

Positive Reform for a Trusted Ofsted

Executive Summary

For an independent Arm's Length Body, the jurisdictional remit and influence of Ofsted is staggering. Since being given an initial narrow scope for conducting school inspections in the early 1990s, the watchdog has gradually amassed additional responsibilities which include: the oversight of early years and further education; adoption and fostering arrangements; and child protection issues. Its remit is now unrecognisable from its initial conception.

In regulating education, Ofsted has the opportunity and authority to significantly shape the entire education sector as well as to drive considerable policy and classroom-based cultural change. The academic curriculum may be set by the school, but the culture of teaching, learning, societal appreciation, and pupil development is increasingly subject to the cultural direction of Ofsted.

With such a broad scope, it is no wonder that Ofsted has faced considerable negative press about some of its practices. The Unions have been unrelenting in their concerns about Ofsted's impartiality and the stress caused to teachers; a leading think tank has exposed its bias against faith schools and has called for institutional reform; and the Labour party has called for its complete abolition due to being "unfit for purpose". The attitudes and perceptions of teaching staff towards Ofsted also consistently poll low.

Yet, neither the Chief Inspector nor the management board of Ofsted have indicated any willingness or proactivity to fight off the critiques with a programme of reform. In fact, following the adoption of the new Education Inspection Framework in autumn 2019, research has pointed to inspectors inspecting teaching methods, creating an even greater climate of fear, and pursuing secularist ideologies in reports.

Moreover, there are increasing examples - of Ofsted acting beyond its delegated authority in interpreting law and policy. A revealing trend has emerged in the way it has selected its inspection priorities, focused on certain types of schools, and selected areas for improvement above others. For schools graded poorly, this bears serious consequences: the label of 'special measures'; a conversion into a sponsored academy; or the pathway towards complete closure.

Conspicuously, it is the watchdog's largely unaccountable and opaque discretionary powers which give it free reign to pursue whichever goals it so decides. It is unprecedented for an Arm's Length Body, especially one with such directive authority, to have such limited checks and balances.

This paper outlines these issues and provides clear calls for reform.

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Introduction

From being established by statute in 1992¹ to raise standards and as an effort to help centralise the school system, the remit of the Office for Standards in Education, Children’s Services and Skills (“Ofsted”) has gradually increased. From a relatively narrow mandate to independently inspect primary, secondary and special schools in a cyclical schedule, Ofsted was, over time, also given oversight over further education, nursery education, childcare, independent schools, social care, teacher training, adoption/ fostering agencies, and child protection. Most recently, it conducted a sensitive inquiry into child sexual abuse in schools. Moreover, its jurisdiction has extensively widened over time, with powers of entry being given in 2002² and covert surveillance powers being awarded in 2003³; rendering it an organisation with a huge amount of authority in the exercise of its activities.

Amanda Spielman, Her Majesty’s Chief Inspector of Ofsted (“HCMI”) considers her school inspection model to be “*one of the lightest*” in the western world⁴. She does not think that the expanding remit of the Non-Ministerial Department needs to be reviewed, and she dismisses the idea that her organisation is becoming too powerful during schools’ inspections.

However, her view is not shared by everyone. Many individuals, politicians, and representatives from the education community are concerned about what appears to be a remit expanding without boundaries and an inspection regime for schools which contradicts Ms Spielman’s minimalist view of education regulation. Not only has the Chief Inspector’s assessment of the light-touch regime “*mystified*” head teachers⁵, but prominent critics have even asserted that the regime acts as a hindrance to the improvement in education standards. One former Ofsted inspector and Head Teacher has said, “*England has one of the most highly regulated education systems in the world, which is limiting schools’ ability to deliver a first-class education*”⁶; the difference of opinion between the Chief Inspector and others is stark.

Moreover, despite prominent educational representatives raising concerns about the extent of Ofsted’s powers in public debates, media interviews, and to the DfE directly, critical concerns remain.

This paper will outline these concerns under three themes and with one general observation: ***Ofsted’s remit, influence, and power are expanding but its accountability is not.***

This expanding remit and insufficient accountability can be observed in two primary ways:

1. First, in the **structure of operations**. This refers to the internal mechanics of Ofsted – the processes, documents, and methods it has decided to adopt to enable the exercise of its functions. It is observed through the training of inspectors; the Framework that Ofsted has written to evaluate schools and teachers; the structure for evaluating and reporting on inspections; and internal processes affecting schools such as the complaints process. These decisions fall primarily outside of the hands of inspectors themselves; they rest upon Ofsted management.

¹ Formed under Education (Schools) Act 1992

² Initially via s.159(4) and 162B Education Act 2002, and later s.97 and s.110 Education and Skills Act 2008

³ Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003

⁴ Amanda Spielman speech to the NAHT Conference, 4 May 2019, <https://www.gov.uk/government/speeches/amanda-spielman-speech-to-the-naht-conference>

⁵ Comment by Nick Brook, deputy general secretary of NAHT and former Ofsted staff member; see <https://schoolsweek.co.uk/heads-demand-independent-panel-to-handle-ofsted-complaints/>, accessed 14/10/2020

⁶ Comment by Nick Brook, deputy general secretary of NAHT and former Ofsted staff member; see <https://schoolsweek.co.uk/heads-demand-independent-panel-to-handle-ofsted-complaints/>, accessed 14/10/2020

2. Second, in the **manner of operations**. This refers to the methods, practises, and ethos applied by Ofsted management and inspectors to inspecting schools. It is observed through the experiences of teachers, pupils and parents; the content of the inspection reports; and the overall assessments of schools.

These areas are not distinct: the structure of operations feeds into the way that inspectors assess schools and into the experience of teachers, parents and pupils.

A wholesale review of the method and impact of Ofsted in schools, combined with the accountability mechanisms overseeing it, is recommended.

SECTION A: Ofsted has reinterpreted its mandate

From being established by statute in 1992² to raise standards and as an effort to help centralise the school system, the remit of the Office for Standards in Education, Children’s Services and Skills (“Ofsted”), has gradually but conspicuously increased. From a relatively narrow mandate to independently inspect primary, secondary and special schools in a cyclical schedule, Ofsted has, over time, gained oversight of further education, nursery education, childcare, independent schools, social care, teacher training, adoption/ fostering agencies, and child protection. Its jurisdiction has also extensively widened, now with powers of entry³ and covert surveillance powers⁴. The body regularly conducts investigations and provides expert opinions on sensitive issues⁷. It has a huge amount of authority in the exercise of its activities.

In schools, its inspection criteria have also significantly evolved. Despite the EIF – the newest in a series of Frameworks created by Ofsted since its creation - outlining that inspectors “*recognise the importance of schools’ autonomy to choose their own curriculum approaches*”⁸, this discretion is neither adequately reflected throughout the rest of the Framework nor in practice. Ofsted’s 2018 ‘clarification for schools’ note stated that inspectors “*must not advocate a particular method of planning, teaching or assessment. It is up to schools themselves to determine their practices and for leadership teams to justify these on their own merits rather than by reference to this inspection handbook*”⁹, yet the EIF’s focus presumes otherwise. Indeed, the clarification note was written after the storm caused only a few years prior when certain inspection reports had to be re-written due to inspectors favouring one teaching style over another in the initial report. A representative from one of the schools impacted at this time, Forest Gate Community School, said “*Ofsted shouldn’t be telling teachers how to teach. They should be looking for progress in teaching and learning in particular*”¹⁰.

