilfully obstructed" Estyn in respect of the inspection evidence for schools B and C. EGIS's letter of 8 May 2003 (see annex E) asked whether Estyn itself took the view that EGIS had "wilfully obstructed" Estyn at any time. Estyn responded on 11 June 2003 that it did not wish to form a view in the absence of full information.

37. It seems to me that Estyn is entitled to make its own decisions on whether or not to seek legal advice on specific issues. I also note that EGIS's letter to Estyn of 7 December 2002 included an express suggestion that Estyn should take legal advice on another issue (whether it amounted to unfair competition for Estyn not to pay the costs incurred by contractors/registered inspectors in responding to complaints). With regard to the allegation of "wilful obstruction" Estyn has declined to express a view. I take this to be related to the fact that the inspection evidence for school B was never seen by Estyn (as mentioned in paragraphs 32 and 34 above). I do not find Estyn's responses to be unreasonable.

Changes in the complaints process

38. EGIS have expressed concern that Estyn has made changes to the complaints process without consulting inspectors and contractors. EGIS expanded on this area of concern when we met on 7 January 2005, and in response to my written request for clarification confirmed that they had in mind particularly Estyn's practice regarding payment of contractors' and inspectors costs (already discussed in paragraphs 18-22 above), Estyn's discontinuance of the practice of sending complaint responses to contractors and inspectors in draft for comment, and changes to the use of the post inspection questionnaire sent to schools. Estyn's view, as presented when we met on 14 January, is that EGIS's concern is not appropriate. The current practices regarding costs and complaint responses have, Estyn say, been in place for some years. The post inspection questionnaire was, according to Estyn, amended (as discussed in paragraph 12) directly in response to EGIS's concern about late complaints. Estyn added that in the case of significant developments it has undertaken wide consultation, which has included contractors and inspectors. Estyn cited specifically the changes to inspection procedure launched in September 2004, and its current review of the complaints process. With regard to the complaints review, Estyn produced evidence of a email message sent to contractors (though EGIS's letter to me of 22 February 2005 reports that EGIS have no record of having received the message), and notes of a contractors meeting in November 2004, at which EGIS were present, and which included a specific request for contributions to the review.

39. With regard to the payment of costs and the practice of seeking comments from contractors on draft letters, it seems that the changes were made several years ago. Certainly the current arrangements regarding costs appear to have been incorporated in Estyn's standard contract as long ago as December 2000 (see paragraph 19 above). I do not think any purpose would now be served by attempting to probe the circumstances in which the changes were made. I am satisfied that the change to the post inspection questionnaire was a direct response to EGIS's concerns about late complaints, but it is evident that it was not perceived by EGIS in this way. It would perhaps have been helpful if the change and the thinking behind it had been explained in "School Inspection Matters". I find that, with regard to recent major developments (the new inspection arrangements and the proposed new complaints procedure) Estyn has made a serious attempt at wide and inclusive consultation.

Conclusion

40. As I have emphasised already, complaints are part and parcel of the work of an inspectorate, and it is important that all involved should perceive the complaints procedure as fair and robust. My overall conclusion is that the issues raised by EGIS's have helped to highlight some gaps and weaknesses in Estyn's current complaints procedure. I have drawn attention in my discussion to the specific areas: the absence of time limits for submission of complaints (see paragraphs 10-13), and the lack of clear arrangements to ensure transparency (see paragraphs 21-25). Estyn's complaints study has been timely and has provided a very useful objective analysis of the particular challenges facing inspectorates in constructing and implementing an effective complaints process. As I have made clear in discussing individual aspects of EGIS's concerns, the new complaints procedure proposed by Estyn appears to me to be a very positive development. It will bring some appropriate tightening of rules, especially with regard to time limits, and should also

ensure greater transparency in the investigation process. In addition, it embodies a clear statement of principle with regard to the rights of individuals who are the subject of complaints. All these developments appear to me to respond directly to concerns that have been raised by EGIS. When implemented, they should significantly improve and strengthen Estyn's complaints procedure. I have suggested that there are two areas (the format of letters, and the target response times) to which it would be appropriate for Estyn to give additional attention in the light of EGIS's concerns and my reflections in this review.

IV EGIS's dissatisfaction with the way in which specific matters have been handled

Introduction

1. EGIS's submission to the Welsh Administration Ombudsman included concerns about three matters which do not fit into the broad categories of concern discussed in sections II and III:
 - The outcome of a complaint regarding school D,
 - Issues relating to school E and LEA E
 - Delays and omissions in responding to correspondence

They relate to Estyn's handling of particular matters, or in the case of the final bullet point, to the overall conduct of correspondence between EGIS and Estyn. While there are inevitably some overlaps with issues already discussed, it seems appropriate to consider each as a separate item. Annex F includes chronological summaries of the exchanges of correspondence on these matters.

2. In the first two cases, I will consider EGIS's concern and Estyn's response, and make observations on the manner in which the matter has been handled. In the third case, I will review the history of the correspondence as a whole, and comment on the approach of both parties.

