

The right balance

Conflicts of interest, whether real or perceived, are a hornet's nest for nurseries and inspectors alike. *Jo Parkes* investigates

In September 2013, the 50-place Rocklands Day Nursery in Merseyside closed its doors for the last time. Co-owner Roy Godwin, who has another two settings, took the decision after a downgrade to Inadequate by a Prospects inspector. The setting's 20 members of staff lost their jobs.

Besides her work for Prospects, the inspector was also part of a family-run nursery group in the region.

When Mr Godwin appealed against the judgment, one of the points he raised was about a potential conflict of interest, suggesting the group may have been a competitor. One of the group's nurseries was just eight miles away. 'Parents travel certainly within that distance to a nursery,' the nursery owner says. 'There are anecdotes of inspectors saying that they feel conflicted within 15 miles if they work for a nursery group in a catchment area.'

'When we said to Prospects, "We think there's a conflict of interest here", they stated they'd already looked into it and there wasn't one,' he adds. 'They said the nearest nursery was 12 miles away, which was "not a problem".'

Prospects rejected the appeal and following an Ofsted investigation the report was upheld. The Ofsted investigator reported that, 'The inspector ... responded with vigour that there is no conflict of interest as the nursery is not close enough to impact on your setting. The investigating officer discovered that the nearest of these nurseries is 11.9 miles away from your setting.'

Although the disparity in distance ultimately made no difference in the eyes of the investigation, the apparent oversight heightened Mr Godwin's feelings of dissatisfaction.

Ofsted's then early years director, HMI Susan Gregory, responded to

MP Maria Eagle, who intervened on behalf of a constituent, saying the matter had been fully investigated, the inspection was robust, and there was not an issue of direct competition in the case.

But it did prompt an internal review. An Ofsted spokesman tells *Nursery World*, 'Ofsted ... carried out an internal review into the handling of the complaint and the judgment, and the overall outcome remained the same.'

'However, the review identified that more clarification – in terms of clearer language – should have been provided by Ofsted to [Mr Godwin].'

'The complaint was referred externally to the Independent Complaints Adjudication Service for Ofsted, and recommendations were made to Ofsted to ensure that concerns raised were fully acknowledged by the inspectorate.'

OUTSOURCED INSPECTORS

Prospects is one of two inspection service providers (ISPs) to which Ofsted outsourced its early years inspections in 2010. Since then, it and the other ISP, Tribal, have written their own policies, which Ofsted says would be based on its 2009 protocol. However, from next April, all early years inspections will come back in house to Ofsted and will be covered by Ofsted's current policy (see box page 21).

This policy, *Conflicts of interest: Policy and procedure for contracted Ofsted Inspectors*, published in November 2015, says 'OIs [Ofsted inspectors] should not accept work or undertake inspection or regulation activity with a provider where past, present or future employment, engagement, allegiance or relationship suggests an actual or perceived bias or any personal benefit.'

The 2009 Ofsted guidance on con-

Conflicts of interest are a specific area of policy set out by Ofsted for its inspectors

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flict referred explicitly to 'involved in an organisation in competition with the provider' as a conflict.

Ofsted inspector-turned-consultant Debbie Alcock claims the ISPs' policies were 'lax and not enforced'.

Prospects, however, contends that its procedures have been 'robust', adding that providers' feedback does not support Ms Alcock's view. A spokeswoman says fewer than 3 per cent of its early years inspections have resulted in a complaint.

She adds that 93 per cent of settings responding to a recent annual survey said they felt its judgments were 'fair and accurate' and would help them improve provision.

While the company reports the number of complaints it receives to Ofsted, these are not broken down by type of complaint, she says, adding, 'However, it is rare for a concern to be received that relates solely to a potential conflict of interest.'

A spokesman for Tribal says, 'Tribal has always strictly adhered to Ofsted's policy regarding conflict of interest and all contracted inspectors are covered by this policy.'



MONEY MATTERS

One problem is that matching a perceived conflict to written policy is often a matter of interpretation. For example, an inspector carrying out consultancy work at a setting he or she has inspected may be, says Ms Alcock, permissible within the policy.

However, this provides an obvious opportunity for the inspector to give a setting a low score and then offer his or her rating-improvement services (though Ofsted banned all its inspectors from carrying out 'Mocksteads' last September).