Thus, Ofsted has been criticised of expanding its remit into telling schools *how* to teach. The central concern with this remit expansion is whether it has expanded too far and without statutory backing.

i. Ofsted has moved beyond statutory inspection requirements

Over the years, the content of maintained schools and academies’ inspections has significantly evolved, with inspector focus shifting. Whereas statute outlines that Ofsted should examine: (a) the achievement of pupils at the school; (b) the quality of teaching in the school; (c) the quality of the leadership in and management of the

⁷ For example, the investigation into child sexual abuse in schools (2021)

⁸ Ofsted, *School Inspection Handbook* 2019, para. 175

⁹ Ofsted publication, *Clarification for schools, Handbook for inspecting schools in England under section 5 of the Education Act 2005*, 2018

¹⁰ Jan Tallis, Chair of Forest Gate Community School governing body, by an interview with BBC Radio 4, February 2014

school; (d) the behaviour and safety of pupils at the school⁵, the inspectorate has gradually added in its own inspection criteria.

In the EIF, Ofsted decided to shift the balance of inspections towards an effectiveness review of: ‘quality of education’; ‘*behaviour and attitudes*’; ‘*personal development*’; and ‘leadership and management’⁷. Educational outcomes for pupils were notably dropped as an endpoint for Ofsted inspectors, and schools started adjusting to a revised emphasis of the philosophy of education and the social, moral, cultural and spiritual development of pupils. Whereas Ofsted previously placed a central emphasis on pupil grades and attainment when undertaking inspections, the emphasis shifted to pupil attitudes, personal development, and a broad, rich and well taught curriculum.

Amanda Spielman endorsed the changes to “*move inspection more towards being a conversation about what actually happens in schools*”⁹ – it was felt that the new criteria would better and more holistically accomplish the inspectorate’s goals. However, in practice, the EIF shifted the goalposts further away from statutory intention (“pupil achievement”¹¹) and detached the body from the aim of raising educational standards.

While this rationale might appear like mere semantics, the shift was significant. Since the EIF focuses inspectors upon the *substance* of education instead of the outcomes on pupils when it comes to the ‘achievement of pupils’, the avenues for *subjective and philosophical* ideas of ‘good’ methods of teaching can easily enter into inspections and reports. It provides the justification for inspectors with certain preferred methods of teaching to judge according to those personal preferences. Additionally, and despite it being generally uncontested that ‘good’ education involves teaching methods and longer-term knowledge acquisition (above and beyond testing and exams), the decision to remove pupils’ exam results from the remit of educational inspection has caused unease among practitioners.

Although inspectors had less than two full terms to use the new Framework before schools were closed due to the Covid-19 pandemic, a proportion of teachers interviewed by Ofsted as part of their internal review insisted that they were not comfortable with the focus so far away from pupil attainment¹².

Other notable educationalists have also expressed their concerns about the EIF’s focus on how to teach. The new Children’s Commissioner, Dame Rachel de Souza, raised significant concerns about the Framework when it was first announced, saying that it was not right for Ofsted to direct the approach taken by schools. She said it was important that Ofsted do not direct schools’ approach to the curriculum¹³. The Teach First Chief Executive made similar remarks, that the Framework was incompatible with the neutral stance on teaching methods and curriculum design that Ofsted is required to have¹⁴.

ii. Ofsted is removing schools’ discretion in how to teach

For inspectors to assess the quality of education at a school, the EIF has provided inspectors with some concrete “good” ways of teaching subjects. Yet, since the education community hosts differences of opinion about what “good” teaching looks like, it is curious that Ofsted has taken the line of specificity over some

¹¹ Section 5A Education Act 2005 – applicable for State schools. Inspection requirements for fee paying schools is also provided for by

¹² Ofsted authored article, Chris Jones, *Evaluating the education inspection framework: for schools and further education and skills providers*, 21 May 2021

¹³ Interview available on TES website, <https://www.tes.com/news/exclusive-mat-chief-warns-ofsted-changes-mean-more-work>, accessed 25 June 2021

¹⁴ Interview available on TES website, <https://www.tes.com/news/ofsted-cant-impartially-inspect-curriculum-says-teach-first>, accessed 25 June 2021

teaching styles and methods. Indeed, some of the methods and phrases adopted by Ofsted in the framework have been very controversial in the education community.

One example of Ofsted's evolving remit to decide the "best" or "preferred" methods and models of teaching, which it previously left to schools' margin of discretion, is the teaching of phonics for early years children. Under an EIF priority for inspectors to inspect "*how* children are taught to read" as part of a deep-dive in reading, schools are now required to use systematic synthetic teaching of phonics ("SSP"), regardless of outcomes or school preferences for other models¹⁵. Although this persuasion was part of the National Literacy Strategy¹⁶ discussed under the Wilshaw regime and then enthusiastically taken up by the DfE in the Gove era, there has been consistent debate and pushback by some schools claiming that it is not the only viable or appropriate method available.

Only in 2011, the All-Party Parliamentary Group for Education advised that teachers ought to be able to choose their own resources for literacy to suit individual needs for phonics without government instruction, since "*there is no one way to teach reading and so a single focus on systematic synthetic phonics is a false one*"¹⁷. Many schools still testify to this – that the creation of a reading culture needs to be flexible and responsive to a child's needs and learning style. In fact, many schools and academics passionately advocate for the alternative analytical, analogy, or embedded teaching methods to phonics – either as a primary technique, or as a secondary option when the synthetic model fails certain children¹⁸. So, while it may be considered reasonable for the government to pursue an educational agenda that is widely considered to drive standards, the decision of Ofsted to incorporate absolute standards about these teaching methods into the inspection framework takes the remit of the ALB beyond its statutory obligations and into an unnecessarily controversial area. In practice, Ofsted is requiring all schools to adopt homogeneous methods regardless of results; and if the school doesn't adopt them, then they will be scored down. It should be queried whether the inspectorate ought to have the authority to govern certain teaching methods, particularly to independent schools with strong reading outcomes which adhere to different didactic methods of teaching.

Another example of controversy is over the phrase "*cultural capital*", which was added to the EIF as part of the quality of education judgement. Now, inspectors cannot score a school positively without leaders showing that they have constructed a curriculum which is designed to give "*all pupils, especially disadvantaged pupils...the knowledge and cultural capital they need to succeed in life*"¹⁹. Derived from the philosopher Pierre Bourdieu in the 1960s, the phrase was developed to explain the differences in achievement of pupils – focusing on the differences between social classes. Now, early years schools are judged in accordance with how they expose children to different experiences and activities within the curriculum. Ofsted has tied the teaching of "*cultural capital*" to pupils becoming "*educated citizens*"²⁰.

However, since this is philosophical concept, lacking any agreed definition or consensus in content throughout the educational community, inspectors face difficulties in applying the inspection criteria to schools. Criticisms have been raised against the "paternalistic" nature of the phrase, such that inspectors could impose cultural ideals of their upbringing or philosophical leaning which are contrary to the ideals of the teachers or schools under inspection. While previous Ministers in the DfE have endorsed the term, including the similar term "cultural literacy", the standards and content of "*the best that has been thought or said*" remains controversial among many schools. Debates around the origin of the term, the philosophical underpinnings behind it, the changing meaning of the term over time, and the practical content of the term as understood across social classes, cultures

¹⁵ Ofsted, *School Inspection Handbook* 2019, para. 298

¹⁶ National Literacy Strategy, 1998

¹⁷ All-Party Parliamentary Group for Education, *Report of the Inquiry into Overcoming the Barriers to Literacy* (2011), at Summary Recommendations no.1

¹⁸ For example, see Professor Jeffrey Bowers research from the University of Bristol: *Reconsidering the Evidence That Systematic Phonics Is More Effective Than Alternative Methods of Reading Instruction* (2020)

¹⁹ Ofsted, *Education Inspection Framework* (2019) at 26

²⁰ Ofsted, *School inspection update* (January 2019) at 32

or parts of England have occurred since the term was first used in the educational circles. Education professors at top academic institutions have even decried the requirement on schools as “*extraordinarily naïve*”²¹ and “*a crude, reductionist model of learning*”²². One educational professor has said, “*Ofsted has misunderstood Bourdieu*” by taking his writings in a certain way, and that “*education cannot compensate for society*”²³. Inspectors will be able to interpret this term subjectively according to their chosen understanding of educational philosophy.

