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“Ofsted has come under intense pressure recently. The Department for Education, the Education Select Committee, and Ofsted need to come together to bring in root and branch reforms before appointing a new Chief Inspector.



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Executive Summary



For an independent arm's length body, the jurisdictional remit and influence of Ofsted is staggering. When it was established in the early 1990s, Ofsted was given a narrow scope for conducting school inspections. Over time, it gradually amassed additional responsibilities which now include the oversight of early years and further education, social care agencies and teacher training providers. Ofsted's remit and the powers vested to the Chief Inspector are now unrecognisable from its initial establishment.

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 is set by schools, but **the culture of teaching, learning, societal appreciation, and pupil development is increasingly subject to the cultural direction of Ofsted.** This has become more prominent under leadership of the current Chief Inspector, Amanda Spielman.

With such a broad scope, it is unsurprising that Ofsted has faced considerable negative press in relation to some of its practices. The teaching unions have been unrelenting in expressing their concerns about the non-ministerial body corporate's impartiality and the stress caused to teachers during and after inspections; the Policy Exchange has exposed its bias against faith schools and has called for institutional reform; and both Labour and the Liberal Democrats have formerly called for its complete abolition under the premise that it is "unfit for purpose". The attitudes and perceptions of teaching staff towards Ofsted also consistently poll low, not least in the aftermath of the news of a headteacher suicide that followed an Ofsted inspection in March 2023.

Moreover, there are increasing examples of Ofsted acting beyond its statutory delegated authority in the exercise of its functions. A revealing trend has emerged in the way it has organised its inspection priorities, with a focus on certain types of schools, and selected certain 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. Avenues of challenge by schools are limited and are often too costly to pursue.

Conspicuously, it is the watchdog's largely unaccountable and opaque discretionary powers which give it an arguably free reign to set and pursue its own agenda. **It is unprecedented for an arm's length body, especially one with such directive authority, to have such limited checks and balances.**

With the term of the Chief Inspector coming to an end in December 2023, and all political parties considering education priorities for their upcoming 2024 manifestos, there is an opportunity, and a need, to reform Ofsted. This paper outlines these issues and provides clear calls for reform.

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Introduction

The Office for Standards in Education, Children's Services and Skills ("Ofsted") is referred to in law as 'The Office' and is a non-ministerial body corporate which performs its functions on behalf of the Crown.[1] Ofsted consists of Chair appointed by the Secretary of State, not less than 5 and not more than 10 members appointed by the Secretary of State, and Her Majesty's Chief Inspector of Education, Children's Services and Skills,[2] known as the 'Chief Inspector'.[3] The 1992 Act establishing Ofsted outlined that it should exist in England to raise standards and as an effort to help centralise the school system.[4] Similar inspection bodies exist in the other British nations; Estyn in Wales, and Education Scotland in Scotland.

Over time, the remit of Ofsted has gradually expanded so that it is now a body with a set of powers that makes it almost unrecognizable from its creation. At first, the inspectorate had a relatively narrow mandate to independently inspect primary, secondary and special schools in a cyclical schedule. Over time, it was also given oversight over maintained schools and academies; [5] registered early years providers; [6] non-association independent schools; [7] various Further Education and education and skills providers; [8] social care agencies such as children's homes, residential holiday schemes and independent fostering agencies; [9] social care inspections of voluntary adoption agencies; and initial teacher training organisations ('ITT'). [10]



[1] Education and Inspections Act 2006, s.112

[2] Ibid. Sch.11 para 1(1)

[3] Ibid. s.113(1)-(3) and Sch.11 para.1

[4] Formed under Education (Schools) Act 1992

[5] Education Act 2005, s.5

[6] Childcare Act 2006, s.49

[7] Independent schools not subject to inspection by the Independent Schools Inspectorate

[8] As defined in Part 8 of the Education and Inspections Act 2006. These include Further Education colleges, sixth-form colleges, independent specialist colleges, dance and drama colleges, independent learning providers (including those delivering apprenticeship training up to and including level 7) local authority providers, designated institutions (under s.28 Further and Higher Education Act 1992), employer providers, higher education institutions that provide further education and/or apprenticeship training up to and including Level 7 plus 16-19 academies and free schools

[9] Under Section 5(1A) of the Care Standards Act 2000 and the Adoption and Children Act 2002. Social care inspections of children's homes, secure children's homes, independent fostering agencies, boarding schools and residential special schools (see Ofsted's s.5 inspection handbook at para.40 – Part 3 of document)

[10] Ofsted inspects providers of Initial Teacher Education (EA 1994, s18B for QTS, FE/HE programmes (under EAI 2006, s.123 and Education and Inspections (Prescribed Education and Training etc) Regulations 2007, S1 2007/464) and all providers leading to early years teacher status (EIA 2006, Sch.13, para.9(1))



Within its inspection remit, it is worth noting that Ofsted's education responsibilities are also staggering. These include monitoring schools' compliance with the Prevent Duty;^[11] inspecting the education functions of local authorities;^[12] inspecting local area effectiveness in identifying the needs of children and young people who have special educational needs and/or disabilities;^[13] considering certain complaints about schools;^[14] inspecting the quality and availability of types of education and training in particular geographical areas for those aged 15-18;^[15] inspecting childminders registered on the early years register;^[16] quality assurance of independent inspectorates;^[17] monitoring inspectorates approved by the Secretary of State to inspect British schools overseas;^[18] and providing summary evaluations of multi-academy trusts.^[19] In 2021, Ofsted was commissioned by the government to conduct a sensitive inquiry into child sexual abuse in schools.^[20] Its jurisdiction has also extensively widened over time, with powers of entry being given in 2002^[21] and covert surveillance powers being awarded in 2003.^[22] Ofsted may do anything that it considers necessary or expedient for the purposes of, or in connection with its 'functions'.^[23]

Today, Ofsted is an organisation with significant authority in the exercise of its activities. This paper focuses on school inspections.

Today, Ofsted is an organisation with a significant authority in the exercise of its activities.



Amanda Spielman, Her Majesty's Chief Inspector of Ofsted ("HCMI"), is the person designated by statute to have the powers under which Ofsted operates,^[24] which also includes people authorised to act on her behalf.^[25] Appointed in 2016 for an initial five-year term which was then subsequently extended for a further two years, she considers her school inspection model to be "one of the lightest" in the western world.^[26] Ms Spielman 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 school inspections.

[11] s.26 of the Counter-Terrorism and Security Act 2015

[12] The functions in Education and Inspections Act 2006 ss135(1)(b); ss136-137

[13] Children Act 2004, s.20

[14] Education Act 2005, ss.11A-11C

[15] Education and Inspections Act 2006, ss.128-130

[16] Childcare Act 2006, s.49 – the register being established under s.32(2)

[17] Education and Skills Act 2008, s.107

[18] See 'Protocol between Ofsted and the approved independent overseas inspection providers for British schools overseas' (August 2012)

[19] See letter from the Secretary of State to Ofsted dated 13 December 2018

[20] Ofsted, Review of sexual abuse in schools and colleges, 10 June 2021

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

[22] Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003

[23] Education and Inspections Act 2006, Sch.11, para 13(1). To the extent that para.6 or para.12 of Sch.11 makes provision for restricting the exercise of any such power, this power is accordingly exercisable subject to any such restriction (EIA 2006, Sch. 11, para.13(2))

[24] Sch.12, para.9 of the Education and Inspections Act 2006

[25] Ibid. Sch.12 para 9(4)-(5)

[26] Amanda Spielman speech to the NAHT Conference, available at www.gov.uk/government/speeches/amanda-spielmans-speech-to-the-naht-conference (Published 4 May 2019)

However, her view is not universally shared. Teaching staff, politicians, academics, and school governors 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 teachers,[27] 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 commented, "England has one of the most highly regulated education systems in the world, which is limiting schools' ability to deliver a first-class education".[28] The difference of opinion between the Chief Inspector and her critics is stark.

Now is the time for the main political parties to rethink Ofsted's mandate, role of the HMCI, and power.

This paper will outline these concerns under three themes with one general observation:

Ofsted's remit, influence, and power are expanding but its accountability is not.

The expanding remit and insufficient accountability are evidenced in two ways:

1. First, in internal management and operations. This refers to the internal mechanics of Ofsted – the processes, documents, and methods it has adopted to enable the exercise of its functions. This includes inspector training; the inspection framework; communication with schools and inspection reports; and the impact of day-to-day Ofsted interactions with schools and teachers. These functions fall primarily on Ofsted management and HMCI.
2. Second, in external accountability applied to Ofsted. This refers to the scrutiny applied to Ofsted by the Ofsted Board, external experts, and by Parliament.



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

[27] Comment by Nick Brook, deputy general secretary of NAHT and former Ofsted staff member; see Catherine Lough, Heads demand independent panel to handle Ofsted complaints, *Tes* magazine (4 May 2019)

[28] Ibid.