School D

3. With regard to the inspection of school D, Estyn investigated a complaint in 2002. An initial letter from the LEA to Estyn in April 2002 (which the LEA said it did not wish to be treated as a complaint) was followed by a formal complaint from the school in September 2002. Estyn's initial response to the school upheld the inspection judgements but made some observations on the pressure and difficulty the school had experienced. This was sent to the school in October 2002, but, through some administrative or postal mistake, EGIS did not receive a copy until February 2003. EGIS objected strongly to the findings of the initial investigation, and Estyn carried out an internal review, which acknowledged that the investigation could have been dealt with better, concluding specifically (see letter of 7.3.2003 in annex F)
 - That there had been delay in the handling of the complaint
 - Some of the statements in the response could have been phrased better, **but**
 - There had been no intention to be unfair
 - The outcome of the complaint had not been adversely affected (as the inspection judgements had been upheld).
4. EGIS responded (letter of 16.3.2003 in annex F) that they found the response "refreshing" and welcomed its conclusions, but asked for a number of further steps to be taken:
 - A personal letter from the member of staff who carried out the original investigation apologising for comments in the response
 - Reimbursement of costs
 - Confirmation that a copy of Estyn's letter of 7 March 2003 had been sent to school D and the local LEA
 - An assurance that Estyn would review its complaints procedures.

Estyn wrote on 21 March 2003 to confirm that copies of its letter of 7 March had been sent to school D and the local LEA, and that feedback from contractors and others informed its evaluation and review of all practices and procedures. However, it declined the request for a personal apology, saying that the responsibility was Estyn's, and also the request for costs, relying on the terms of the contract for school inspections. Estyn has maintained this position in subsequent correspondence. As indicated in the summary of correspondence in annex F, the most recent

development in respect of school D is that the LEA, who made the initial contact with Estyn, have acknowledged that their original letter of April 2002 to Estyn was not based on full knowledge, withdrawn the letter, and apologised to EGIS.

5. EGIS have described Estyn's final response on the matter as unsatisfactory and "perverse". I have considered all the correspondence, but have focused specifically on the outcome, and Estyn's response to EGIS's request for a personal apology and reimbursement of costs. It seems to me that EGIS was largely satisfied with Estyn's review of the matter, and that its current view of the outcome as "perverse" is based on Estyn's refusal to contemplate a personal apology or payment of costs. I find Estyn's explanation of its reasons for refusal on both counts clear and reasonable. It seems to me that EGIS, having found the outcome of the internal review basically satisfactory, has now become pre-occupied with securing additional concessions. In my view there is clear evidence that the issues have been seriously considered, and decisions properly taken, and it is appropriate for the matter to be regarded as closed.

School E and LEA E

6. The correspondence on the matter of school E and LEA E is summarised in annex F. EGIS's principal concern has been about the conduct of the LEA in seeking to exclude one of EGIS's inspectors from a forthcoming inspection of school E (and also from other inspections in the LEA area). The complaint has been directed to Estyn, as I understand it, on the basis that Estyn circulated tender documents in respect of school E, containing an indication by the school and LEA that EGIS's inspector had "a relationship with school E which, in the view of the LEA, was such that the objectivity of any inspection might be prejudiced". Correspondence on the matter has focused on exchanges between Estyn and LEA E, and the extent of Estyn's responsibility for the statement in the tender document. It has included disclosure to EGIS by Estyn of correspondence between Estyn and LEA E. In the course of correspondence Estyn has assured EGIS that (a) it is a matter for Estyn to determine whether an individual is a fit and proper person to conduct an inspection and that (b) that there was nothing on the face of the form completed by school E to suggest that misinformation might be being provided.
7. Two unusual features of the correspondence have struck me. The first is that it includes several exchanges about the status of letters from EGIS headed as "personal", "confidential" or "private" or some combination of these terms. Estyn has complained that it found these headings a barrier to sharing the letters with appropriate individuals within the organisation, but EGIS has been most reluctant to abandon their use. These exchanges seem to have been a distraction from the main subject matter of the correspondence and to have resulted in its being more protracted than necessary. The second unusual feature is that while EGIS's complaint appears to relate primarily to the actions of school E and LEA E, EGIS appears to have directed its correspondence exclusively to Estyn. I am inclined to think that the matter might have been concluded more satisfactorily if EGIS had initially directed their complaint to the LEA, and referred it to Estyn only in the event of an unsatisfactory response from the LEA.
8. Overall, therefore, the history of the matter has been rather unusual. Estyn appears to have attempted to respond to EGIS's concerns to the extent that it was able to do so. I am not clear, however, that the issue has ever been fully resolved. I would suggest that, if EGIS wish to bring the matter to a conclusion, they might, in the light of the information and assurances provided by Estyn, wish to refer their concerns to the LEA.