In practice, this has led to some schools receiving either a Requires Improvement or Inadequate grades for the quality of education with reasons including “*opportunities for spiritual, moral, social and cultural development are disjointed*”²⁴, and “*not ensured that pupils receive a curriculum that develops pupils’ spiritual, moral and cultural knowledge and understanding*”²⁵. The overlap with the Personal Development judgement is evident, and neither of these reports provides any constructive advice for the schools how to develop the pupils’ cultural capital.

Summary

The desire to standardise techniques and content above teacher experience, individual pupil learning styles, a pupil’s cultural background, and the school’s historic approach to teaching - without emphasis on pupil exam results –unnecessarily interferes with well-performing schools’ rights to run educational institutions with elective responsibility. It also stretches Ofsted’s remit beyond statutory intent and into driving educational culture. It also gives inspectors a significant amount of discretion in how they interpret the Framework.

Ofsted’s focus on the ‘quality of education’ should also be questioned against the constantly evolving and debated landscape of educational philosophy, curriculum content, pupils’ knowledge acquisition amongst DfE Ministers, educationalists, and researchers. With fast-paced and widely contested education method and content reforms, notably during the Gove era, the Ofsted EIF and inspector’s focuses on these contested areas of teaching cannot be expected to be equally well received across the schools which have historically opted for different methods while consistently producing good results.

Over time, the rich educational diversity which forms part of the makeup of a free and democratic society is at risk of being eroded if Ofsted continue to require standardisation for schools to pass inspections.

SECTION B: Ofsted inspections cause unnecessary stress

To achieve its aim of being a force for improvement in education, inspections should be efficient, impartial, thorough, collect evidence in a representative fashion, and unbiased in assessment and evaluation. A core component of this is the partnership between inspector and inspected – Ofsted and teacher. Trust needs to be built up on both sides if Ofsted is to be able to carry out its functions well. Yet, teaching staff and education professionals report among the highest levels of stress, depression and anxiety across the entire British workforce²⁶ - this creates a potentially difficult interaction with inspectors.

²¹ John Yandell, Associate professor of English, UCL Institute of Education

²² Diane Reay, Education professor, Cambridge University

²³ Michael Young, Professor of education, UCL Institute of Education

²⁴ Woolenwick Junior School, inspected 12-13 February 2020

²⁵ De Vere Primary School inspected 18 October 2019

²⁶ At a rate of 2,100 cases per 100,000 professionals compared with 1,320 cases for all occupational groups (‘Work related stress, depression or anxiety statistics in Great Britain’, Health and Safety Executive, 2018; www.hse.gov.uk/statistics/)

In a study conducted by Ofsted into teacher stress and wellbeing, teaching staff were asked to identify the contributing factors; Ofsted inspections scored high on the list²⁷. Testimonies of the “fear” and “threat” of inspections, and the “working to Ofsted rather than student needs” were among the reasons, and the theme of “*improving and changing the nature of a relationship between Ofsted and schools*” was highlighted as a way in which Ofsted could improve the situation from their side.

Ofsted presented the EIF as being able to broaden the inspection focus and help alleviate many of the feelings of stress experienced by teachers, including the “unnecessary workloads”. However, almost two years into the new regime, confidence levels are not high that the root of the problem has been dealt with.

i. Ofsted causes stress to teachers

With the introduction of the EIF and its focus on educational quality and pupil development, Spielman said that she wanted Ofsted to “*move inspections more towards being a conversation about what actually happens in schools*”²⁸. She emphasised that she wanted the channels of conversation and collaboration with teachers to be opened, and for inspectors to be able to get a more holistic appreciation of how the school ‘scores’ in order to make their assessments. However, many teachers have not been able to testify to this progress. In fact, many teachers’ experiences with Ofsted have worsened since the introduction of the EIF.

Teachers and notable educationalists have spoken out against the unnecessary stress that Ofsted causes – particularly with the EIF and the “tick-box” preparation an inspection requires at short notice. One Primary school Headteacher said he may “*actually spontaneously self-combust*” if he heard Ofsted say “deep-dive” again, especially since it was proving incredibly difficult for teachers to understand what the Framework was requiring of them. He said that by using different management language and inspecting lessons in a different way, Ofsted managed to “*increase workload stress and anxiety*”²⁹.

Apart from the increased workload, teachers have also spoken out against the “unfair” realities of the EIF causing them to be scored lower than under the CIF by maintaining the same curriculum and methods of teaching. The shift from criteria used to award an ‘outstanding’ grade in the past has resulted in quite a number of schools moving drastically down the classification ladder, causing many schools to protest³⁰. Ofsted have reported that a staggering one third of previously ‘outstanding’ schools have now dropped to ‘requires improvement’ or ‘inadequate’ recently³¹. Examples of schools making formal complaints when gradings had sharply and starkly fallen under the EIF include primary schools in Bristol³² and Lincolnshire³³, and a pre-school in Yorkshire³⁴.

Unions have also been vocal in raising teacher concerns. These have included issues about Ofsted interviewing, the large workload inspectors impose on teachers, the stress caused by grades being moved down the scale, and the lack of opportunities to positively engage with inspectors. The largest school leaders’ union, the National Association of Head Teachers (“NAHT”), has stated that members find that inspectors too often form

²⁷ Ofsted, *Teacher well-being at work in schools and further education providers 2019*, para. 146 onwards

²⁸ Amanda Spielman speech to the Schools NorthEast summit, 11 Oct. 2018, <https://www.gov.uk/government/speeches/amanda-spielman-speech-to-the-schools-northeast-summit>

²⁹ Blog of the Primary Head, <https://www.teachwire.net/news/why-i-hate-ofsted-new-eif>, 21 January 2020

³⁰ For example, see Parkinson Lane Community School, URN 107487, Full inspection 26 Nov. 2019: graded as ‘requires improvement’ under the new Framework, compared to a previous ‘outstanding’ grade

³¹ See <https://schoolsweek.co.uk/ofsted-downgrades-‘outstanding’-schools/>, accessed 13/10/2020

³² St Francis’s Catholic Primary School, Nailsea <https://www.bristolpost.co.uk/news/bristol-news/school-nailea-receives-damning-ofsted-4277778>

³³ Surfleet Primary School, Lincolnshire, <https://www.spaldingtoday.co.uk/news/school-objects-to-‘inadequate’-ofsted-finding-9115206/>

³⁴ Mill Cottage Montessori Nursey, <https://www.examinerlive.co.uk/news/west-yorkshire-news/unfair-inaccurate-ofsted-report-made-17651727>

judgements on a scant and unreliable evidence base and that the new experience for teachers with interviewing was “*brutal*”³⁵.

Even more importantly, the impact on teachers was the primary concern voiced by the DfE prior to the introduction of the EIF. Damian Hinds, the former Secretary of State for Education, was widely reported to have raised serious concerns with Amanda Spielman about the distraction and hindrance that the EIF would cause to teachers, increasing their already high workload. During a Radio 4 programme, Mr Hinds refused to endorse or back the EIF³⁶, exposing the tension between the government and the independent watchdog.