SECTION A

Ofsted's Remit Has Grown Too Rapidly

Ofsted can inspect any maintained school or academy at any time^[29] and must do at prescribed intervals^[30] or when requested to so by Secretary of State.^[31] Ofsted's practice is to publish all inspection reports on its website, although the precise legal duties to publish the reports vary upon the type of inspection. Ofsted decisions are, mostly, available for public viewing. In the schools' context, many prospective parents search for Ofsted reports prior to applying to enrol their child at a particular school.

The law outlines the inspection categories that inspectors should focus on during their half-week inspections in schools, these are: (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 school; (d) the behaviour and safety of pupils at the school,^[5] the inspectorate has gradually added in its own inspection criteria.

Over the years, the content of maintained schools and academies' inspections has significantly evolved, with inspector's focus shifting. In the Education Inspection Framework ("EIF"), which is the latest in a series of guidebooks that inspectors use to guide their inspections, written by Ofsted,^[32] the watchdog decided to shift the balance of inspections towards an effectiveness review of: 'Quality of Education'; 'Behaviour and Attitudes'; 'Personal Development'; and 'Leadership and Management'. Notably, educational outcomes for pupils were dropped as a focus area for Ofsted inspectors, and schools started adjusting to a revised emphasis on 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 gradually shifted to pupil attitudes, personal development, and the teaching of the 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")^[33] and towards a more subjective assessment of "raising educational standards".

While this rationale might appear like mere semantics, the shift was significant. Considering

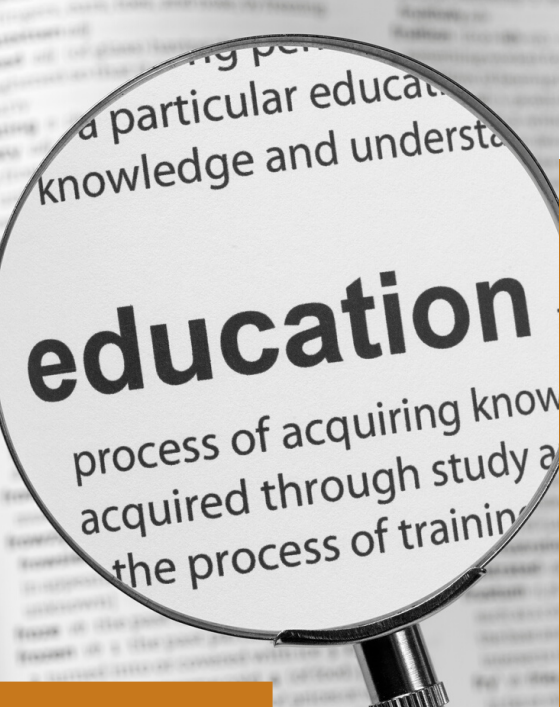
[29] Section 8(2) of the Education Act 2005

[30] Ibid. s.5(1)(a). The intervals are prescribed in Regulations SI 2005/2038

[31] Ibid s.8(1)

[32] As required by section 133 of the Education and Inspections Act 2006

[33] Section 5A of the Education Act 2005 – applicable for State schools



The Education Inspection Framework was shifted towards an effectiveness review of:

- 'Quality of Education';
- 'Behaviour and Attitudes';
- 'Personal Development'; and
- 'Leadership and Management'.

The inspection of educational outcomes for pupils have been dropped over the years by Ofsted

that the EIF focuses inspectors upon the **substances** of education instead of the **outcomes** for pupils (under the heading of 'achievement of pupils'), it is entirely predictable that the avenues for subjective and philosophical ideas of 'good' methods of teaching can easily enter inspections and reports.

Notably, Ofsted has been criticised for 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 in school inspections

The gradual move away from inspecting the 'achievement of pupils in the school', which happened over a series of Ofsted guidance updates,[34] has had the effect of inspectors penalising well-performing schools because some teachers were using teaching styles that inspectors subjectively thought were second-rate.[35] When the former HMCI Sir Michael Wilshaw was in post, prior to the appointment of Ms Spielman, many schools started publicly airing frustrations about what appeared to them to be an unfair Ofsted grading system. A representative from one of the schools that felt unjustly graded at this time said "Ofsted shouldn't be telling teachers how to teach. They should be looking for progress in teaching and learning in particular".[36]

[34] For example, the Ofsted subsidiary guidance, supporting the inspection of maintained schools and academies, Reference no. 110166, "Inspectors should not insist that there must be three years' worth of data, or that these data must show good progress or achievement, before judging a school's overall effectiveness to be good overall. A school can be good if teaching, leadership and management, and behaviour and safety are good, and if there is sufficient evidence that progress and/or achievement of current pupils are good also. This is often the case when a school is improving from requires improvement, serious weaknesses or special measures. However, inspection reports must state clearly if this is the case." (April 2014), para. 5

[35] For example, Suzanne O'Connell, Phonics: the debate continues..., Headteacher update, 16 May 2022

[36] Jan Tallis, Chair of Forest Gate Community School governing body, by an interview with BBC Radio 4, (February 2014)

The outrage from schools led to Ofsted conceding that some inspection reports should be re-written and that inspectors were wrong to downgrade schools which were legitimately using discretion in how academic standards could be raised.

Ofsted's 'clarification for schools' guidance from 2018 emphasised the concession that Ofsted made on the back of the unfair gradings. It instructed inspectors "not [to] 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".[37] This set out the clear parameters for school inspections; inspectors were told to focus on raising school standards instead of telling teachers how to teach. The EIF (2019) also repeated this sentiment by instructing inspectors to "recognise the importance of schools' autonomy to choose their own curriculum approaches".[38]

Notwithstanding the revised Ofsted position, in practice, inspectors continued to show partiality about specific teaching styles during school assessments, either critiquing or downgrading schools on this basis. At the end of 2022, it was revealed that hundreds of schools had been downgraded within the year, following their first reinspection in years; only 17% of 370 schools inspected within the year kept a grading of "outstanding" that they had been awarded.[39]

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DD



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[37] Ofsted publication, Clarification for schools, Handbook for inspecting schools in England under section 5 of the Education Act 2005, 2018

[38] Ofsted, School Inspection Handbook 2019, para. 175

[39] Harry Taylor, Hundreds of schools in England lose outstanding status after reinspection, The Guardian (22 November 2022)

In part, the unwarranted downgrading of schools is due to the Ofsted framework which both directs inspectors away from reviewing teaching methods, and yet also necessitates that inspectors review them. The EIF shifted the role of inspectors away from acting as objective reviewers of school standards and academic achievement towards a role that requires them to homogenise teaching methods across all schools. This is a fundamental shift from the original scope of the organisation, and has lead head teachers to raise concerns regarding schools being downgrade for reasons not connected with exam results.[40] Ofsted's Director of Education stated that the downgraded schools may not have actually worsened, but instead were being graded differently under a new "challenging and exacting" inspection framework.[41]

The shift has provided the justification for inspectors with certain preferred methods of teaching to interpret the inspection criteria according to 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.

Educationalists have expressed their concerns about the EIF's focus on how to teach and how the focus has moved inspectors away from the topic of pupil attainment.[42] The 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 curriculum.[43] The Teach First Chief Executive made similar remarks, claiming that the framework was incompatible with the neutral stance on teaching methods and curriculum design that Ofsted is required to have.[44]

[40] For example, Shannen Headley, Leicester school speaks out over 'harsh' Ofsted report, The Leicester Mercury (30 December 2021); Chas Newkey-Burden, Ofsted's widespread downgrading of British schools, The Week (24 November 2022)

[41] James Carr, Downgraded 'outstanding' schools may have actually improved, says Ofsted director, Schools Week (9 November 2021)

[42] Chris Jones, Evaluating the education inspection framework: for schools and further education and skills providers, Gov.uk authored article (21 May 2021)

[43] Exclusive: MAT Chief warns Ofsted changes 'mean more work', Tes magazine (3 October 2018)

[44] Martin George, Ofsted can't impartially inspect curriculum, says Teach First, Tes magazine (2 October 2018)



ii. Ofsted is removing school's discretion in how to teach

To assess the quality of education at a school, the EIF has provided inspectors with some concrete 'good' ways of teaching subjects. Yet, considering that there are multiple opinions, conclusions from research studies, and philosophical leanings within the education community about what 'good' teaching looks like, it is curious that Ofsted has chosen to be specific about how certain topics are taught when there are many possible options that could be successfully used by teachers. 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. It is Ofsted priority for inspectors to inspect "how children are taught to read" as part of a "deep-dive" in reading, schools were required to use systematic synthetic teaching of phonics, regardless of outcomes or school preferences for other models.[45] Although this approach was part of the National Literacy Strategy[46] discussed during Wilshaw term and then enthusiastically taken up by the DfE in the Gove era, there has nonetheless been consistent debate and pushback by some schools claiming that it is not the only viable or appropriate method available; some educationalists still 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 children.[47]

Ofsted's evolving remit to decide the 'best' or 'preferred' methods and models of teaching, which it previously left to schools' margin of discretion.