Delays and omissions

9. It will be apparent from the discussion throughout this report, and from the summaries provided in annexes D, E and F, that the correspondence between EGIS and Estyn has been protracted and complex, and that many letters have referred to a range of quite separate issues. The

correspondence has also been characterised by bursts of very vigorous activity interspersed with quieter periods. For example, according to my reckoning, 44 letters were exchanged in January and February 2003, and 8 letters were sent by EGIS to Estyn on 8 August 2004. In contrast there appear to have been only 6 exchanges in the period July to November 2003. EGIS have complained on several occasions (for example on 4.2.2003, 12.2.2003 and 22.12.2003) that there have been delays and omissions in Estyn's responses to their concerns. It is fair to say that Estyn has also, on occasion (for example on 14.1.2004) directed a similar complaint at EGIS.

10. In the earlier discussion in this report, I have reviewed the exchanges of correspondence on many different issues. On the whole, where specific questions have been raised (for example regarding complaint numbers, schools in special measures, or the conduct of governors at school H), responses seem to me to have been prompt and focused. Where general matters of principle have been raised by EGIS, the situation has not been so clear cut. In the case of EGIS's letters of 2 December and 7 December 2002, for example, they primarily related to schools B and C, but also included a number of critical opinions on the Estyn's inspection and complaints processes. Estyn focused primarily, in response, on the matters immediately in hand (the complaints from schools B and C) and gave some inconsistent indications (as highlighted in EGIS's letter of 12 February 2003) of when EGIS might expect responses on other issues it had raised.
11. My overall view is that, given the intensity of the correspondence and the range of the subject matter, Estyn has made reasonable attempts to provide timely and relevant responses. I have noted particularly the fact that Estyn has made helpful efforts on a number of occasions to provide a round up of ongoing correspondence, and responses to outstanding issues (for example on 10.2.2003, 31.3.2003 and 12.2.2004). There have been cases of delay or inconsistent information about when responses could be expected, but these appear to me to have been relatively isolated. Delays clearly occurred in the investigation regarding school D (see annex F(a)), but these were acknowledged by Estyn following its internal review. In some cases, it seems to me, EGIS's view that Estyn had not responded has related to the fact that EGIS were hoping for a much more detailed response than they actually received. So, for example, it is apparent that EGIS expected a detailed response from Estyn to the opinions expressed, in their letters of December 2002, about the inspection system in Wales. Estyn, however, took the view that the proper response was simply to say that EGIS's views would be taken into account together with those of other stakeholders, when its processes and policies were reviewed. I have given my opinion that, because of the nature of EGIS's concerns, Estyn's response was appropriate. I do not, therefore, agree that the failure to give a detailed response was a failure on Estyn's part.

V Overall conclusions

1. I have given careful consideration to EGIS's concerns and to the responses made by Estyn. I have taken into account both replies given in correspondence and action taken to improve or clarify procedures. I have taken the view, overall, that Estyn has responded appropriately, having regard to the nature of the concerns. The proposed new complaints procedure, in particular, will address a number of the issues that EGIS has raised, and should help prevent similar matters causing problems in the future. I have made four suggestions on matters of detail that I believe it would be appropriate to consider as part of the finalisation and implementation of the proposed procedure.
2. Looking at the history of the matter overall, I cannot resist the obvious observation that it appears to have got seriously out of hand. EGIS is a very small organisation and Estyn a relatively small one. Both must have applied a quite disproportionate amount of time and resources to dealing with all the aspects of this protracted correspondence. EGIS were extremely persistent in pursuing their concerns and, as I have indicated in paragraph 11 of section IV, appear to have expected more detailed and direct responses than it was appropriate for Estyn to give, taking into account the nature of some of the concerns. I have suggested that some of the issues would probably have been better tackled through other channels, particularly where EGIS were putting forward views on the inspection system as a whole. EGIS represent a single stakeholder perspective on the inspection system in Wales, whereas Estyn has to have regard to the views of the full range of stakeholders when assessing the strength of its system and deciding on the need for change. While it was appropriate for EGIS to contribute their views, it would also have been appropriate for them to have recognised that Estyn has a duty to consider the full range of perspectives.
3. The present situation is unsatisfactory: EGIS have continued to correspond with Estyn during the course of this review, and it seems clear from recent correspondence that EGIS's dissatisfaction as a whole has increased rather than diminished with the passage of time. This is particularly unfortunate as both EGIS, as contractors and inspectors, and Estyn, as the inspectorate, should have a shared interest in promoting public confidence in the inspection system.
4. I have reflected on whether there are any obvious ways of improving the situation. I have considered, in particular, whether a meeting between the parties might be productive. Both EGIS and Estyn have canvassed the possibility of a meeting at various points, but, as I understand it, no meeting has actually taken place. EGIS have expressed the view that the time when a meeting might assist has past, and this may be so. I would, however, invite both EGIS and Estyn to consider the possibility again in the light of the discussion in this review.
5. As this report is to be published by the Welsh Assembly Government, it is likely that it will prompt some discussion within the education community in Wales. My view is that this will be beneficial, as the exchanges between EGIS and Estyn appear to me to have been hampered by the fact that EGIS presented principally their own particular perspective on the issues. The letters produced by Estyn in response to the draft of this report indicate that other contractors and inspectors hold views very different from those of EGIS. Other stakeholders in the system will also have their own perspectives. Estyn may wish to make positive use of the opportunity to take stock of a wide range of views through its established stakeholder forums.
6. In conclusion, I hope that my review may have helped to provide clarity on some issues, and a fresh view on others. I hope that it has shown understanding of the different perspectives involved in this complaint, and that it has also reflected an appreciation of the complexity of the context in which an inspection agency and its inspectors and contractors operate. I have tried to emphasise the need to move on from this protracted and contentious complaint, and to suggest some actions that may help this to happen.