To try and resolve some of these issues, the DfE and Ofsted jointly made 12 commitments under an education staff wellbeing charter, published in May 2021 to better protect the mental health of school staff³⁷. Ofsted committed to reviewing whether the EIF had caused unnecessary stress to staff including in their workloads but countered this also by stating that the promise would not result in a dedicated review of how inspections impact staff³⁸. The National Education Union responded by evaluating, “*Ofsted was overpromising and under-delivering, being disingenuous in the process*”³⁹ – showing no real desire to improve teacher experiences.

ii. Ofsted causes stress to pupils

Negative accounts of Ofsted inspections and inspectors are not just limited to teacher experiences. The impact of many inspections upon pupils has been troubling; the cause is that a core method of gathering evidence during an inspection is through pupil interviews. Under Ofsted’s own guidance, inspectors must be careful when interviewing children, although this is a valuable area of evidence-collection. The guidance reinforces that Ofsted are bound under the law to have regard to the views of pupils and “*safeguard and promote the rights and welfare of children*”, and it emphasises that views do not need to be provided by pupils if parents refuse permission⁴⁰. Yet, this has not precluded many pupils and parents feeling uneasy about the interviewing and accusing Ofsted of not “having regard to” to the legitimate views of the pupils as required by law⁴¹.

Even under former inspection Frameworks, the focus on the values underpinning Ofsted’s interpretation of ‘personal development’ were troubling for interviewees who held a faith or conservative ethos, particularly in light of pupils reporting being upset, uncomfortable or distressed by questions. Interviewing patterns specifically from independent faith schools revealed that inspectors previously probed students on their views on sex and morals; questions that were based on presumptions about the religious standpoint of the pupils under examination. Examples included Ofsted asking 11-13 year-old pupils at a Christian school whether they had ever met any gay or bisexual people⁴²; questioning of 9 year-old pupils at an Orthodox Jewish primary school about whether they knew how babies were made and whether they knew any homosexuals⁴³; and questioning of primary aged girls in a Muslim school about whether they wear a hijab, following the HMCI’s assertion that this could be interpreted as “*sexualisation*”⁴⁴.

³⁵ National Association of Head Teachers, Ofsted – a change for the better? (2020)

³⁶ <https://www.bbc.co.uk/programmes/b0bf4crx>

³⁷ Department for Education, The Education Staff Wellbeing Charter, May 2021

³⁸ Ofsted branded disingenuous over wellbeing, <https://schoolsweek.co.uk/ofsted-branded-disingenuous-over-wellbeing-review/>, accessed 25 June 2021

³⁹ Mary Bousted, Joint General Secretary of the National Education Union, as reported in Schools Week 14 May 2021

⁴⁰ Ofsted guidance, Inspectors talking to pupils under inspection, updated on 19 April 2021

⁴¹ Section 117(2) of the Education and Inspections Act 2006

⁴² See <https://www.dailymail.co.uk/news/article-2922591/Is-school-gay-inappropriate-Ofsted-questions-children-aged-just-11-school-children-branded-bigots.html>, accessed 15/09/2020

⁴³ See <https://jewishnews.timesofisrael.com/ofsted-bullying/>, accessed 15/09/2020

⁴⁴ See <https://www.theguardian.com/education/2017/nov/28/ofsted-accused-racism-hijab-questioning-primary-schools>, accessed 15/09/2020

Indicating Ofsted’s view that sensitive personal questions should still be asked to pupils under the new Framework to show whether they are adequately developing personally and socially, one inspection report stated that due to having “*restricted access to pupils and limitations on [discussing marriage, gender reassignment, and religion], this inhibited our ability to...determine compliance with independent school standards*”⁴⁵. Further, in a primary school setting, Ofsted reported “*[the school does] not permit reference to all of the protected characteristics, which means that children do not learn to be respectful of difference and diversity*”⁴⁶. Both these examples illustrate the narrow view that it is only pupils who speak knowledgeably and affirmatively about modern sexual lifestyles who could be tolerant and respectful persons. Moreover, another Ofsted report documented, “*pupils cannot show respect for those groups [choosing different sexual lifestyles] of which they are unaware*”⁴⁷, to the failure of the school’s ‘personal development’ Key Judgement.

[insert concerns about Ofsted interviewing children for sexual abuse claims, and in RSE – these could be from personal contacts]

SECTION C: Ofsted’s impartiality is questionable

The ideals of pluralism are widely ascribed to; political, cultural, and religious pluralism are frequently cited as hallmarks of our tolerant and democratic society. The UK’s strengths in this area have served as an example to many other countries around the world. In its 2017 Annual Review, Ofsted referred to pluralism as a ‘Shared British Value’, and that “*a core function of education...is spreading the values and culture that binds us as a society. There is no tension between this and religious pluralism. In fact, any proper teaching of fundamental British values encourages respect and tolerance for others’ views*”⁴⁸.

Pluralism is embedded in a public sector organisation’s responsibilities through the Public Sector Equality Duty (“PSED”), which requires school policies, practices and decision-making to have *due regard* to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between people of the different protected characteristics when carrying out duties⁴⁹. Ofsted and state schools alike are bound by this legal obligation.

However, Ofsted has faced criticisms that inspectors and HMCI alike have failed to promote religious pluralism alongside educational values. Representatives from various faith communities have raised repeated concerns about Ofsted’s bias and lack of impartiality against the faith community, raised directly by members of the Education Select Committee⁵⁰. As stated by a Policy Exchange report, “*a proper understanding of freedom of religion in a British context is not one that can be confined to the private sphere but must include the right to fully and actively express those beliefs in public observance, including in education*”⁵¹ – yet this cannot be evidenced by the wave of Ofsted judgements specifically against faith schools. By HMCI commenting that the nature of the state has changed sufficiently to censor minority group beliefs, the accusation of ‘secularist’ bias that has been levelled against the inspectorate on numerous occasions is reinforced.

Notwithstanding, bias is a difficult accusation to prove. It is also a criticism with far-reaching implications if proven. This paper does not make a definitive accusation of bias against the inspectorate, but it does outline a few notably examples of how Ofsted may be perceived to act in a biased manner against schools of a religious

⁴⁵ Beis Ruchel Girls School, inspected 14 January 2020

⁴⁶ Shiras Devorah, inspected 12 February 2019

⁴⁷ Keser Girls School, inspected 10-12 December 2019

⁴⁸ Ofsted, *The Annual Report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills 2016/17*, (December

2017): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/666871/Ofsted_Annual_Report_2016-17_Accessible.pdf

⁴⁹ Section 149 Equality Act 2010

⁵⁰ For example, as raised by Robert Halfon MP in the Education Select Committee accountability hearing in February 2020 – questions raised by Robert Halfon MP and Ian Mearns MP

⁵¹ Policy Exchange, *The Watchmen Revisited: Curriculum and Faith in Ofsted’s new Inspection Framework*, 24 Feb 2020, page 34

ethos. Assumed bias can be seen in how the inspectorate judges schools according to preconceived ideas and also during inspections themselves. Faith-based schools appear to be suffering from this worst.

i. Preconceived bias

Importantly, a NAO consultation of stakeholders indicated schools' perceptions that inspectors go into inspections with a pre-conceived idea of the outcome, prior to formally conducting the educational review⁵². Slim inspection reports, with their lack of evidential information, do nothing to allay these fears. When Ofsted used previous Frameworks, 'bias' was a major criticism raised by the faith community in both Muslim and Christian school settings when surprisingly poor gradings led the schools to pursue judicial action, or face being closed. For example, facing the disclosure of an inspection report, an Islamic faith school from Birmingham which was already subject to special measures applied to the courts to quash the report and prevent Ofsted from publishing it. Hearing the school's submissions in the Al-Hijrah case, Stuart Smith-J concluded that the evidence he had seen suggested that the unpublished Ofsted report was "*infected by a pre-determined mindset or prejudice that would be quite alien to the proper and independent inspection process upon which the education system and the public at large rightly depends*"⁵³.