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".[48] In January 2022, a group of 250 educationalists also called on the Education Secretary of State to allow teachers to use their own judgement in teaching phonics; researchers at the UCL Institute of Education had initiated this following their new research that the government and Ofsted's bias towards certain phonics teaching was "not underpinned by the latest evidence".[49]

[45] Ofsted, School Inspection Handbook 2019, para. 298

[46] National Literacy Strategy, 1998

[47] 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)

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

[49] Sally Weale, Focus on phonics to teach reading is 'failing children', says landmark study, The Guardian, 19 January 2022

So, while it may be considered reasonable for the government to pursue an educational agenda that is widely considered to drive standards for the majority of child learners, the decision of Ofsted to incorporate absolute standards about these teaching methods into the inspection framework takes the remit of the watchdog beyond having a light touch approach to raising standards and into an unnecessarily controversial area which is unpopular with some well-performing schools.

Another example of **controversy caused by the specificities of the Ofsted framework** is the phrase ‘cultural capital’ which was added to the EIF as part of the Quality of Education Judgement. Inspectors cannot score a school highly 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”. [50] 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. By adopting the phrase into the inspection regime, early-years schools are now 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’.[51]

Despite previous Ministers in the DfE endorsing 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. Considering that the concept chosen by Ofsted lacks any agreed definition or consensus in content throughout the educational community, inspectors necessarily face difficulties in applying objective criteria to schools. Critics have spoken out against the ‘paternalistic’ nature of the phrase which allows inspectors to impose their personal cultural and philosophical biases which may be contrary to those of the teachers or schools under inspection. Debates around the origin of ‘cultural capital’, 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 or parts of England have occurred since the term was first used in the educational circles. Academics in the educational field have decried the requirement placed on schools as “extraordinarily naïve”[52] and “a crude, reductionist model of learning”.[53] One educational professor has said, “Ofsted has misunderstood Bourdieu” by taking his writings in a certain way, and that “education cannot compensate for society”.[54] The introduction of vague ‘cultural capital’ criteria and the latitude left to inspectors to interpret whether a school is fulfilling its responsibilities in that area has created significant confusion and resentment toward Ofsted.

Some schools have been graded as either ‘Requires Improvement’ or ‘Inadequate’ because the “opportunities for spiritual, moral, social and cultural development are disjointed”,[55] and they have “not ensured that pupils receive a curriculum that develops pupils’ spiritual, moral and cultural knowledge and understanding”.[56] The overlap with the Personal Development Judgement is therefore evident, and neither of the reports quoted provided any constructive advice for the schools on how to develop the pupils’ cultural capital under either the Quality of Education or Personal Development Judgement.

[50] Ofsted, Education Inspection Framework 2019, at 26

[51] Ofsted, School inspection update, January 2019, at 32

[52] John Yandell, Associate professor of English, UCL Institute of Education

[53] Diane Reay, Education professor, Cambridge University

[54] Michael Young, Professor of education, UCL Institute of Education

[55] Woolenwick Junior School, inspected 12-13 February 2020

[56] De Vere Primary School inspected 18 October 201

Summary

The Ofsted desire to standardise techniques and content, ignoring teacher experience, individual pupil learning styles, a pupil's cultural background, and the school's historic approach to teaching interferes with well-performing schools' rights to run educational institutions with elective responsibility. Moreover, **it stretches Ofsted's remit beyond statutory intent into inevitably driving educational culture.** It also gives inspectors a considerable degree of discretion with how they interpret the inspection criteria.

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 over the last 15-20 years, the framework and the focuses of inspectors regarding these contested areas of teaching cannot be expected to be equally well received across the schools which have historically opted for different methods while raising academic standards.

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 continues to require standardisation for schools to pass inspections, regardless of outcomes.

SECTION B

Ofsted Inspections Cause Disproportionate Levels of Stress to the Teaching Profession



To achieve its aim of being a force for improvement in education, inspections are expected to be efficient, impartial, and thorough. Inspectors must collect evidence in a representative fashion and be unbiased in their assessment and evaluation. Schools that receive “outstanding” grades rejoice in their grades to parents, governors, and prospective pupils – regardless of educational outcomes or many specifics of operational school practice having received the spotlight. Schools that receive “inadequate” grades can be transferred to academies to ensure a greater level of external control, be put under “Special Measures”, and be assigned an Ofsted representative to “journey” with them to improve using a post-Ofsted action plan. [57]

[57] An example is King David High School Post-Ofsted Action Plan, September 2022, available at https://www.kdhs.org.uk/uploads/1/3/5/4/13549444/2022-06_ofsted_kdhs_statement_of_action.pdf, accessed 4 April 2023



A core component of a **successful and accurate inspection** is therefore the **partnership** between the **inspector** and the 'inspected'.



A core component of a successful and accurate inspection is therefore the partnership between the inspector and the 'inspected'. Essential elements for developing such an effective and efficient partnership are trust, open channels of communication, and the willingness by inspectors to understand the individual circumstances faced by teachers and leadership. Yet, **teaching staff and education professionals report among the highest levels of stress, depression and anxiety across the entire British workforce[58] and many teachers testify to such anxiety worsening with the thought of an Ofsted inspection.** Moreover, and particularly following the return to the inspection cycle after the Covid-19 pandemic, teachers and senior school leaders have been walking away from employment in significantly high numbers, with nearly one third of teachers who qualified within the last ten years leaving the profession.[59] The stress or threat of an Ofsted inspection or report has featured as a major determining factor.[60]

In a study conducted by Ofsted, teaching staff were asked to identify the factors leading to them, scoring high for stress and low for wellbeing. Ofsted inspections scored high on the list, with the factors of the 'fear' and 'threat' of inspections, and "working to Ofsted rather than student needs", being listed as reasons why. Ofsted responded to these findings by proposing that "improving and changing the nature of a relationship between Ofsted and schools" could improve the situation,[61] but there were no concrete proposals for improving processes or practices of inspections and report writing.

Essential elements for developing such an effective and efficient partnership are:

- Trust;
- Open channels of communication; and
- The willingness by inspectors to understand the individual circumstances faced by teachers and leadership



[58] 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; available at www.hse.gov.uk/statistics/)

[59] Peter Walker, Third of England's teachers who qualified in last decade 'have left profession', The Guardian (9 January 2023)

[60] Matt Powell, Ofsted inspections on top of Covid causing teachers to 'walk away' from job, East Anglian Daily Times (13 December 2021)

[61] Ofsted, Teacher well-being at work in schools and further education providers 2019, para. 146 onwards

With the introduction of the EIF in Autumn 2019, Ofsted said that it was broadening inspection focuses as a help to alleviate many of the feelings of stress experienced by teachers during inspections, including the “unnecessary workloads”. However, a few years into the new regime, with the emphasis on “deep dives” and the quality of the education provided, confidence levels among the teaching profession are not high, with reports suggesting that the root of the problem has not been adequately dealt with.

i. Inspections Cause Disproportionate Stress to Teachers



When the EIF was introduced, Amanda Spielman said that she wanted Ofsted to “move inspections more towards being a conversation about what actually happens in schools”.[62] 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; the framework emphasised the Quality of Education and Pupil Development (as two of the Key Judgements) instead of the academic achievement of pupils. However, many teachers who have been inspected under this new regime have not testified to an improved process. In fact, some have reported that their relationship with the watchdog has worsened since the introduction of the EIF. A study conducted by University College London in 2021 revealed that more than two in three teachers in England have reported being stressed compared to a global average of forty-five percent; Ofsted inspections have seemingly played a large part in this.[63]

Many teachers who have been inspected under this new regime have not testified to an improved process. In fact, some have reported that their relationship with the watchdog has worsened since the introduction of the EIF.



[62] Amanda Spielman speech to the Schools NorthEast summit, 11 Oct. 2018

[63] UCL Faculty of Education and Society, Teachers point towards school accountability as main driver of stress, 18 March 2021

In particular, the “tick-box” preparation that an inspection requires, considering the short notice given by Ofsted before an inspection, is one of the main reasons given by teachers that causes stress. One primary school Headteacher said he may “actually spontaneously self-combust” if he heard Ofsted say the words “deep-dive” again after his inspection, especially since it was proving incredibly difficult for teachers to understand what the inspection criteria was requiring of them. He said that by using different management language and inspecting lessons in a different way to the approach under the former framework, Ofsted managed to “increase workload stress and anxiety”.[64]

Ofsted managed to “increase workload stress and anxiety”.