Annex A
Protocol and Timetable for this review

1. The aim and objectives of the review are:
 - To consider and provide advice on the resolution of a complaint lodged against Her Majesty's Inspectorate for Education and Training in Wales
 - To undertake a review of the material provided in support of the complaint and related material provided by Her Majesty's Inspectorate for Education and Training in Wales
 - To establish a process for the complaint to be considered and disposed of appropriately
 - To provide advice on the resolution of any elements of the complaint that are not susceptible to resolution by other means
 - To provide general advice and recommendations to improve systems and procedures for the handling of complaints.

2. Every effort will be made to adhere to the following timetable. However, it is recognised that there is a need for some flexibility to accommodate the reasonable needs of both parties and unexpected circumstances.

Stage 1 steps	Timetable
Consultation on review process	To be completed by 26 November 2004
Disclosure to Estyn by the Welsh Assembly Government of the complaint letters and supporting documents submitted by EGIS to the First Minister	By 3 December 2004
Production of draft first stage report to include: <ul style="list-style-type: none"> ○ A summary of the issues in the complaint ○ Proposals for a suitable approach for resolving them ○ A protocol for the conduct of the review, including a firm timetable 	By 3 December 2004
Comments on draft first stage report	By 10 December 2004
Production of final version of first stage report	By 17 December 2004
Stage 2 steps	
Meetings with EGIS and Estyn	By 15 January 2005
Submission, if appropriate, of further supporting documents by EGIS and Estyn	By 31 January 2005 if possible
Correspondence with EGIS and Estyn and possible further meetings to seek clarification of specific points	February 2005
Production of draft written report for comment	By 18 March 2005
Production of final written report	By 31 March 2005

3. The process will be as transparent as possible. Copies of all correspondence will be copied to both parties and the Welsh Assembly Government. Where meetings are held, notes of the key points will be provided to both parties and the Welsh Assembly Government.

4. The parties will be consulted at both stages of the process, and in particular, will be invited to comment on drafts of both the first stage report and the final report.
5. The review will be conducted principally by correspondence, but will include at least one meeting with each of the parties.
6. The review will address the issues a, b, and d summarised in Annex B⁹. It will focus on the issues raised by EGIS with the Welsh Assembly Government, and will not attempt a general review of Estyn's inspection and complaints-handling procedures. It will not express opinions on the professional judgements of inspectors, and will not propose changes in Welsh Assembly Government policy.
7. The report of the review will include a history of the matter, an outline of methodology, an analysis of the issues raised by EGIS and the responses by Estyn, and, where appropriate, recommendations either for action to address the specific concerns of EGIS or for steps that could strengthen the robustness of inspection and complaints-handling procedures and to avoid similar complaints arising in future.
8. The report will be prepared with a view to publication. In particular it will, where possible, avoid reference to individuals. The decision on timing and manner of publication will be a matter for the Welsh Assembly Government.
9. If HMCI wishes, a commentary reflecting the findings on this complaint will be provided on the recommendations of the current independent review of Estyn's appeals and complaints procedures.

⁹ Not included. The issues are set out in Section 1 paragraph 4 above

Annex B

Outline chronology of the complaint

Date	
1997	Correspondence between EGIS and Estyn regarding publicity regarding a school inspection and related complaint
2000	Correspondence between EGIS and Estyn regarding an inspection complaint, also raising general concerns about Estyn's inspection system and complaints process
2002 to date	Continuing correspondence between EGIS and Estyn on many issues, including EGIS's concerns about Estyn's inspection system and complaints process
9.3.2003	Formal letter of complaint from EGIS to the Welsh Administration Ombudsman
27.5.2004	Letter from Welsh Administration Ombudsman to say that the complaint was outside her jurisdiction
31.5.2004	Formal letter of complaint and supporting documentation from EGIS to the First Minister of the Welsh Assembly Government
6.10.2004	Welsh Assembly Government asked Elizabeth Derrington (the reviewer) to undertake a review of the complaint
17.12.2004	Scope of review, procedural protocol and timetable proposed by the reviewer and agreed by the parties
January 2005	Meetings between the parties and the reviewer
January/February 2005	Correspondence between the parties and the reviewer and submission of additional documents
March 2005	Report of review findings

Annex C

Comments on Estyn's consultation on its review of its feedback and complaints procedure and proposals for a revised procedure