The same speculation that inspectors deliberately targeted faith schools to pass negative judgements based upon precogitated ideas was raised by Christian independent schools inspected around the same time. A few years ago, two schools notably took forward their cases to the media and to Ministers, resulting in the Education Secretary having to make justifications of Ofsted's action to Parliament⁵⁴. Ultimately, one school had to close just a short time after opening⁵⁵, and the other was taken over.

Remarkably similar complaints about Ofsted hostility based on pre-decided assumptions about the 'quality of education' and pupil development have also made by the National Association of Jewish Orthodox Schools to the Secretary of State. On numerous occasions, the group claimed that a "*climate of hostility*"⁵⁶ had been exhibited by Ofsted inspectors at various partner schools, and that the high number of no-notice inspections targeting the schools in the network further evidenced biased analyses.

In the face of complaints raised by the three major religious groups in the UK alleging prejudicial attitudes towards independent schools of a religious nature, the thinly evidenced inspection reports do little to foster transparency.

Ofsted will continue to face criticisms of favouring certain types of schools at the expense of others on the continuation of scant and opaque evidence given in EIF reports; especially when schools are not being judged primarily on outcomes that can be externally evidenced, but for taught content.

ii. Inspection bias

⁵² National Audit Office, *Office for Standards in Education, Children's Services and Skills: Ofsted's inspection of schools*, HC 1004 Session 2017-2019 (2018), Para.2.34

⁵³ R (*The Interim Executive Board of X*) v *Ofsted* [2016] EWHC 2004 (Admin), Per Mr Justice Stuart-Smith, para.45

⁵⁴ See <https://www.telegraph.co.uk/news/religion/11358797/British-Values-rules-to-blame-as-Christian-school-placed-in-special-measures-by-Ofsted.html>; <https://www.theguardian.com/education/2015/jan/23/durham-free-school-closure-ministers-ofsted> accessed 13/10/2010

⁵⁵ House of Commons Hansard, Education, 19 January 2015, Volume 591

⁵⁶ See <https://www.theguardian.com/education/2014/oct/14/jewish-schools-complain-ofsted-inspections>, accessed 13/10/2020

The margin of leeway available to religious schools for when and how they introduce and explain culturally non-religious lifestyles to pupils is noticeably absent from inspection reports. Adding to a longstanding critique of some prominent leaders of independent faith schools that Ofsted bows to pressure from secularist organisations with a specific anti-faith agenda⁵⁷, and criticism from the Policy Exchange on Ofsted's negative inspections of faith schools⁵⁸, inspection report analysis confirms concerns. In all the faith school reports where 'inadequate' sexual lifestyle teaching was cited as a reason for failure within the past few years, Ofsted inspectors failed to even attempt to balance the discretion and rights afforded to religious belief, or, as the ISS requires, the reflection of the "school's ethos"⁵⁹.

When Amanda Spielman was directly asked by a prominent member of the faith community, where she thought the line should be drawn for the right of parents to bring up their children in accordance with religious requirements and have this mirrored in privately funded schools, Ms Spielman did not directly answer the question⁶⁰. Instead, she argued that state expansion in modern times meant that the freedom requested by certain communities like the Orthodox Jewish community were archaic. The current state model, she affirmed, was legitimately entitled to interfere more with children's teaching against the wishes of parents. This, she implied, gave Ofsted the right to also inspect sexually related morals and values against the wishes of religious schools and parents; and there were no opt-outs available even to independent schools.

It is also interesting to note that faith schools are disproportionately poorly graded compared to secular schools. While Ofsted inspections have uncovered serious educational poor practice and building safety concerns which have been acted upon by many schools receiving negative grades, there is scope to question further why faith schools consistently receive bad results. As observed by the Policy Exchange, there is a "perceived suggestion by Ofsted that freedom of religion should be limited to the private sphere"⁶¹. Indeed, Spielman has not been shy in expressing that a "muscular liberalism", which "holds no truck for ideologies that want to close minds or narrow opportunity," ought to be promoted by school leaders instead of religious beliefs⁶². The 2019 Ofsted Annual Report showed that only 39% Orthodox, independent Jewish schools were rated as 'good' or 'outstanding' for the year, compared with 76% independent Christian schools and 80% all non-faith independent schools. Moreover, Jewish schools were found to be four times more likely to be graded as 'inadequate' compared to Muslim and Christian schools⁶³.

However, Ofsted's approach is incorrect against the statutory and governmentally enshrined latitude for the faith community and minority groups. DfE guidance affirms that a 'balanced debate' may take place when religious schools or religiously minded educators teach about distinctive faith perspectives on relationships and contentious issues⁶⁴. The DfE states, "it is not the intention of the Equality Act to undermine [the position of religious schools] as long as they continue to uphold their responsibilities in these areas"⁶⁵. DfE guidance also explicitly provides that independent faith schools "can teach that its particular faith has teachings relevant to these matters and explain to pupils what those teachings are"⁶⁶, and a House of Commons briefing paper similarly stresses the flexibility available to faith schools in teaching RSE in accordance with the tenets of their faith⁶⁷. The government therefore leaves schools considerable discretion in this matter.

⁵⁷ See <https://jewishnews.timesofisrael.com/almost-7000-charedim-hold-prayers-over-ofsted-challenge-to-religious-education/>, accessed 14/10/2020

⁵⁸ Policy Exchange, *The Watchmen Revisited: Curriculum and Faith in Ofsted's new Inspection Framework* 2020

⁵⁹ Regulation 2 2(d) (i), The Education (Independent School Standards) Regulations 2014

⁶⁰ The Eli Spitzer Podcast, *In conversation with HMCI Amanda Spielman*, 18 October 2020

<https://www.youtube.com/watch?v=eGzYPgo63Zl&feature=youtu.be>

⁶¹ Policy Exchange, *The Watchmen Revisited: Curriculum and Faith in Ofsted's new Inspection Framework* 2020, page 9

⁶² Amanda Spielman's speech at the Church of England Foundation for Educational Leadership, 1 February 2018

⁶³ Ofsted, *The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2018/19*, at Figure 23

⁶⁴ Department for Education, *Relationships Education, Relationships and Sex Education (RSE) and Health Education: Statutory guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers* 2019, para. 21

⁶⁵ Department for Education, *The Equality Act 2010 and schools Departmental advice for school leaders, school staff, governing bodies and local authorities* 2014, para. 3.30

⁶⁶ Department for Education, *The Independent School Standards: Guidance for independent schools* 2019, para. 2.16

⁶⁷ House of Commons Library, Briefing Paper No. 06103, *Relationships and Sex Education in Schools (England)*, 17 March 2020

Yet, if Ofsted continues to diminish the value of the distinctive religious ethos of faith-based schools, many which are non-state funded, it might encourage parents to instead explore home-based methods of teaching in order to become removed from state-observed assessment. The inspection of sex and relationship education in schools – expected from September 2021 - could be particularly relevant in these regards. Ensuring that freedom of religion and belief is protected in education, just as the UK government is advancing and protecting in efforts globally, will require an effort by Ofsted to re-calibrate the balance of the debate and acknowledge the protections afforded to faith schools by law and policy. More is required from Ofsted to ameliorate faith community concerns of anti-faith bias.