MOST

Ofsted downgrades in 2022 were not for reasons related to the achievement of pupils

Teachers have also spoken out against the EIF’s “unfair” marking criteria. Whereas many schools were graded as ‘outstanding’ by inspectors under the former framework, the EIF’s wholesale replacement of academic improvement in favour of softer, qualitative criteria underpinning ‘Quality of Education’ and ‘Pupil Development’, has allowed inspectors to significantly downgrade them from previous inspections. This has led to high achieving schools, which did not alter teaching styles or their curriculum between inspections, to receive either ‘requires improvement’ or ‘inadequate’ grades and protest in dismay.[65] **Most (80%) of the schools previously rated ‘Outstanding’ by Ofsted were downgraded in 2022,[66] and the fall in grades bears no correlation between the grades achieved by pupils or other tangible successes of the schools.** Primary schools in Bristol[67] and Lincolnshire[68] and a pre-school in Yorkshire[69] were among many schools across the country that made formal complaints to Ofsted because their inspection grades fell sharply and starkly under the EIF without reasons relating to quantitative pupil progress a few years before, but the reports in 2022 about even more schools facing the same assessments revealed that Ofsted had not taken the concerns seriously. In November 2022, the National Education Union stated that Ofsted’s findings were “frequently unreliable”.[70] The impacts upon teachers of the seemingly unfair grades awarded has in some cases been tragic; the case of the head teacher at Caversham Primary School, Ruth Perry, exemplifies this reality.[71] The Guardian has reported that the **stress of Ofsted inspections has been cited in the deaths of 10 teachers** over the past 25 years.[72]

[64] Teachwire, “Why I hate Ofsted’s new EIF”, Teachwire blog of the Primary Head (21 January 2020)

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

[66] Hazel Shearing, Ofsted downgrades hundreds of outstanding schools in England, BBC News (22 November 2022)

[67] St Francis’s Catholic Primary School, Nailsea, inspected June 2020

[68] Surfleet Primary School, Lincolnshire, inspected July 2020

[69] Mill Cottage Montessori Nursey, inspected January 2020

[70] Hazel Shearing, Ofsted downgrades hundreds of outstanding schools in England, BBC News (22 November 2022)

[71] Elsa Maisham, Primary headteacher took her own life after Ofsted downgraded school to ‘inadequate’, The Telegraph (16 March 2023)

[72] Anna Fazackerly, Revealed: stress of Ofsted inspections cited as factor in deaths of 10 teachers, The Guardian (25 March 2023)

Unions have also been vocal in advocating the concerns expressed by teachers. The matters raised specifically include the interviewing techniques and practices used by inspectors, the large workload faced by teachers both before and during inspections, the stress caused by grades being lowered, and the lack of opportunities to positively engage with inspectors about school achievements and progress. The largest school leaders' union, the National Association of Head Teachers ("NAHT"), has stated that members think that inspectors too often form judgements on a scant and unreliable evidence base and that the experience for teachers interviewed under the EIF criteria is "brutal".^[73]

Unions have also been vocal in advocating the concerns expressed by teachers. The matters raised specifically include:

- The interviewing techniques and practices used by inspectors;
- The large workload faced by teachers both before and during inspections
- The stress caused by grades being lowered; and
- The lack of opportunities to positively engage with inspectors about school achievements and progress



Before the EIF was introduced, the DfE specifically raised concerns about how teachers would be impacted. Damian Hinds, the former Secretary of State for Education, was widely reported to have raised serious concerns with Ms Spielman about the distraction and hindrance that the EIF would cause to teachers, including by increasing their already high workload. During a Radio 4 programme, Mr Hinds refused to endorse or back the EIF,^[74] exposing the tension between the government and Ofsted.

^[73] National Association of Head Teachers, *Ofsted – a change for the better?* (2020)

^[74] Available on the BBC Radio 4 Today programme, 16 August 2018, available at <https://www.bbc.co.uk/programmes/b0bf4crx>

To try and resolve some of these issues over a year after the EIF was introduced, the DfE and Ofsted published 12 joint commitments under an education staff wellbeing charter to better protect the mental health of school staff.[75] In this document, Ofsted committed to reviewing whether the EIF had caused unnecessary stress to staff; but also noted that the promise would not result in a dedicated review of how inspections impact staff; a commitment that in reality was meaningless.[76] The National Education Union responded, “Ofsted was overpromising and under-delivering, being disingenuous in the process”.[77] The Unions felt that the promise without action showed no real desire on behalf of the watchdog to improve teacher experiences or the whole inspection process.

Notwithstanding the regulator’s Covid-19 pandemic break in school inspections, the start of the academic year 2021 followed in the same vein. Dame Alison Peacock, head of Chartered College of Teaching told the Times Education Commission of Ofsted’s “reign of terror”, with teachers facing pressure to “stick to the script” in classrooms when they should be “inspired” and “joyful”.[78]

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The stress of Ofsted inspections has been cited in

10
deaths of
teachers in
recent years



[75] Department for Education, The Education Staff Wellbeing Charter, May 2021

[76] James Carr, Ofsted branded disingenuous over wellbeing, Schools Week (14 May 2021)

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

[78] Nicola Woolcock, Teachers condemn Ofsted ‘reign of terror’, The Times (20 October 2021)

ii. Inspections Cause Disproportionate Stress to Pupils



QQ Pupils have also reported **stressful and uncomfortable experiences** with inspectors, primarily during the individual pupil interviews. OO

Negative experiences with Ofsted are not limited to teacher accounts. Pupils have also reported stressful and uncomfortable experiences with inspectors, primarily during the individual pupil interviews. While Ofsted advocates its interviewing method as a valuable area of evidence-collection, especially to identify how pupils are ‘personally developing’ and what their ‘attitudes’ are, its guidance for inspectors cautions them to be careful when interviewing children. The guidance reinforces that inspectors 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 permission.[79]

However, this has not prevented many pupils and parents feeling uneasy about the interviewing process and the questions asked to pupils during inspections. Over the past few years, many parents and pupils have accused Ofsted of not having regard to their legitimate views or being sensitive to their religious and cultural background in their questioning, as required by law and guidance.[80]

[79] Ofsted guidance, Inspectors talking to pupils under inspection, updated on 19 April 2021

[80] Section 117(2) of the Education and Inspections Act 2006

Even under former inspection frameworks dating back to 2014, the focus on the values underpinning the 'Personal Development' Judgement were troubling for interviewees who held faith-based or conservative views. In particular, pupils reported being upset, uncomfortable or distressed by some of the questions that inspectors asked them. Inspectors' pupil interviewing at independent faith schools has revealed some of the most concerning examples, including inspectors probing primary school students on their views on sex and morals before the introduction of Relationships and Sex Education statutory guidance in 2019. Examples included 11-13 year-old pupils at a Christian school being asked, to the point of upset, whether they had ever met any gay or bisexual people;^[81] the questioning of Orthodox Jewish primary school pupils about whether they knew how babies were made and whether they knew any homosexuals;^[82] and the questioning of Muslim girls at a primary school about whether they wore a hijab. The backdrop here was HMCI's assertion that hijabs could be interpreted as "sexualisation".^[83] In all examples, the parents and teachers at the school publicly spoke of their cases in the media due to the futility of using Ofsted's internal complaints processes.

Most concerning examples:

- Questioning primary school students' views on sex and morals
- Questioning 11-13 Year-old pupils at a Christian school whether they had ever met any gay or bisexual people
- Questioning of Orthodox Jewish primary school pupils whether they knew how babies were made and whether they knew any homosexuals
- Questioning of Muslim girls at a primary school about whether they wore a hijab

Should Ofsted inspectors who have only just met the children be able to ask them such questions in closed spaces?

[81] Eleanor Harding and Mrio Ledwith, Is anyone in your school gay? The 'inappropriate' Ofsted questions for children aged just 11 at school where children were branded bigots, The Daily Mail (22 January 2015)

[82] Ofsted denies 'bullying and traumatising' Jewish kids, Jewish News (14 October 2014)

[83] Josh Halliday, Ofsted accused of racism over hijab questioning in primary schools, The Guardian (28 November 2017)



QQ A narrow view held by Ofsted that **only pupils who could speak knowledgably and affirmatively about modern sexual lifestyles** could be deemed tolerant and respectful persons; and only sexually knowledgeable pupils **could lift school grades.** DD

Ofsted indicated that sensitive personal questions should still be asked to pupils under the EIF to indicate whether the pupils were adequately developing personally and socially and whether the school was promoting respect for the protected characteristics (under the Independent School Standards Regulations 2014). One inspection report under the EIF said that due to having “restricted access to pupils and limitations on [discussing marriage, gender reassignment, and religion]”, inspectors’ ability to determine compliance with the independent school standards was “inhibited”. Further, in a different primary school, inspectors 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”.^[84] Both these examples illustrate a narrow view held by Ofsted that only pupils who could speak knowledgably and affirmatively about modern sexual lifestyles could be deemed tolerant and respectful persons; and only sexually knowledgeable pupils could lift school grades. Another Ofsted report stated, “pupils cannot show respect for those groups [choosing different sexual lifestyles] of which they are unaware”,^[85] a finding such as this against a religious school would constitute a failure of the ‘Personal Development’ criteria.