1. I welcome the opportunity to comment on the review findings and the proposals for a revised feedback and complaints procedure. However, I should make clear that I do so from a specific perspective. I have been asked by the Welsh Assembly Government to review, and produce a report on, one complex complaint involving Estyn. I am due to produce a report for publication by the end of March 2005. As a result of my work on the complaint, I have examined Estyn's current complaint procedures, and have given attention to the particular issues raised by the complaint. I do not have any broader experience of the inspection or complaints procedures operated by Estyn. I am, however, very familiar with the inspection and complaints procedures used in England by Ofsted and the Adult Learning Inspectorate, as for the last three years I have held the appointment of Independent Complaints Adjudicator for Ofsted and the Adult Learning Inspectorate.
2. The proposed procedure is said to be "intended for all who are interested in or affected by Estyn's work". It expressly mentions complaints from education or training providers, people working in education and training, parents, learners, or governors, and also refers to people who may be "otherwise connected with education or otherwise affected by Estyn's work". I am not sure whether this is intended to include possible complaints from inspectors and contractors. While issues raised by inspectors and contractors may be covered by the terms of the relevant contract, this may not always be the case. If the proposed procedure is **not** intended to apply to general expressions of dissatisfaction by inspectors and contractors, perhaps it would be appropriate to make this clear.
3. I note that the proposed procedure includes a three month time limit for submission of complaints (from the event or, in the case of an inspection, receipt of the report) unless there are "exceptional circumstances". I am aware that Estyn does not currently have a time limit for complaints, and also that current procedures allow for post-inspection questionnaires to be treated as complaints. As questionnaires may, it seems, be received up to 9 months after the inspection they relate to, it appears that there is the possibility of conflict between the three month time limit for complaints, and the policy of treating critical post inspection questionnaires as complaints. I assume that this point has been considered, but it might assist understanding for those familiar with the present procedure if it were expressly addressed.
4. I note that the first principle of the proposed procedure is that "a person who is the subject of a concern must be told about it, have the opportunity to respond and, if appropriate, put matters right, and have access to support". I know, from the case I am currently reviewing for the Welsh Assembly Government, and from cases I have considered in England, how important it is for inspectors to feel that they have had an appropriate opportunity to respond to any complaint, and also appropriate support. I assume that there will be discussion with, and guidance for, inspectors on the practical aspects of implementing this particular principle in the context of the procedure as a whole. The procedure envisages that complainants will generally receive full responses within 20 working days, and it seems to follow that the time available for consultation with inspectors will be limited.
5. With regard to the proposal to introduce an external review option, my objectivity is perhaps compromised! However, I do believe that the availability of independent adjudication is appropriate, and will be appreciated by complainants. No internal complaints process can be wholly impartial, and an independent review can significantly increase complainants' satisfaction that their concerns have received full and fair consideration. Early access to independent adjudication in the case I am currently reviewing for the Welsh Assembly Government would

probably have helped to avoid delay and procedural difficulties. It is, of course, important that there should be appropriate arrangements to protect the independence (both real and perceived) of the adjudication process.

6. I see that the proposed procedure includes the guidance that “if your work has been inspected and you have concerns about the inspection judgements, it is essential to raise your concerns before the report is published”. I am not sure about practice in Wales with regard to the draft report, but it strikes me that if (as in England) there is not generally enough time for all staff who have been involved in an inspection to see and comment on the draft report, and if senior management do not, in any event, feel it appropriate to give this opportunity, staff whose work has been inspected may not in fact be in a position to comply with the guidance (I have certainly encountered cases in England where teachers had made the point that the first time they became aware that their work had been criticised was when they read the published report). I appreciate that the next paragraph deals with the situation of those who do not see the report until it is published, but it does not appear to envisage those “whose work has been inspected” falling into this category.
7. I note that, for complaints about school inspections, the procedure requires the complainant to determine whether the complaint should be addressed to Estyn or to an inspection contractor, though it also indicates that Estyn will provide help with identifying the inspection contractor and, if necessary, will forward the complaint to the contractor. The proposed procedure appears similar to the arrangements currently operating in England, and my experience in England suggests that complainants sometimes have problems deciding where to send their complaints. I wonder if it might be worth considering whether it would be more user-friendly for complainants to direct all complaints to Estyn, in the first instance, and for Estyn to redirect them to contractors if appropriate.
8. I see that, under the proposed procedure, a complainant will be informed who will investigate his or her complaint. This transparency seems entirely appropriate. My experience in England suggests that it is important, when responsibility for complaint investigation is delegated, that the complainant should know the name and position of the investigator.
9. I see that it is proposed that complainants will be invited to include, with their written complaint, information about “what evidence or witnesses you have”. It seems to me that this is likely to raise expectations on the part of complainants that, if they give details of witnesses, the complaint investigator will contact those witnesses to obtain their evidence. However, the description of the investigation process does not refer to his happening, and I am not clear that it could be managed within the proposed timescales.
10. I note that the procedure explains to complainants that the person whose work or inspection is being complained about “will be shown your letter and asked for their view”. This routine disclosure seems appropriate, especially in the light of the clear statement of principle already discussed in paragraph 4. However, as I understand it, it will represent a change from current Estyn practice: the current complaints procedure expressly offers complainants the opportunity to request that their letters of complaint should not be disclosed to the inspector. In the circumstances, it might help to prompt awareness and thus avoid problems if the point were given greater emphasis.
11. I hope that these observations are of assistance.