Summary

The more subjective an assessment by any organisation, the more the organisation can be accused of bias by those who fare badly. Ofsted must tread carefully in this regard because inspectors are faced with the task of conducting thorough inspections of complex institutions within only 2 to 3 days. Particularly with the gradual move of the inspectorate from quantitative to qualitative data collection and analysis, a lack of objectivity and transparency from inspectors can be easily exposed, as well as an increasingly limited time for reviewing substantive school achievements.

The following section provides practical solutions for dealing with perceived bias, and centres upon robust and transparent accountability. Without this, Ofsted will continue to face severe allegations from various sectors that it is acting with bias against religious and other schools which do not promote the secular values inspectors wish to promote.

SECTION D: Ofsted accountability should be strengthened

As an independent non-ministerial department, with delegated power to conduct inspections by statute, Ofsted was created to be free from political involvement in operations, direct inspections oversight, and inspection judgements – despite the Chief Inspector being appointed by Parliament⁶⁸. Yet, robust accountability is a crucial aim for all public bodies, not only to provide transparency to the taxpayer, but also to ensure that operations are as effective as possible. Ofsted faces a layer of direct accountability through the Education Select Committee and another indirect layer through the government’s National Audit Office (NAO) which periodically reviews the technicalities of performance and spending of the body. HMCI is also personally accountable for her use of resources.

Ofsted values its independence to report on schools and to produce policy recommendations for the DfE. Still, Ofsted inspections have been described by practitioners as “*high stakes accountability*”⁶⁹. The consequences for schools after poorly graded inspection reports bear significant and far-reaching effects. After being graded ‘inadequate’ by a small team of two or three inspectors, schools could face: *a*) conversion to an academy⁷⁰; *b*) the school governors or academy trustees taking action to replace the senior school staff; and *c*) the ramifications of parents transferring their children elsewhere – impacting the school’s ongoing financial viability, and for many independent schools, their financial borrowing prospects. Consequently, firm accountability mechanisms of Ofsted are critical to ensure that public and Parliamentary confidence remains in the judgements and

⁶⁸ While the Education Select Committee plays a role in providing recommendations for new HMCIs, it is notable that the collective advice against the incumbent HMCI was not heeded to in the appointment of Amanda Spielman, <https://publications.parliament.uk/pa/cm201617/cmselect/meduc/170/170.pdf>

⁶⁹ National Audit Office, *Office for Standards in Education, Children’s Services and Skills: Ofsted’s inspection of schools*, HC 1004 Session 2017-2019, 2018, Para.1.16

⁷⁰ Conversions to Academies are for Maintained Schools only, under the Education and Adoption Act 2016

competence of the overseer. The power to trigger individual school, teacher, and student upheaval is too great without it.

Yet, gaps in both the depth and breadth of accountability for reporting and decision-making are evident.

i. Inspection summaries do not provide enough feedback to schools

In shifting to the EIF from the Common Inspection Framework (“CIF”), Ofsted decided to make school inspection reports ‘simpler and clearer’. Standard reports, which previously included a reasonably thorough list of evidence findings per inspection judgement against the Framework criteria and a summary of key findings for parents and pupils, were replaced by relatively short and condensed summary documents. The new report headings became: ‘what is it like to attend this school?’, and ‘what does the school do well and what does it need to do better?’. Under this new regime, inspectors were endowed with a large degree of discretion in how to write reports. Within a limited amount of space, inspectors can now select which aspects of the school’s education provision to include or omit. Whereas CIF reports used to include, on average, 8 full pages of substantive information to inform the school and parents about the school’s performance, the average number of pages for EIF reports is 3.5.

One year into Ofsted using the abridged and summarised documents, it was observed that the evidence and examples cited to justify grades were lacking. Criticisms that “*vignettes are a sentence or two at most, and often quite obscure*”⁷¹ were coupled with the feeling amongst school leaders that reports all too easily ignored the merits and achievements of the school, focusing instead upon the negatives⁷². This significantly reduces accountability behind decision-making since a school’s access to inspector reasoning has been limited.

Particularly for schools graded as ‘inadequate’ after a 2-day full inspection or 1-day short inspection, the new reports provide little or no reassurance to management or parents that the decision is justified, transparent, or fair. Considering that a full re-inspection of ‘requires improvement’ schools will take place within 30 months of the grading, and ‘inadequate’ schools are placed in the category of concern, ‘vignettes’ do not provide the necessary assistance for poor-performing schools to successfully institute and drive improvements – in the absence of schools requesting further information.

Recommendation

Ofsted should revert to using longer inspection templates and providing schools a greater evidence base behind decisions. The inspection reports used under the CIF provided more structure and space for inspectors to outline their assessments and provide critical feedback to schools, and Ofsted should review whether this template or an updated one should be used to substantiate decision making.

ii. The complaints process is weak

⁷¹ See <https://schoolsweek.co.uk/an-early-verdict-on-the-new-ofsted-framework/>, accessed 01/09/2020

⁷² See <https://www.halifaxcourier.co.uk/news/halifax-head-teacher-criticises-ofsted-inaccurate-and-misleading-report-school-1364202>, accessed 01/09/2020

The Ofsted complaints procedure has faced serious criticisms for many years, both in substance and in practice. After receiving a final report, schools have a 5 working day window to raise an issue and then face a two-stage internal review of the complaint by the Ofsted team, if the complaint is taken forward. If a school is still aggrieved after this stage, it can then ask the Independent Complaints Adjudication Services for Ofsted (“ICASO”) to review the complaint, although this final stage body does not have power to re-examine the report’s substantive judgements and grades. Its decisions are also non-binding⁷³. Public organisations, including state schools do not have the right to make a complaint to the Parliamentary Ombudsman outside this process⁷⁴. When it comes to the fairness of school gradings, therefore, the responsible body for reviewing Ofsted complaints by schools is Ofsted itself. This has caused significant concerns and calls for reform throughout the education sector. According to the Association of School and College Leaders (ASCL) curriculum and inspection specialist, “*school leaders have little faith in Ofsted’s complaints process*”⁷⁵. Even outside the complaints process, 50% of all schools graded ‘inadequate’ consider their inspections to be unfair⁷⁶.

In 2018, Ofsted logged an appeal case to the Court of Appeal following a High Court judgment which declared its complaints procedures to be procedurally unfair. The Durand Academy Trust, rated ‘inadequate’, had no means to appeal the decision after Ofsted considered the appeal to be unreasonable. The school had been put under mandatory special measures as a result of its Ofsted grading⁷⁷, and the High Court Judge concluded, “*The absence of any ability effectively to challenge the report renders the complaints procedures unfair and, in my judgment, vitiates the report*”⁷⁸. Although the Court of Appeal overturned this decision in favour of perceived fairness throughout the entire decision-making process as a whole, it acknowledged that there remained a significant difference between complaints relating to inspection grades (which could not be re-reviewed)⁷⁹, compared to other types of complaints, for example regarding inspector conduct and processes (which could be investigated at complaint stage)⁸⁰.