[84] Shiras Devorah school, inspected 12 February 2019

[85] Keser Girls School, inspected 10-12 December 2019

Summary

Data shows clear correlation within the teaching profession between the timings, processes, and reports of Ofsted inspections and the unnecessarily high levels of anxiety and fatigue felt by teachers. In the aftermath of head teacher Ruth Perry's death, many educationalists have started speaking out about just how bad inspections are for teachers' mental wellbeing. Head teachers across the country have spoken out in "fury" about the cumbersome and inappropriate types of inspections that schools have had to become accustomed to over the past few years, with solidarity being expressed through the wearing of black armbands across many schools for the teachers that have been affected the worst.

The factors that contribute towards the immense level of strain that Ofsted has put the teaching profession under are numerous.

These include the short timeframe by which an inspection is announced to a school; the narrow and subjective focus that an individual inspector may have when approaching a school; the unpredictable nature of how an inspector will assess pupil achievement; the overly simplified method for inspectors to grade schools; and the almost impossible avenues for challenging unfair reports.

It will only be through a large-scale independent review into the nature and consequences of the impact that inspections are having on the teaching profession, as well as upon pupils when inappropriate interviewing methods have been used, that will suffice to satisfy an already overwhelmed profession that the watchdog is willing to overhaul its practices. The reforms that Ofsted make to its entire regime are dependent upon this first, foundational evaluation.

SECTION C

Inspector Decisions Are Not Transparent

Political, cultural, and religious pluralism are frequently cited as hallmarks of a democratic society. 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". Exploring this concept further, the watchdog stated, "[t]here is no tension between this and religious pluralism. In fact, any proper teaching of fundamental British values encourages respect and tolerance for others' views".[86]

Ofsted has faced criticism on numerous occasions for failing to promote religious pluralism alongside, or even as an equal to, educational values.



A commitment to "pluralism" is a statutory duty for a public sector organisation as contained in the 'Public Sector Equality Duty' at Section 149 of the Equality Act 2010 ("PSED"), which requires decision-makers 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 duties. The duty is applicable to Ofsted as a public body.[87]



[86] Ofsted, The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2016/17, (December 2017)

[87] Equality Act 2010, s.149

However, Ofsted has faced **criticism on numerous occasions for failing to promote religious pluralism on an equal basis to other, aspects of societal pluralism.** Representatives from the major faith communities have repeatedly raised concerns about Ofsted's perceived bias and lack of impartiality in its dealings with faith communities as can be seen in the harsh assessments made by Ofsted inspectors when assessing faith schools. Many of these concerns have been raised directly to Ofsted by members of the EdSC during Parliamentary Accountability Hearings.[88]

Jewish independent schools

63%
less than
'good'

vs

All independent schools

23%
less than
'good'

Jewish independent schools

33%
'inadequate'

vs

All independent schools

10%
'inadequate'

[88] Ofsted, The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2016/17, (December 2017) [87] Equality Act 2010, s.149

Over the past few years, faith schools appear to have suffered among the worst Ofsted grades, regardless of the academic achievement of pupils or the improvements of standards since the previous inspection. Ofsted's published statistics show that independent Jewish schools are three times more likely to be rated 'requires improvement' or 'inadequate' than other independent schools. 63% of Jewish independent schools are rated less than 'good' with 33% 'inadequate', while for all independent schools the comparative figures are 23% and 10% respectively.[89] When directly challenged by a leader of the Jewish faith community about why Jewish schools appeared to repeatedly face poor grades (not justified by pupil's academic achievements), and whether the inspectorate would allow schools and parents leeway in teaching sexual topics if they taught them in accordance with the law, Amanda Spielman gave no ground. She responded by saying that the nature of the British State has changed since the late 1800s sufficiently to now legitimately limit minority group beliefs in schools, even when parents and teachers thought that other approaches are in the best interests of children.[90] Spielman has also repeatedly brushed off accusations of 'secularist bias' when asked about it by Members of Parliament, but without providing evidence to the contrary.[91]

Yet, as widely understood, "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".[92] Moreover, DfE statutory and non-statutory guidance explicitly grants leeway to faith schools in how they teach certain subjects, such as the more sensitive personal, sexual and social development topics. Inspection reports often do not note this discretion.

While this paper does not make a definitive accusation of bias against the inspectorate, the notable examples of how **Ofsted may be perceived to act in a biased manner against schools of a religious or faith ethos must form part of any conversation regarding reform of Ofsted.** In consideration of the foregoing, it is reasonable to assume some level of bias based on how the inspectorate engages with certain schools, highlighting preconceived negative ideas prior to and during the inspections themselves.



Ofsted may be perceived to act in a biased manner against schools of a religious or faith ethos must form part of any conversation regarding reform of Ofsted.



[89] Ofsted official statistics, Main findings: non-association independent schools inspections and outcomes in England, updated 28 January 2021

[90] The Eli Spitzer Podcast, In conversation with HMCI Amanda Spielman (18 October 2020)

[91] John Cosgrove, Ofsted needs proper oversight, The Jewish Chronicle, 7 December 2021

[92] Iain Mansfield and Tim Clark, The Watchmen Revisited: Curriculum and Faith in Ofsted's new Inspection Framework, Policy Exchange (4 February 2020), page 34



i. Preconceived bias

In conducting a section 5 inspection, Ofsted must have regard to any views expressed to them by the head teacher, members of staff, registered pupils and their registered parents and the governing body or proprietor.[93] Nonetheless, a consultation of stakeholders brought together by the National Audit Office (“NAO”) in a recent review of Ofsted spending and practices revealed that many individuals in school senior leadership positions stated that inspectors enter into schools with pre-conceived ideas and views regarding the outcome of the inspection. The stakeholders assumed that these ideas were formed prior to any formal educational review within the schools.[94] Furthermore, the terse inspection reports written by Ofsted inspectors do little to allay fears of bias as the limited text does not reveal any significant reasoning for why a particular grade is given to a school.

Under former inspection frameworks, ‘bias’ was a major criticism of Ofsted from both Muslim and Christian schools when surprisingly poor grades and the weak Ofsted complaints process gave the schools no option but to pursue legal action in the courts or face the negative consequences of a lowly-graded report; including possible closure. For example, facing the disclosure of an inspection report which would bear detrimental consequences for the school in question if publicly released, an Islamic faith school in Birmingham applied for judicial review – the school sought an order preventing the publication of the report and quashing its findings. In finding for the school, the judge agreed with the school’s position and held 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”. [95] It was not just the case that the school thought it was being judged prejudicially due to its Muslim ethos; the judge ruled that inspectors were biased, and this influenced the report.

Around the same time, Christian independent schools from the North of England shared their concerns of religious bias within Ofsted with the media and to Ministers, leading to the former Education Secretary having to defend Ofsted’s actions to Parliament.[96] Ofsted required the first Christian school to close just a short time after opening,[97] and the other to be placed under a different governance structure.

[93] Education Act 2005, s.7

[94] 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

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

[96] Emily Gosden, British Values rules to blame as Christian school placed in special measures, The Telegraph (20 January 2015)

[97] House of Commons Hansard, Education, 19 January 2015, Volume 591

Remarkably similar complaints about Ofsted hostility based on preconceived and biased ideas about the 'Quality of Education' and 'Pupil Development' in religious schools have also been made by the Jewish Orthodox School representatives to the Secretary of State for Education. On numerous occasions, the group has claimed that a "climate of hostility"[98] had been exhibited by Ofsted inspectors at Jewish schools, and that the high number of no-notice inspections targeting the schools in the network further illustrated this point.[99]

In the face of complaints raised by Christian, Islamic and Jewish schools, alleging prejudicial attitudes towards independent schools of a religious nature, the terse and uninformative thinly evidenced inspection reports do little to foster transparency. In responding to allegations of anti-religious bias in Ofsted, Amanda Spielman and Dame Christine Ryan adopted a defensive posture before the EdSC dismissing the accusations without providing any clear evidence to the contrary.[100]

Ofsted will continue to face criticisms of favouring certain types of schools at the expense of others, this is compounded by the very limited information provided on EIF reports leading to the apprehension that the disproportionate criticism of religious schools is not well founded but driven by anti-religious bias.