Elizabeth Derrington
24 February 2005

Annex D Chronological summary of concerns raised by EGIS regarding the school inspection system in Wales

Date	Concerns
20.10.2000	Letter regarding an inspection complaint from school A, complaining of abuse and harassment from governors, but also referring to broader concerns regarding <ul style="list-style-type: none"> o Pressure from governors on inspectors to change judgements o Tendency of schools to complain when they receive a critical report o Damage to inspectors' reputation as a result of complaints o Inspectors producing less rigorous reports for a "quieter, more trouble-free life".
2.12.2002	Letter regarding a complaint from school B, including the view that it would not have been made if inspectors had given in to pressure to change their judgements, and expressing broader concerns that <ul style="list-style-type: none"> o No school complains if the judgements are good or very good o Some inspectors never produce a critical report.
2.12.2002	Letter regarding the inspection at school C, expressing concern that pressure was being put on inspectors to change their judgements in three areas, with an indication that EGIS would "hear further about it" if the judgements were not revised
7.12.2002	Letter referring to the two letters of 2.12.2002 including a concern that some inspectors adopt a policy of expediency and say nothing that would lead to dissatisfaction on the part of a school.
21.12.2002	Letter including a concern about a reported remark by a headteacher at an Estyn conference that, in an area where his school had obvious weaknesses, it was given a "satisfactory" grade "just like everyone else. The letter observed that this suggested that inspectors were wary of saying anything that could possibly cause an adverse reaction
15.1.2003	Letter raising (amongst other things) the possibility that unreliability of inspection reports may affect the validity of information produced by Estyn to Parliament and the Welsh Assembly Government, and suggesting that pressure on inspectors to produce good reports may be the reason for the substantial difference between Wales and England in the number of schools made subject to special measures.
20.1.2003	Letter requesting information about complaints, including numbers relative to the numbers of inspections, numbers from schools that have had favourable inspection judgements and numbers upheld.
1.4.2004	Letter including the view that Estyn does not wish to identify any problem and refuses to countenance the possibility that anything could be wrong.
18.10.2004	Letter regarding the inspection at school H, expressing concern about browbeating behaviour towards inspectors at the feedback meeting and the impact on inspectors, the overall organisation and conduct of the meeting, and the need for Estyn support.

Chronological summary of responses from Estyn

Date	Response
14.1.2003	Letter giving information about schools in special measures, and a copy of a draft Welsh Assembly Government consultation document on schools in special measures
29.1.2003	Letter describing differences between Wales and England in standards achieved by pupils
7.2.2003	Letter giving numbers of complaints received between 1996 and 2002, showing the proportion of inspections that generated complaints and the distribution between registered inspectors
24.2.2003	Letter including comment that EGIS's concerns about the school inspection system in Wales had been duly noted and would, with other feedback, inform future thinking, but that Estyn did not regard itself as under a duty to engage in further correspondence.
14.3.2003	Letter giving the outcome of the complaint from school C, including comment that it would be quite improper for inspectors to give way to pressure to change their findings without good reason.
31.3.2003	Letter summarising Estyn's responses on a number of issues, confirming that Estyn would take EGIS's views into account on policy matters, and observing that it was difficult to make direct comparisons between Wales and England, such as curriculum and assessment arrangements, socio-economic factors and the availability of data, but confirming that Estyn and Ofsted work together on matters of consistency and reliability.
12.2.2004	Letter including comments (a) Estyn did not have anything to add to previous correspondence on differences between schools in Wales and England, (b) both inspections and reports were monitored for QA purposes and while there was always room for improvement, it was not accepted that there was "a culture of saying nothing really critical for fear of repercussions and complaints".
3.11.2004	Letter regarding pressure on inspectors at school H indicating that <ul style="list-style-type: none"> o Uncontrolled and threatening conduct at feedback is not acceptable o Inspectors should withdraw if subjected to such behaviour o Estyn believed it had provided appropriate support for inspectors at school H o There was clear inspection guidance on the conduct of feedback meetings, which had been provided to the school at the school's request o That Estyn expects school staff and governors to behave courteously and will, if EGIS wishes, seek the school's comments on EGIS's letter, or EGIS may complain to the school or LEA o There has been no recent suggestion from contractors and inspectors that conduct at feedback meetings is an issue, but that the situation would be monitored

Annex E Chronological summary of concerns raised by EGIS regarding Estyn's complaints procedure