And Prospects advises that 'inspectors must not promote any business interest they may have whilst conducting inspections on our behalf.'

Ms Alcock recounts a story told by a nursery owner at a recent regional Ofsted Big Conversation (OBC) meeting, involving a couple who had purchased a setting rated Good. It was inspected soon afterwards and then downgraded to 'requires improvement'.

'The provider was very upset and

the inspector said, "Don't worry, I am also a consultant and can come back and help you"; continues Ms Alcock. 'The provider agreed to this and was charged £1,500.

'The inspector came back as a consultant, gave her verbal advice that she had already told her at the inspection, took her money and left.

'There was no report, links to use-

ful sites or aftercare. She was clearly using inspection to boost her private business.'

Although returning to a setting after inspection would not necessarily be counter to conflicts policy, the opposite situation, according to Ms Alcock's understanding of the rules – an inspector making a report on a setting where he or she has previously done consultancy work – would flout the rules.

EASY TO COMPLAIN?

Conversely, a nursery which legitimately receives a low or downgraded rating could cry 'conflict of interest' as a way of trying to get the inspection result changed.

Ken McArthur, deputy chair of the Yorkshire & Humber region of the Ofsted Big Conversation, thinks that '99 per cent of perceived conflicts probably aren't true conflicts.'

This fits Ofsted's statement that 'very few' claims of conflict of interest have been upheld to date.

Nonetheless, there is a prevailing view among commentators that some conflicts are never reported. Mr McArthur says many in the sector view Ofsted as the 'early years police' and settings are worried about getting on the wrong side of inspectors.

'People are very frightened to stick their head above the parapet in case it triggers an inspection or it might get them a black mark,' says Mr McArthur. He says the odds for mounting a successful challenge or averting conflicts are therefore seen as stacked against settings.

Equally, he says, inspectors may raise a potential conflict with their ISP and, if it rules there is no ➤

THE 2015 POLICY

- Inspectors 'must not put themselves in a position where previous employment, personal relationships or private interests conflict, or could be perceived to conflict' with the regulator's values, which include integrity, openness and impartiality.
- Inspectors 'should not accept work or undertake inspection or regulation activity with a provider where past, present or future employment, engagement, allegiance or relationship suggests an actual or perceived bias or any personal benefit.'
- Ofsted's approach to conflicts, real or perceived, is, 'Always disclose, agree arrangements to manage the conflict where possible and prohibit activity when necessary.'
- Ofsted considers that conflicts can occur at any time and should be declared as soon as inspectors are made aware of them. A spokesperson explains, 'When an inspector flags a conflict they will not undertake inspections that are linked to that conflict. If they attend an inspection and an unknown conflict becomes apparent, they will make their line manager aware. The inspection is unlikely to go ahead at that point.'
- Download *Conflicts of interest: policy and procedure for contracted Ofsted inspectors* here: <http://bit.ly/2bhPXzW>

conflict, the inspector may feel they have to inspect or lose business.

WHAT IS LOCAL?

So should Ofsted ban inspectors from working within a specified area? Prospects says there would be different measures for cities and rural locations, with the latter having a wider radius for competitor. For Mr Godwin, the inspector's business interests should have been made clear from the start. 'No-one stated her background at the time,' remarks Mr Godwin. 'It was us that found out she was a manager in this family nursery.'

Speaking generally, early years consultant and nursery owner Kate Peach comments, 'If I were an inspector, I would point blank refuse to inspect any settings close to any of my settings.'

'We live in a competitive market,' she observes, adding wryly, 'Wouldn't it be wonderful if I could go and inspect a competitor?'

'It shouldn't happen. None of us should be put in that position.'

But Ms Peach also acknowledges policing this would be a 'logistical nightmare'.

'Ofsted wants people who are up to date and engaged with early years,' says Mr McArthur, i.e. someone running an early years business or involved in training or a consultancy-type business.

'It's about getting the balance right.'

Finding that balance is not easy. In another case which hinged on locality, a nursery owner told how she felt her complaint would never succeed regardless of the points she raised, and gave up.

A Tribal inspector, whom the owner claimed was both running a setting about 12 miles away and a consultancy in the area, had given her a Satisfactory rating in 2013.