QQ In the face of complaints raised by Christian, Islamic and Jewish schools, alleging prejudicial attitudes towards independent schools of a religious nature, the terse and uninformative thinly evidenced inspection reports do little to foster transparency.



ii. Inspection bias

Any appreciation or acknowledgement of the degree of leeway available to religious schools to decide when and how they introduce and explain culturally non-religious lifestyles to pupils is noticeably absent from inspection reports. An analysis of inspection reports of religious schools confirms the concerns of some leaders of independent faith schools that Ofsted bows to pressure from secularist organisations with a specific anti-faith agenda,[101] and criticism from the Policy Exchange on Ofsted's negative inspections of faith schools[102].

[98] National Association of Jewish Orthodox Schools (NAJOS) letter to Nicky Morgan MP in 2014

[99] See also, John Cosgrove, Ofsted needs proper oversight, The Jewish Chronicle (7 December 2021)

[100] For example, see Education Committee Oral Evidence Session: Accountability Hearing with Dame Christine Ryan (14 September 2021)

[101] Almost 700 Charedim hold prayers over Ofsted challenge to religious education, Jewish News (19 June 2018)

[102] Iain Mansfield and Tim Clark, The Watchmen Revisited: Curriculum and Faith in Ofsted's new Inspection Framework, Policy Exchange (4 February 2020)

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 Regulations require, the reflection of the “school’s ethos”.**[103]

Leaders of faith schools have raised concerns with the EdSC on numerous occasions about their concerns that there is systematic bias against their schools by Ofsted inspectors. While some Ofsted inspections have uncovered serious educational poor practice and buildings safety concerns which faith schools have acted to resolve, a large proportion of inspection reports that have graded faith schools as ‘Inadequate’ or ‘Requires Improvement’ cite reasons unrelated to educational attainment or facilities management.

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As observed by the Policy Exchange, there is a “perceived suggestion by Ofsted that freedom of religion should be limited to the private sphere”. [105] 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 beliefs, [106] and the repeated sexuality education focus of inspectors in religious schools reveals this. The 2019 Ofsted Annual Report showed that only 39% of Orthodox, independent Jewish schools were rated as ‘good’ or ‘outstanding’ for the year, compared with 76% of independent Christian schools and 80% of 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 schools. [107] Academic excellence in Jewish primary schools is frequently overshadowed by the pupils’ lack of sexual knowledge; and the Telegraph has reported that “gender identity” is a prominent factor for Ofsted downgrading primary schools, particularly faith schools. [108]



[103] The Education (Independent School Standards) Regulations 2014, Regulation 2 2(d) (i)

[105] Iain Mansfield and Tim Clark, *The Watchmen Revisited: Curriculum and Faith in Ofsted’s new Inspection Framework*, Policy Exchange (4 February 2020), page 9

[106] Amanda Spielman’s speech at the Church of England Foundation for Educational Leadership, 1 February 2018

[107] Ofsted, *The Annual Report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills 2018/19*, at Figure 23

[108] Ewan Somerville, *Ofsted cites lack of gender identity lessons as factor in primary school grading*, *The Telegraph* (18 June 2022)

Orthodox, independent
Jewish schools

39%
'good' or
'outstanding'

Independent Christian schools

76%
'good' or
'outstanding'

VS

All non-faith independent
schools

80%
'good' or 'outstanding'

However, Ofsted's limiting approach on sexuality education should be queried in light of the wider freedoms granted for faith schools in statutory texts and governmental guidance. When Relationships and Sex Education (RSE) was made mandatory by the DfE in 2020, the statutory guidance affirmed that a 'balanced debate' may take place when religious schools or religiously-minded educators teach about distinctive faith perspectives on sexual and contentious issues[109]. 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".[110] 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",[111] 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 faith.[112] The government therefore leaves schools considerable discretion in this matter, a fact that is consistently ignored by Ofsted inspectors.

[109] 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

[110] 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

[111] Department for Education, The Independent School Standards: Guidance for independent schools 2019, para. 2.16

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

Summary

The allegations of bias against certain types of schools are numerous, wide-ranging, and perceivable by objective third-parties, such as the judiciary. The lack of accountability applied to Ofsted exacerbates the issue, because schools that feel like inspectors have an agenda that is not strictly related to the academic achievement of pupils under inspection, are unable to prove their suspicions in time for reports to be published; this causes greater tension between Ofsted and schools. Particularly with the gradual shift of Ofsted away from quantitative to qualitative data collection and analysis, a lack of objectivity and transparency from inspectors can be easily exposed.

Moreover, without a satisfactory response by Ofsted to the specific allegations of bias from faith-ethos schools, trust from the country's religious schools will not be forthcoming. Ofsted needs to reaffirm the commitment to recognise the value of pluralism in education and the discretion of schools to teach topics in a culturally and religiously appropriate manner recognising the distinctive backgrounds of pupils and parents.

SECTION D

Ofsted Lacks Sufficient Accountability

As an independent Non-Ministerial Department with delegated power to conduct inspections, Ofsted was created to be free from political involvement in operations, direct inspections oversight, and inspection judgements. Ofsted frequently highlights its independence to assess educational standards in schools and to produce policy recommendations for the DfE.

Ofsted does not report as directly to the Secretary of State for Education following the same format that other Non-Ministerial Departments operate, such as Her Majesty's Revenue and Customs, the Forestry Commission, and UK Trade and Investment. Its accountability relationship is described as 'impartial and independent', and instead relies upon a thin layer of parliamentary accountability. The Chief Inspector of Ofsted, Ms Spielman, is called before the Education Select Committee at least annually, and the Chair of Ofsted, Dame Christine Ryan was called for an accountability hearing for the first time in September 2021.

Ofsted faces another indirect layer through the government's NAO which periodically reviews the technicalities of performance and spending of the body. The Chief Inspector is also personally accountable for her use of resources; her appointment is by Her Majesty by Order in Council.[113]

Yet, the NAO has concluded that arm's-length bodies such as Ofsted are "confused and incoherent" with no "consistent overarching framework" overseeing how they are run and civil servants do not know how to interact with it or exert accountability.[114] A former non-Executive Director at the DfE has observed of both Ofsted and Ofqual, "Ironically, [they] were created to ensure that those with operational responsibility would be discrete, expert and accountable. In practice they result in no one knowing where accountability lies at all".[115]



[113] Education and Inspections Act 2006, section 113



[114] National Audit Office, Departments' oversight of arm's-length bodies: a comparative study, HC 507 Session 2016-17 (5 July 2016)

[115] Paul Marshall, former lead non-Executive Director at the Department for Education, Six ways to fix our failing government, Unherd (2 September 2020)

Challenging reports in the courts by judicial review is also very difficult for schools. Notwithstanding the high cost burden that schools need to consider in advance of instructing lawyers, the main grounds of challenge in a judicial review are limited; namely illegality, irrationality and procedural impropriety. As has been illustrated by The Old Co-operative Day Nursey case ruling, mere complaints made about inspections are unlikely to be sufficient for a court. Here, it was alleged that the inspector had been demeaning to staff, had behaved autocratically and unreasonably and had failed to put her concerns to the manager of the institution before reaching conclusions, but these were dismissed by the judge.[116]

The 'high stakes' for schools following Ofsted inspections show the need for strong accountability mechanisms for the inspectorate. Accountability is also critical to build public and Parliamentary confidence, particularly when serious accusations, such as bias, are made against the public body.

Yet, gaps in both the depth and breadth of accountability for reporting and decision-making are evident and should be resolved in both the practice and operations of Ofsted. It is recommended the Chair of Ofsted reviews the following as part of her strategy for the next few years.

 The 'high stakes' for schools following Ofsted inspections show the need for strong accountability mechanisms for the inspectorate. **Accountability is also critical to build public and Parliamentary confidence,** particularly when serious accusations, such as bias, are made against the public body. 

i. Inspection summaries do not provide enough feedback to schools

When the Common Inspection Framework ("CIF") was replaced by the EIF in Autumn 2019, 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 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 the EIF, inspectors were given a large degree of discretion in how to write reports. Within a limited amount of space, inspectors were given the freedom to 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.

[116] The Old Co-operative Day Nurseries Ltd v Ofsted [2016] EWHC 1126 (Admin), paras. 61-62

Evidence and examples cited to justify grades were lacking.



One year into Ofsted using the abridged and summarised reports, teachers 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”[117] were coupled with the feeling amongst school leaders that reports could easily ignore the merits and achievements of the school, with inspectors focusing instead just upon the negatives.[118] This was combined with the limited ability of schools to understand inspectors’ evidence-base and reasoning behind judgements.

Common Inspection Framework (“CIF”) vs New (from Autumn 2019) Education inspection framework (“EIF”)

- The CIF standard reports used to include a thorough list of evidence findings per inspection judgement criteria, and a summary of key findings for parents and pupils
- The EIF contains a relatively short and condensed summary document
- Under the EIF, inspectors get a large degree of discretion in how to write reports
- 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



[117] Alex Ford, An early verdict on the new Ofsted framework, Schools Week (13 October 2019)

[118] The Newsroom, Halifax headteacher criticises Ofsted for “inaccurate” and “misleading” report on school, Halifax Courier (14 January 2020)

When schools are graded 'Inadequate' after a full two-day inspection or a short one-day inspection, EIF 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 schools that receive a 'Requires Improvement' overall grade 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.