Date	Concerns
20.10.2000	Letter regarding a complaint from school A, including EGIS's concerns about <ul style="list-style-type: none"> o the amount of time needed to respond to complaints o the damage caused to inspectors' reputations by complaints even if they are rejected o the apparent impunity of schools that complain o the need for support for inspectors when complaints are rejected.
22.11.2000	Letter regarding the complaint by school A including a request for Estyn to bear the costs of the investigation
2.12.2002	Letter including concern that a post inspection questionnaire from school B had been treated as a complaint though not received until 9 months after the inspection, and when no problems had been mentioned at the time, and suggesting changes to the complaints procedure to ensure that complaints are made promptly.
7.12.2002	Letter including concern that complaints procedures <ul style="list-style-type: none"> o are loaded against inspectors as there is no requirement for schools to make them promptly, but inspectors are required to respond urgently (within a week in the case of school B), even after many months o have never provided adequate support for inspectors (referring back to a case in 1997) o do not include arrangements for conciliation or local resolution o do not compensate inspectors for time spent answering complaints (and suggesting that it would be appropriate for Estyn to take legal advice on whether this led to unfair competition between contractors) <p>The letter also enquired about progress with an investigation regarding school D</p>
21.12.2002	Letter including suggestion that Estyn's practice of "calling in" inspection evidence when a complaint is received is unfair to inspectors who inspect rigorously (and attract more complaints)
Dec 2002- Feb 2003	EGIS resisted requests initially from Estyn, and then from Estyn's solicitors, to send to Estyn the inspection evidence in respect of schools B and C. EGIS offered access at its own premises arguing that that was what was required by the terms of its contracts with Estyn. The letters from Estyn's solicitors included the allegation that EGIS had "wilfully obstructed" Estyn with regard to the inspection evidence.
15.1.2003	Letter including concerns that <ul style="list-style-type: none"> o complaints procedures are oppressive and onerous and may be in breach of the contract between EGIS and Estyn, which has implied terms that both parties will behave reasonably and not impede the other o Estyn was investigating a complaint by school C, but had not given EGIS a copy of the complaint
12.2.2003	Letter including concern that Estyn appeared to have discontinued (without consultation) its earlier practice of sending draft complaint responses to inspectors for comment
4.3.2003	Letter including <ul style="list-style-type: none"> o regret that Estyn had engaged solicitors regarding access to inspection evidence relating to schools B and C (and had done so previously in connection with school G) o concern about the expense of this action o concern that Estyn's solicitors had said that EGIS had "wilfully obstructed" Estyn in performance of its duties
8.5.2003	Letter asking whether Estyn took the view that EGIS had "wilfully obstructed" Estyn
29.1.2004	Letter expressing concern that a post inspection questionnaire received from school F 7 months after the inspection had been treated as a complaint, and not forwarded to EGIS until 6 weeks after receipt by Estyn
3.2.2004	Letter including <ul style="list-style-type: none"> o concern that LEAs in Wales have put forward complaints of which they have no knowledge to offer "comfort and support" to schools, and that the practice should be stopped o concern that the style and wording of Estyn's responses to complainants suggested Estyn had assumed the complaint was justified.
1.4.2004	Letter including concern that Estyn had not consulted an individual who EGIS had suggested could give relevant information about the conduct of the inspection at school F
1.12.2004	Letter raising questions about whether it was Estyn's practice to contact LEAs for their perspective on complaints.

Chronological summary of responses from Estyn

Date	Response
31.10 and 7.12 .2000	Letters requesting EGIS's response to the complaint by school A, indicating that Estyn wished to take into account EGIS's own comments on the points made by the school, but that Estyn's contract specifically provided that this should be done at the contractor's expense.
Dec 2002 – Feb 2003	Estyn, and then Estyn's solicitors, requested EGIS to send to Estyn the inspection evidence for schools B and C
10.2.2003	Letter including indication that Estyn's response to EGIS's letters of 2 and 7.12.2002 regarding schools B and C was awaiting EGIS's response to the request for inspection evidence

1.3.2003	Estyn attended EGIS's premises to examine the inspection evidence relating to school C
14.3.2003	Letter regarding the complaint by school C indicating that: <ul style="list-style-type: none"> o Estyn endorsed the judgements of the inspection team but would like EGIS's comments on five specific points o It would be quite improper for inspectors to give in to pressure to change judgements unless they were based on inaccurate or insufficient evidence
31.3.2003	Letter including <ul style="list-style-type: none"> o comment on the difficulty of reaching firm conclusions on complaints where the evidence is inadequate or there are no independent witnesses, and both parties think they are right o assurance that Estyn does try to give all parties an opportunity to put their points of view and then to reach a fair and balanced conclusion o comment that responsibilities for supporting staff lie with their employers, so contractors have a duty to support inspectors o reference to the possibility of meeting having been suggested by NAEIAC
11.6.2003	Letter regarding the matter of "wilful obstruction" raised by EGIS on 8.5.2003, indicating that Estyn did not wish to form a view in the absence of full information.
12.2.2004	Letter indicating that <ul style="list-style-type: none"> o Estyn was reviewing its complaints procedure and policy and would take into account the issues raised by EGIS o if a complaint was submitted late the reasons for delay would be investigated o LEAs may have good reason for raising issues or complaints about inspections o Only a small proportion of inspections give rise to complaints, and in the majority of cases the outcome supports inspectors' judgements or there is insufficient evidence to make a judgement o Estyn always gives registered inspectors the opportunity to respond to complaints about their inspections o There are many opportunities for inspectors to raise concerns with Estyn, through organised events, meetings or by telephone o Estyn provides support for inspectors by providing guidance, training and feedback.
22.11.2004	Email to EGIS and others inviting contributions to its review of complaints procedure and policy.
16.12.2004	Letter in response to EGIS's letter of 1 December 2004, confirming that it was not unusual for Estyn to seek information from third parties when investigating complaints
21.1.2005	Letter including comment regarding the inspection at school F, that Estyn had not contacted the third party whom EGIS had suggested could provide relevant evidence, as EGIS themselves had declined to give comments on the issues in the complaint