Other examples of schools having negative experiences using the complaints process include one Stockport comprehensive school. The headteacher had received a prestigious national award only the summer before the inspection, and the school’s results had climbed for three consecutive years despite budget cuts of £400,000. Notwithstanding, Ofsted said that the curriculum was inadequate. After more than 300 parents wrote to Ofsted to praise the school’s impact upon their children, the headteacher said that Ofsted still upheld its original rating. Upon making a request for evidence about how it had reached “*astounding conclusions*”, Ofsted replied that making a disclosure was not in the public interest and would “*harm potential future inspection activities*”. With no reasonable further avenue to pursue the complaint, the headteacher resigned, saying, “*Ofsted is a machine you can’t beat*”⁸¹.

The lack of substantive challenge to Ofsted reports prior to publishing meant that there was no way to change the outcome of inspection results other than recourse to the courts to quash the report. This is because the independent adjudication panel, ICASO, cannot overturn judgements or order a re-inspection. It is comprised of lawyers whose focus is on the process Ofsted has followed in handling the complaint, not on whether the judgements are well founded in evidence. As stated, this leaves the complaint process “*toothless*”. Many schools still consider this internal-only process to be unjustified when the impact of reports is so large and the timeframe to collect the evidence to produce the report is so small. In June 2021, Christian Wakefield MP raised the matter

⁷³ Independent Complaints Adjudication Service for Ofsted, *An introduction from the Senior Adjudicator*

⁷⁴ See <https://www.ombudsman.org.uk/>

⁷⁵ See <https://www.tes.com/news/heads-say-ofsted-complaints-plan-doesnt-go-far-enough>, accessed 15/09/2020

⁷⁶ Based on a survey of headteachers, National Audit Office, Office for Standards in Education, Children’s Services and Skills: Ofsted’s inspection of schools, HC 1004 Session 2017-2019 (2018), at Figure 13

⁷⁷ Section 44(1) Education Act 2005

⁷⁸ *Durand Academy Trust, R (on the application of) v The Office for Standards In Education, Children’s Services and Skills & Anor* [2017] EWHC 2097 (Admin), para.47

⁷⁹ Ofsted complaints process, para. 14

⁸⁰ *Ofsted v The Secretary of State for Education* [2018] EWCA Civ 2813

⁸¹ Observer report: “*I’ve been a head for 17 years. Now Ofsted has driven me out of the job I loved*”, 18 January 2020,

<https://www.theguardian.com/education/2020/jan/18/how-ofsted-drove-me-out-of-teaching-job-i-loved>, accessed 16/10/2020

again with Amanda Spielman during the EdSC accountability hearing, questioning why Ofsted had failed to make any substantive changes with another independent layer, even after so much criticism. He said this was “usually the case for any other public body”. Spielman maintained her stance that the complaints process would not change⁸².

Making a compelling case for reforming the procedures to institute greater equitability for schools, and in addition to the fact that schools are deterred from challenging reports via prolonged and extremely expensive judicial proceedings, a TES investigation reported that no school reports had been successfully changed or quashed between 2014-17 following a legal challenge, deeming the overturning of an Ofsted verdict to be a “virtually impossible task”⁸³. The National Governance Association has also highlighted significant errors in the processes, in describing that the new inspections system “renders governance less visible”, and in the interests of independence, “fundamental” reform will be required⁸⁴. Now that Ofsted has moved to the EIF, a Framework which is perceived to over-rely on inspectors’ professional judgements, criticisms about the complaints process have heightened; NAHT has stated that the new Framework lends itself even more to inspector “misinterpretation”⁸⁵ of the evidence, rendering the process even more unaccountable.

Heeding to the sector call for a rehaul of these procedures, and following a public consultation, Ofsted listened to some concerns and proposed an updated complaints process in early 2020, proposing that schools could have the opportunity to challenge the factual accuracy of draft reports before they become final⁸⁶. This challenge would be reviewed by Ofsted themselves. While taking a small step towards introducing a re-review of reports, the changes still ignored overall sector concerns in the consultation responses that the complaints process is too limited and insular.

It is worth noting that adding additional oversight and thoroughness to the complaints procedure is not a novel idea. As a comparison to Ofsted’s current processes, the third stage in an ISI complaint involves all documentation being sent to an independent adjudicator, who will be able to demand amendments to reports; the use of the performance procedure for inspectors or staff; a partial re-inspection as required, at ISI’s expense; or a further full inspection at ISI’s expense⁸⁷. This process provides a second opportunity for the school to be graded justly and equitably, if they consider the first report to be evidentially weak.

Recommendation

External oversight is required in order to overturn inspector judgements in instances when the school, parents, or wider community reasonably believe that the educational provision is better than judged during a compressed inspection, or that there had been flaws in the judgement making process. Without this mechanism, Ofsted will continue to, in effect, hold absolute discretion.

NAHT have expressed the need to establish a new independent appeal body following “irrational or unfair” Ofsted judgements⁸⁸. If Ofsted were to include an external body of education experts in the stage 3 part of the complaints process, given the right to request a re-inspection of a school when the evidence base was lacking or judgements unsubstantiated, or the right to withhold the publishing of reports while facts were verified after

⁸² House of Commons Education Select Committee Hearing, 15 June 2021, Q827 onwards

⁸³ See <https://www.tes.com/news/exclusive-virtually-impossible-task-overturning-ofsted-verdict>, accessed 16/10/2020

⁸⁴ See [https://www.nga.org.uk/getattachment/News/NGA-News/March-2020/Governance-not-consistently-recognised-in-new-Ofst/NGA-View-from-the-Board-\(Ofsted\)-Report-\(WEB\)-Stg2B.pdf?lang=en-GB](https://www.nga.org.uk/getattachment/News/NGA-News/March-2020/Governance-not-consistently-recognised-in-new-Ofst/NGA-View-from-the-Board-(Ofsted)-Report-(WEB)-Stg2B.pdf?lang=en-GB), accessed 16/10/2020

⁸⁵ See <https://schoolsweek.co.uk/heads-demand-independent-panel-to-handle-ofsted-complaints/>, accessed 16/10/2020

⁸⁶ See Changes to Ofsted’s post-inspection processes and complaints handling: proposed improvements, 16 July 2020

⁸⁷ See Independent Schools Inspectorate *Complaints and Review Procedure* June 2018

⁸⁸ See <https://schoolsweek.co.uk/heads-demand-independent-panel-to-handle-ofsted-complaints/>, accessed 30/10/2020

being contested, many concerns about the procedure would be alleviated. The process of reviewing the evidence on which the judgements are made would also be given far more credence and confidence. An external body should also have the remit to keep track of which specific inspectors had been subject to challenge by schools on the basis of their judgements or failure to abide by DfE guidance, should the Education Select Committee wish to see the list.

iii. Parliamentary scrutiny could be strengthened

A cause for concern regarding the decision-making of Ofsted is the lack of vigorous external scrutiny that is applied to the organisation. The outworking of this can be seen in the way the Education Select Committee (“EdSC”) interrogates the operational practice of Ofsted. When HMCI appears before the EdSC for an accountability hearing, she will face a series of questions from the panel on a range of topics, with her answers usually as the final opinion on the matter. The absence of an inquisitorial-style system from the Committee results in responses to quite weighty questions being accepted with little analysis. Largely, this is because the Committee simply does not have the capacity to investigate further. For example, when questioned about whether she accepted the accusations that Ofsted has departed from DfE guidance on a particular matter of inspection in early 2020, an accusation also made in the House of Lords⁸⁹, HMCI’s responded “*To my knowledge, we haven’t*”; this elicited no investigation, interrogation, or follow up⁹⁰. Indeed, the evidence collection remained purely an oral exercise without the request for written documentation to prove the accusation otherwise.