Moreover, short reports limit the general trust that schools have in the inspectorate and stands contrary to the principle of fair and open disclosure about evidence behind judgements. In *PB v The Information Commissioner*, a College had been placed in 'special measures' following an adverse Ofsted report which was published just four months after a satisfactory report. A parent of a pupil made a request to Ofsted under the Freedom of Information Act 2000 for information relating to the inspection, including notes, minutes of internal meetings and emails. Ofsted refused the request on the basis that disclosure would, or would be likely to, prejudice the exercise of its statutory functions.^[119] However, the tribunal observed that no proper evidence of this had been put forward by Ofsted ordered disclosure. It also found that even if there had been such prejudice it would have been outweighed by the public interest in disclosure, stating, "Disclosure of the underlying evidence would enable a diligent and fair-minded observer from the local community ...to satisfy himself that the report did not explain the dramatic change in the assessment of the school's performance. If it did, that would do much for parental and community confidence in the adoption of special measures, if it did not, then it would enable those concerned with the future of the school to challenge what was taking place at Ofsted's behest".^[120]

Short reports limit the general trust that schools have in the inspectorate and stands contrary to the principle of fair and open disclosure about evidence behind judgements.

ii. The complaints process is weak

The Ofsted complaints procedure has faced serious criticisms for many years, and despite it undergoing reform in 2020 and Ms Spielman publicly recognising that Ofsted will have to change the processes in early 2023,^[121] the inherent weaknesses remained unresolved. After receiving a final inspection report, schools have a 5 working-day window to raise an issue and then a two-stage internal review of the complaint by the Ofsted team, if the complaint is to progress. 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 or order a re-inspection.

^[119] Section 31(1)(g) of the Freedom of Information Act 2000

^[120] *PB v The Information Commissioner* [2017] UKFTT 2015_0294, [2017] ELR 176, para.42

^[121] John Roberts, Ofsted chief: Complaints process not 'satisfying' schools, *Tes Magazine* (10 March 2023)

ICASO is comprised of lawyers whose focus is instead on the process Ofsted has followed in handling the complaint, not on whether the judgements are well-founded in evidence, and its decisions are non-binding.[122]

Public organisations, including state schools, do not have the right to make a complaint to the Parliamentary Ombudsman outside this process. When it comes to the fairness of school grades, therefore, the responsible body for reviewing Ofsted complaints cannot be seen to exhibit complete independence.

This insular process has caused significant concerns and calls for reform throughout the education sector. According to a curriculum and inspection specialist from the Association of School and College Leaders (ASCL), “school leaders have little faith in Ofsted’s complaints process”.[123] Even outside the complaints process, 50% of all schools graded ‘Inadequate’ consider their inspections to be unfair.[124]

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In January 2020, a Stockport comprehensive school similarly faced issues with Ofsted’s complaints process, leading to the head teacher resigning. The head teacher 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 school’s 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”.[125]

[122] Independent Complaints Adjudication Service for Ofsted, An introduction from the Senior Adjudicator

[123] John Roberts, Heads say Ofsted complaints plan doesn’t go far enough, Tes magazine (4 March 2020)

[124] 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

[125] Donna Ferguson, “I’ve been a head for 17 years. Now Ofsted has driven me out of the job I loved”, The Observer (18 January 2020)

Considering the lack of substantive challenge options available to schools prior to Ofsted publishing a report that they disagree with, schools with substantial financial backing are able to apply to a court to quash the report and restrain its publication pending the outcome, or to lodge a claim in the County Court if the claim relates to a contravention of the Equality Act. Yet, in addition to the high fees, which are ordinarily up to £50,000 for a standard judicial review and with the potential to additionally pay the legal costs for the other party, pursuing litigation is unattractive to most schools because it prolongs the acrimonious situation and the outcomes can be very unpredictable. Ofsted's current complaints procedure also suggests that it will not normally withhold publication pending any legal challenge,[126] which acts as a further disincentive to challenge a report. This principle remains from the judgment in *R (City College Birmingham) v Ofsted*, where it was held that courts will only grant injunctive relief restraining a publication of a report pending a claim for judicial review if "there are the most compelling reasons", "exceptional circumstances", or "exceptionally strong grounds".[127] This constitutes a very high threshold.

“Ofsted is a machine you can’t beat”.

Donna Ferguson, The Observer



Before the complaints process was simplified in the latest iteration of internal Ofsted process changes, the Durand Academy Trust, which had been rated 'Inadequate', applied to court via judicial review to challenge the report. The school had been put under mandatory special measures as a result of the 'Inadequate' grade,[128] and the High Court Judge handed down some revealing observations about the complaints process. He concluded, "The absence of any ability effectively to challenge the report renders the complaints procedures unfair and, in my judgment, vitiates the report".[129] Although the Court of Appeal overturned this decision in favour of perceived fairness throughout the 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,[130] and other types of complaints such as those relating to inspector conduct and processes which could be investigated at complaint stage.[131]

In June 2021, Christian Wakefield MP raised the matter of the inadequate complaints process with Ms 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". Ms Spielman maintained her stance that the complaints process would not change,[132] a position that she has only started to review recently.[133]

[126] As articulated in paragraph 15 of the previous complaints process

[127] *R (City College Birmingham) v Ofsted* [2009] EWHC 2373 (Admin) [2009] ELR 500, paras.28-29

[128] Section 44(1) of the Education Act 2005

[129] *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



[130] Former Ofsted complaints process, para. 14

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

[132] House of Commons Education Select Committee Hearing, 15 June 2021, Q827 onwards

[133] John Roberts, Ofsted chief: Ofsted complaints process not 'satisfying' schools, *Tes Magazine* (10 March 2023)

Making a compelling case for reforming the procedures to bring greater equitability for schools, a TES investigation revealed 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”.[134] 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 required.[135] With inspectors using 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”[136] of the evidence, rendering the process even more unaccountable.

 **The new framework lends itself even more to inspector “misinterpretation” 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 2020. It was proposed that schools would have the opportunity to challenge the factual accuracy of draft reports before they become final,[137] but that the complaint would still be reviewed by Ofsted staff. While this constituted a step forwards, the changes still ignored the concerns that had been fed back to the watchdog during the consultation; namely that the complaints process remained too limited and insular.

iii. Parliamentary scrutiny is weak

At present, Ofsted inspection reports do not receive external scrutiny; they are de-facto accepted as valid appraisals of schools’ educational standards. When called to the EdSC for an accountability hearing, the Chief Inspector faces a series of questions from Members of Parliament on a range of topics, and the answers provided are usually received as the final opinion on the matter. Inspection reports are not individually reviewed by the EdSC, and the absence of an inquisitorial-style system results in responses to various questions being accepted with little further analysis. For instance, when HMCI was questioned about whether she had 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 Lords,[138] Spielman responded “To my knowledge, we haven’t”. This response elicited no further investigation, interrogation, or follow up.[139]

[134] Charlotte Santry, Exclusive: the virtually impossible task of overturning an Ofsted verdict, Tes magazine (12 June 2007)

[135] National Governance Association news, Governance not consistency recognised in new Ofsted inspections, report finds, 20 March 2020

[136] Freddie Whittaker, Heads demand independent panel to handle Ofsted inspections, Schools Week (4 May 2019)

[137] Changes to Ofsted’s post-inspection processes and complaints handling: proposed improvements, 16 July 2020

[138] House of Lords Hansard Volume 803, Schools: Relationships and Sex Education, 12 May 2020, per Lord Polak

[139] Education Select Committee: Ofsted Accountability Session, April 2020



A pertinent example of the lack of follow-up made by the EdSC to the detriment of two schools was the commitment made by former Chief Inspector Sir Michael Wilshaw, to investigate the evidence-base behind damaging Ofsted reports at two independent Christian schools. Following complaints made against Ofsted's handling of the inspections, in which inspectors questioned children about sex issues in order to find out their views, Sir Michael assured the Committee that there had been a "thorough" investigation into the complaints. He affirmed to the EdSC, "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 MPs.[140] However, a Freedom of Information request on the matter later revealed that none of the parents, staff or pupils who had made the complaints had been interviewed before or after the Chief Inspector's appearance before MPs.[141] The EdSC did not have the capacity to investigate further, and the matter was dropped.

While the NAO performs an auditing role in overseeing 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 made to Parliament. The gap lies in assessing whether inspector judgements are based upon robust and impartial evidence.