Annex F Chronological summary of specific concerns and responses

a. School D

Date	From	Concerns and Responses
April 2002	LEA	Letter to Estyn regarding the inspection of school D in March 2002
13.8.2002	EGIS	Initial response by EGIS to Estyn
Sept 2002	School	Complaint to Estyn
1.10.2002	Estyn	Request to EGIS for inspection evidence to be sent to Estyn
25.10.2002	Estyn	Response to school regarding the complaint
7.12.2002	EGIS	Enquiry re the progress of the complaint from school D
12.2.2003	EGIS	Letter to Estyn expressing concern that EGIS had not received a copy of Estyn's response to school D
21.2.2003	Estyn	Letter to EGIS <ul style="list-style-type: none"> o enclosing copies of Estyn's response to school D (dated 25.10.2002) and of the letter from LEA D dated 30.4.2002 o apologising for the fact that the copy response had not reached EGIS and that the LEA's letter had not been sent at the time
23.2.2003	EGIS	Letter to Estyn regarding the complaint objecting to the findings of Estyn's investigation and expressing concern that <ul style="list-style-type: none"> o it appeared that LEA D had written to complain in April 2002, but the complaint had not been mentioned to EGIS until July 2002 o that the rules of natural justice had not been followed as the complaint from LEA D was not disclosed to EGIS o the LEA was in no position to complain as it had no direct experience of the inspection o Estyn had not sent a copy of its response to the complaint in response to EGIS's specific enquiry on 7.12.2002
7.3.2003	Estyn	Letter to EGIS giving the result of an internal review of the way in which school D's complaint had been handled, and acknowledging that <ul style="list-style-type: none"> o there had been delay o Estyn should have ensured that all parties had access to relevant correspondence o some of the statements in the response could have been phrased better but concluding that o there had been no intention to be unfair o the outcome of the complaint had not been adversely affected by the process as the inspection judgements had been upheld
16.3.2003	EGIS	Letter to Estyn acknowledging the result of Estyn's review and requesting <ul style="list-style-type: none"> o a personal apology from the member of Estyn staff who investigated the complaint o confirmation that copies of Estyn's letter of 7.3.2003 had been sent to the school and LEA o reimbursement of EGIS's costs o a review of Estyn's complaints procedures.
21.3.2003	Estyn	Letter to EGIS indicating that Estyn did not consider it appropriate either for a personal apology to be given or for EGIS's costs to be paid
1.6.2003	EGIS	Letter to Estyn objecting to Estyn's refusal to give a personal apology or costs
29.11.2004	EGIS	Letter from EGIS to Estyn to say that LEA D had apologised for statements not based on full knowledge in its letter of 30.4.2002 and withdrawn the letter

b. School E and LEA E

Date	From	Concerns and responses
6.5.2003	EGIS	Letter to Estyn expressing concern at a statement in documents giving tender information for contractors that a member of EGIS "had a relationship with school E, which, in the view of LEA E, is such that the objectivity of any inspection might be prejudiced"
7.5.2003	EGIS	Letter to Estyn expressing further concern that LEA E had suggested on the telephone <ul style="list-style-type: none"> o that the member of EGIS was not suitable to inspect any schools in its area o that any further enquiries should be made with Estyn, which was handling the matter
9-23.5.2003	Estyn and EGIS	Correspondence about whether EGIS's letters of 6 and 7.5.2003, marked "strictly private and confidential" could be shown to other people with whom it would be relevant to discuss them
23.5.2003	Estyn	Letter to EGIS to say that <ul style="list-style-type: none"> o there was no reason in principle why an inspector should not inspect a school he or she had inspected before o Estyn had not received anything in writing from LEA E, nor agreed to deal with any matter on behalf of LEA E and would contact EGIS again when it had heard from the LEA
27.5.2003	EGIS	Letter to Estyn asking <ul style="list-style-type: none"> o whether there had been any contact at all between Estyn and the LEA

		<ul style="list-style-type: none"> o for confirmation that the reply from the LEA would be copied to EGIS o whether Estyn had made any enquiries before circulating the tender documents
11.6.2003	Estyn	<p>Response to EGIS including the information that</p> <ul style="list-style-type: none"> o Estyn had received a telephone call from LEA E on 6 May and had asked for the issue to be explained in writing o Estyn had made no enquiries about the statement in the tender documents as it is not unusual for such entries to be included in forms.
25.10.2003	EGIS	<p>Letter to Estyn expressing concern that EGIS has seen a letter from LEA E saying that the LEA does not consider a member of EGIS "an appropriate person" to inspect schools in its area.</p>
11.11.2003	Estyn	<p>Response enclosing copies of correspondence with LEA E, and confirming that</p> <ul style="list-style-type: none"> o responsibility for determining whether an individual is a fit and proper person to conduct an inspection rests with HMCI o LEA E may have provided misinformation, and this could be investigated if further evidence was produced