After the owner raised the issue with Tribal, the company stated, 'You agreed you did not know the inspector, and therefore that there was no conflict of interest', adding that Ofsted does not re-inspect on request other than in 'exceptional circumstances, which do not apply in this case'.

Commenting to *Nursery World*, Tribal, says, 'In this particular case the distance to the inspector's organisation means it would not be considered to be in competition with the provider.'

CONFIDENCE PROBLEM

There is a register of interests for Ofsted inspectors, but this is not publicly available. Yet Mr McArthur, who also runs Polly Anna's Nursery in York, says openness from the start would be a constructive way of building trust, and would also serve to protect inspectors from having the finger pointed at them.

He suggests the inspector make a precis of their background and business interests available to the setting being inspected.

'It could be designed as part of their induction and training programme, so that afterwards a setting can't say, "If I'd known about it before, I would have said something,"' he adds.

'Conflict is a little bit of a smoke-screen to the real problem, which is the lack of confidence with regard to the professionalism of the third-party providers.'

Prospects says it recruits freelance inspectors from Good or Outstanding settings. A spokeswoman for Prospects says, 'This has been Ofsted's response to the charge from early years and childcare providers that inspectors whose full-time job is inspection may lose touch with current practice after a number of years as a non-practitioner.'

THE OUTLOOK

The announcement that inspections are coming back in-house from next April now means that sector leaders are optimistic they are being taken seriously.



Ken McArthur, deputy chair of the Yorkshire & Humber region of the Ofsted Big Conversation, calls for openness from inspectors

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Ofsted confirms that the 2015 conflict of interest policy will be carried over for use when early years inspections are taken back in-house and reviewed as necessary.

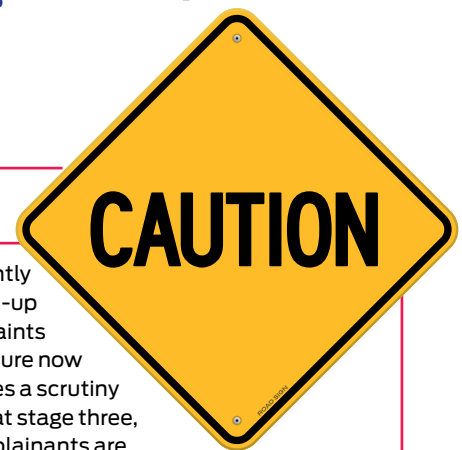
Catriona Nason, CEO of training and consultancy company NEyTCO, and co-founder of the OBC, says Ofsted has 'bent over backwards' to improve things.

'The early years team has really been excellent at making change and making policy,' she says.

Ms Nason suggests 'asking inspectors to be full-time', meaning that they would work exclusively for Ofsted. This, she says, would be a way of improving public confidence, and cutting conflict.

'I think they will have to,' she adds, 'Because that way it can be much more professional. It's still going to be very difficult for them.'

However, Ofsted confirms that, 'We anticipate that because of the commitments from their other professional roles, most freelance inspectors will work on a part-time basis.' The Prospects spokeswoman adds, 'There is no plan to cease using freelance inspectors when Ofsted takes inspection back in-house. These inspectors are trained to perform inspections to a very high standard and work within a professional code of practice.' ■



EXPERTS' ADVICE FOR SETTINGS

- Check out the inspector as soon as the name is supplied – this will be given in advance of the inspection – and check ID on the day.
- Raise a suspected conflict at the earliest opportunity, ideally before the inspection takes place. Do not wait until unfavourable feedback/report arrives.
- If it's a very clear conflict, say, 'I'm sorry, I'm not allowing you to inspect the setting today.'
- Settings are often anxious about complaining. Ofsted's advice is, 'We would encourage anyone with a concern about a conflict of interest to make us aware of this. Their concerns will be taken seriously and investigated thoroughly. Providers should be assured that complaints will not affect their inspection outcome – inspection findings are based solely on the evidence found, backed up by a thorough quality assurance process.'
- A recently beefed-up complaints procedure now includes a scrutiny panel at stage three, if complainants are unhappy with the stage two result. The panel includes an HMI and an independent early years representative, and has the power to overturn a judgment, make adjustments to a report, or require an apology.
- If you are still not satisfied, approach the inspections ombudsman.
- Ofsted confirms that if a complaint about an undeclared conflict is upheld, sanctions include termination of the inspector's contract.

PICTURE: ADOBE STOCK