QR There is a gap for **scrutinizing value judgements** about schools and policy recommendations made to Parliament. DD

[140] Reassurance made by Sir Michael Wilshaw during the 28 January 2015 Education Select Committee hearing

[141] Josh Bingham, Ofsted accused of whitewashing inquiry in Christian schools' 'British values' complaints, The Telegraph (5 May 2015)

Summary

Ofsted inspections have been described by practitioners as “**high stakes accountability**”,^[142] but yet the consequences for schools of poorly graded inspection reports are tremendously significant. After being graded as ‘Inadequate’ by a small team of two or three inspectors over the two-to-three-day inspection, schools face: a) conversion to an academy;^[143] b) the school governors or academy trustees taking action to replace the senior school staff; or 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.

It is therefore pertinent to observe that Ofsted, the arms-length body that has an extraordinarily large remit to shape the education sector and ordain the future viability of schools, has such limited accountability applied to its decision making.

Accountability needs to be applied to inspectors for writing individual inspection reports, and to Ofsted in general for its general processes, expectations, and methods.

^[142] 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

^[143] Conversions to Academies are for Maintained Schools only, under the Education and Adoption Act 2016

8 RECOMMENDATIONS from Positive Ofsted Reform

There is an opportunity for the Ofsted Board to prioritise reform and accountability of Ofsted before it appoints its new HMCI at the end of 2023.

Positive Ofsted Reform
recommends the
following



1

Ofsted should commission an urgent independent review into the causes and impacts of inspections upon teachers, school management and pupils

A nationwide, independent review into the stress, anxiety, and wider impacts of Ofsted inspections should be commissioned. The review should include opinions of teachers from a range of schools around the country and should be publicly published. The Ofsted Board should present the findings to Parliament alongside an action plan of how to resolve the negative impact of inspections in a root and branch manner.

The review should include an analysis of the methods and techniques used by inspectors to gather evidence from teachers and pupils, and the impact that these have on individuals. Considering that inspectors started additionally inspecting Relationships and Sex Education material from September 2021, the purpose and methods of interviewing pupils, especially those from faith schools, should be reviewed to ensure it is an appropriate and culturally sensitive tool of data collection.

2

Inspectors should receive training about different types of faith schools and teaching methods

Ofsted should ensure that the training of inspectors is from a range of organisations, including representation from secular and religious groups, and HMCI should report on the training of inspectors to the EdSC. This will increase the confidence of schools in inspector neutrality and will help with the ongoing accusations of bias against faith schools.





3

Reports should be evidence-based

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. Ofsted should review whether this template or an updated one should be used to substantiate decision making and build greater confidence with schools.

4

A plan for increasing avenues of constructive dialogue with teachers and management should be established

Ofsted should establish a formal roundtable for long-term collaboration with leaders from all types of schools within its remit and publicly record the findings annually. The salient points of feedback from educationalists should be discussed in EdSC meetings annually, including opinions and feedback related to the inspection framework and methods of evaluation.

5

The 4 Key Judgements and grade structure should be reviewed

The statutory judgement of 'Achievement of Pupils' should be revisited alongside other objective criteria to be used by inspectors. The 'Personal Development' and 'Behaviour and Attitudes' Judgements should be clarified in the Handbook to ensure that inspectors are not able to use inappropriate interviewing to determine school progress, and to ensure that subjective values are not introduced into reports.

With such a fundamental shift in Ofsted's role in school inspections away from original intention, it is also advised that the Education Select Committee should undertake a formal review of how the framework aligns, or does not align, with legislation.

The grading categories should also be reviewed, based on a consultation from the education community, to identify a more suitable system to assess how a school has performed. The four grades ought to be reconsidered, in addition to the final award of a single grade. The feedback given to schools ought to be more nuanced and less focused on a one-word evaluation.

6

The complaints process should have an independent adjudication component

Ofsted should introduce independent adjudication into its complaints process to give schools the opportunity to contest and overturn inspector judgements in instances when they 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 an external mechanism, Ofsted will continue to, in effect, hold absolute discretion.

NAHT have proposed the creation of a new independent appeal body following "irrational or unfair" Ofsted judgements, and this external body of education experts should sit at stage 3 of the complaints process.

This is required to order Ofsted to request a re-inspection of a school when the evidence base was lacking or judgements unsubstantiated, or to withhold a report being published while facts are verified after being contested. The process of reviewing the evidence on which the judgements are made could be given more credence and confidence by schools if reports were to be externally reviewed when contested.

As a comparison to Ofsted's current processes, the third stage in an Independent Schools Inspectorate ("ISI") complaint requires all documentation to be sent to an independent adjudicator for review, which can demand amendments be made to the reports if the evidence requires it. The independent adjudicator can also require that a different performance procedure for inspectors or staff is used; a partial re-inspection as required, at ISI's expense; or a further full inspection is required at ISI's expense.^[144] This process provides a second opportunity for a school to be graded justly and equitably, if they consider the first report to be evidentially weak and incorrect.

7

HMCI should be more accountable to the Board for operational decisions

The Board ought to bear responsibility for holding Ofsted to account for operational decisions, considering the breadth of operational oversight taken by HMCI. A structured hearing session should be periodically established for the Board to ask questions of an operational nature to HMCI, prior to the Chair attending EdSC Accountability Hearings.

The Board ought to be able to sample-check the complaints received to Ofsted, to ensure that they are dealt with expeditiously and fairly.



^[144] Independent Schools Inspectorate Complaints and Review Procedure June 2018

8

Ofsted should face more robust parliamentary scrutiny through thematic deep-dives

A new and independent body for overseeing the substantive judgements of inspectors should be created to assist the EdSC bring accountability to Ofsted. It is recommended that an Independent Commission for Education Provision (ICEP) be established to conduct thematic deep dive reviews from Ofsted inspection reports; report to the EdSC about the impartiality and priorities of Ofsted; and report to the EdSC about the complaints process and judicial proceedings relating to Ofsted and inspected schools. ICEP should carry out a small number of well-prioritised, well-evidenced thematic reviews on strategic issues, and directly report to the EdSC about areas of interest - whether sparked by ministerial inquiry or by repeated media concern about a certain matter. The EdSC is currently not equipped with the requisite time or resourcing to undertake this role internally.

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, ICEP 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.

It is further recommended that the EdSC document oral commitments made by Ofsted representatives during oral hearings as action points, to be referred to at the next hearing and publicly publish the commitments made by Ofsted representatives in response to challenges or questions from the Committee.



Conclusion

This paper has presented some of the trends and issues with Ofsted's applied remit and the lack of transparency behind its decision-making and has highlighted some of the reasons why the watchdog has recently received unprecedented levels of criticism. 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 felt by inspections which detracts away from teaching priorities. Parents and communities have also expressed concerns when their satisfaction levels are high with a school and they see children academically progressing well, but inspectors downgrade schools based on, for example, not teaching British Values in accordance with inspector definitions.

Without positive reform for Ofsted, the following three issues will persist:

First, well-performing schools which facilitate good outcomes for pupils and teach a rich curriculum of academic and personal development for pupils, will continue to receive negative grades simply for not adopting Ofsted-recognised teaching methods or content. Along with the stress that an Ofsted inspection often causes to teachers – especially those who are aware of the differences in their teaching methods compared to the EIF – low Ofsted grades leave well-performing schools at the mercy of inspectors' educational philosophy. As outlined in the body of this paper, schools graded overall as 'Inadequate' are often hindered in their ability to continue as reputable educational establishments.

Second, accusations made against Ofsted about ‘anti-faith’ bias are likely to persist unless greater transparency and accountability are pursued by the watchdog. 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”[145] – yet this cannot be evidenced by the way that inspectors have been assessing orthodox faith-schools. With Spielman’s comments about the nature of the state implying that she believes the inspectorate is entitled 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, schools will continue to lack the ability to challenge inspection reports, except via the courts. This leaves schools at the mercy of Ofsted as to whether an inspection report is evidentially fair and justified in analysis. In the event that a school fundamentally disagrees with the decision making of the inspector, there are currently only limited, or no, avenues for the decision to be overturned. Lodging a complaint with Ofsted rarely achieves a decision reversal.

Ofsted should be reformed to ensure transparency and accountability, to promote trust in schools, and to increase respect for, and positive influence of the inspectorate on, the education system.

[145] Iain Mansfield and Tim Clark, *The Watchmen Revisited: Curriculum and Faith in Ofsted’s new Inspection Framework*, Policy Exchange (4 February 2020), page 34

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Positive
Ofsted
Reform

ABOUT

Positive Ofsted Reform is a group of practitioners who are passionate about advocating for Ofsted reform. We have experience of how Ofsted has overstepped its remit and we think that this is bearing negative consequences for schools, teachers, and the wider community.

Our open letter to Ofsted received the support of over 700 people, including current and former inspectors, education organisations, current and former teachers, head teachers, parents, and academics.



Positive
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Reform

positiveofstedreform@gmail.com | www.positiveofstedreform.com