A pertinent example of the lack of follow-up made by the Education Select Committee causing detrimental consequences for schools was the commitment made by previous HMCI Sir Michael Wilshaw to investigate the evidence-base behind damaging Ofsted reports at two independent Christian schools. Following complaints made against the Ofsted handling of the inspections, which involved the inappropriate questioning of children about sex issues, Sir Michael assured the Committee that there had been a “*thorough*” investigation into the complaints. He affirmed, “*we looked at the evidence base thoroughly and found no evidence to suggest that inspectors used inappropriate language and terminology to those children*”, thus dismissing the complaints before MPs⁹¹. However, a Freedom of Information request on the matter later revealed that no parents, staff or pupils who made the complaints had been interviewed before or after the appearance before MPs⁹². The Education Select Committee appeared not to have the capacity to investigate.

While the NAO performs an auditing role in overseeing the DfE’s policies and spending as well as the value for money, performance and impact of Ofsted, and ICASO review Ofsted’s processes around complaints handling, there is a gap for scrutinizing value judgements about schools and policy recommendations to Parliament. The gap lies in assessing the thrust and impact of Ofsted, and whether decisions about the grading of schools based upon the evidence available are justified.

⁸⁹ House of Lords Hansard Volume 803, *Schools: Relationships and Sex Education*, 12 May 2020, per Lord Polak

⁹⁰ See Education Select Committee: Ofsted Accountability Session, April 2020

⁹¹ Reassurance made by Sir Michael Wilshaw during the 28 January 2015 Education Select Committee hearing, see <https://www.parliamentlive.tv/Event/Index/20dd28e2-58e4-4ee9-b107-31c04f16dc2d>

⁹² See the coverage in *Ofsted accused of whitewashing inquiry into Christian schools’ ‘British values’ complaints*, <https://www.telegraph.co.uk/news/religion/11580415/Ofsted-accused-of-whitewashing-inquiry-into-Christian-schools-British-values-complaints.html>, accessed 30/10/2020

Recommendation

A new and independent body for overseeing the substantive judgements of Ofsted should be created to assist the Education Select Committee bring accountability to Ofsted. A constitutionally and operationally similar body to the Independent Commission for Aid Impact (“ICAI”, operating independently of government and reporting to Parliament through the International Development Committee) is recommended for the scrutiny of Ofsted judgements, with a remit that periodically selects areas of interest. ICAI carries out a small number of well-prioritised, well-evidenced thematic reviews on strategic issues faced by the UK government’s aid spending and utilizes a theory of change to systematically improve overseas development spending. It operates independently of government and reports to the relevant Commons Committee. Referring to a methodology which independently selects a thematic area of spending and conducts a deep-dive into the programme goals, local implementation, effectiveness, work with stakeholders, and commitments of foreign aid spending departments, ICAI consultants are provided access to all required internal documentation allowing them to report thoroughly, constructively, and accurately.

If a similar model were to be adopted for Ofsted, the Commission would be able to thematically review, for example, Ofsted’s approach to Equality Act integration; early years teaching methods; life in modern Britain; or health and safety in school buildings, the new body would provide a credible check on the wide remit and high influence of the overseer. It would also be able to directly report to the Education Select Committee about areas of interest, whether sparked by ministerial inquiry or by repeated media concern about a certain matter. The Select Committee is not equipped with the requisite time or resourcing to currently undertake this role internally.

The effectiveness of ICAI and the usefulness of the role to the relevant Select Committee in Parliament can be observed in any review report, being persuasive for the value of a similar body for Ofsted. For example, the review of the Department for International Development’s results in improving Maternal Health (2018)⁹³ took a comprehensive approach to systematically reviewing and analysing DFID statements, programmes across a 5 year period, spending commitments, actual spend, and results in order to assess whether the purported goals had been achieved – as quoted by the department. By reviewing all materials and information closely, including the written evidence, and undertaking its own qualitative research to verify and triangulate findings, an ‘Amber-Red’ rating was given. If ICAI had looked at each programme individually like Ofsted does, the overall evaluation would not be achievable; only a complete review of multiple programmes over many years achieved the evaluation that proved that DFID maternal health programmes were imbalanced and biased towards family planning instead above maternal health.

With access to all Ofsted evidence-gathering documentation and materials, including staff and pupil interview transcripts, parental consultation documents, school performance logs, and draft inspection reports, a new Ofsted Commission would develop an invaluable role in providing an objective review of inspector value judgements and repeated themes behind reports, as well as the transparency behind judgements that is currently lacking.

CONCLUSION

⁹³ See Independent Commission for Aid Impact, *Assessing DFID’s results in improving Maternal Health*, 30 Oct 2018

This paper has presented some of the trends and issues with Ofsted's applied remit and the lack of transparency behind its decision-making. Teachers and school staff have expressed concerns about the increasing amount of discretion that inspectors are given to grade schools, as well as the unnecessary stress they feel that inspections have on them which detracts away from teaching priorities. Parents and wider communities have also expressed concerns when their satisfaction levels are high with a school and they see their children academically progressing well, but inspectors downgrade schools on the basis of, for example, not teaching British Values in accordance with inspector definitions. The dangers of continuing down this trajectory can be summarised as three-fold:

First, the negative impact on schools which are well performing, producing good outcomes, and teaching a rich curriculum of academic and personal development for pupils, yet utilising non-Ofsted teaching methods or content, is significant. Along with stress an Ofsted inspection often causes to teachers – especially those who are aware of the differences in their teaching methods compared to the EIF – leaves schools at the mercy of what the inspector's educational philosophy is on the day. As outlined in the body of the paper, schools graded as 'inadequate' face severe consequences to their ability to carry on as educational establishments and so schools are finding it increasingly unfair that such 'high stakes accountability' can come from the inspection criteria being applied subjectively.

Second, the criticism relating to Ofsted's bias and lack of impartiality against the faith community has not been resolved, even though it has been raised on multiple occasions by members of the Education Select Committee to Ms Spielman. As stated by the Policy Exchange report previously, "*a proper understanding of freedom of religion in a British context is not one that can be confined to the private sphere but must include the right to fully and actively express those beliefs in public observance, including in education*"⁹⁴ – yet this cannot be evidenced by the wave of Ofsted judgements specifically against faith schools. By HMCI commenting that the nature of the State has changed sufficiently to override minority group beliefs in schools on topics like gender reassignment, the 'secularist' bias that has been levelled against the inspectorate on numerous occasions is reinforced.

Third, the lack of opportunity to challenge inspection reports, except via the courts, leaves schools at the mercy of Ofsted as to whether they receive a report that is evidentially fair and justified. In the event that a school fundamentally disagrees with the decision making – which, as has been outlined, is a common occurrence – there are currently only limited or no avenues for this decision to be overturned. Lodging a complaint with Ofsted rarely achieves a decision reversal, and in any event ICASO (as the final stage of a complaint) does not consider educational evidence. We suggest that all report complaints are reviewed by an independent committee once the internal Ofsted process has been exhausted. The complaints process should ensure transparency and accountability, and promote trust in schools, thereby increasing the respect for, and positive influence of the inspectorate on, the education system.

This paper has outlined suggestions of reform for the inspectorate. For the proposals to be taken seriously, the Education Select Committee is tasked with welcoming the concerns of multiple interest groups that Ofsted is not as impartial as it promotes itself to be; that the concerns of faith schools have still not been resolved; and that another layer of accountability is required to report back simultaneously to it about educational standards and the 'inspection of the inspectorate'.

⁹⁴ Policy Exchange, *The Watchmen Revisited: Curriculum and Faith in Ofsted's new Inspection Framework*, 24 Feb 2020, page 34