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The Complaints Scheme

A public consultation

on proposed amendments

30 October 2019 – 22 January 2020

**Consultation on amending the OISC’s Complaints Scheme**

**Introduction**

1. The OISC is an executive non-departmental public body established by the Immigration and Asylum Act 1999 to regulate the provision of immigration advice and services throughout the UK. It is led by the Immigration Services Commissioner (the Commissioner), a corporation sole.
2. The OISC seeks to protect consumers by ensuring the continuing fitness and competence of registered advisers and organisations, setting standards for registration and promoting good practice throughout the sector. In addition, it operates a scheme to receive complaints relating to immigration advice (whether or not provided by registered organisations) and it enforces the regulatory regime by identifying and, where appropriate, prosecuting individuals who are acting illegally.
3. In addition, the Commissioner monitors the effectiveness of regulation of the immigration advice sector by bodies in Scotland and Northern Ireland which are beyond the jurisdiction of the Legal Services Board.
4. Full information about the Commissioner’s functions and the types of organisations and advisers which the OISC regulates can be found on its website at [OISC.GOV.UK](https://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner)
5. The Commissioner’s regulatory scheme is currently based on three separate documents (which can be found via these hyperlinks):

[Code of Standards](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/458689/Code_of_Standards_2016.pdf)

[Guidance on Competence](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604807/OISC_GoC_2017.pdf)

[Complaints Scheme](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/436116/OISC_complaint_Scheme_2015.pdf)

These documents set out what the Commissioner expects of regulated immigration advisers in terms of skills, experience and aptitudes, and of regulated organisations in the way they conduct their business and the quality of the service they provide. For the Commissioner to remain an effective regulator these documents need to be fit for purpose – current, effective and useable – for the regulated, the regulator and for the wider sector.

**Complaints handling**

1. The Commissioner’s complaint-handling duties and powers are derived from Schedule 5, paragraph 5 of the Immigration and Asylum Act 1999, as amended (the 1999 Act). The Complaints Scheme explains how the Commissioner and his staff will handle complaints relating to the provision of immigration advice and services.
2. A fundamental review of the Complaints Scheme was undertaken in 2015 to reflect amendments to the Commissioner’s powers implemented by the Immigration Act 2014. There have been no further changes to his powers in relation to complaints processes since that time. However, the Commissioner has continued to seek views from those subject to the scheme (authorised advisers) and from complainants, as to the operation of the scheme and invited feedback from both parties to ensure the scheme operates effectively for all.
3. The Commissioner is also mindful of developments in complaint handling techniques and best practice elsewhere. The OISC is a member of the Ombudsman Association and is eager to ensure that the scheme he operates is a model of good practice.
4. Subject to responses received to this consultation, the intention is for a revised Complaints Scheme to be implemented in early 2020.
5. This consultation is being undertaken in accordance with the requirements of Part V of the 1999 Act. It also follows Government guidelines for departments and other public bodies engaging with stakeholders when developing policy and legislation (see [Guidance on Consultation principles](file:///C:\Users\ileigh\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\3CTMO5A8\(https:\www.gov.uk\government\publications\consultation-principles-guidance)).
6. This consultation was launched on 30 October 2019 and will remain open for twelve weeks until 22 January 2020.
7. An initial assessment of the consultation’s proposals has indicated that they will have minimal impact. Therefore no formal Regulatory Impact Assessment has been produced. We accept that there may be some impact on immigration advisers in understanding the changes, but these are expected to be small. The OISC asks that consultation respondents include in their responses any feedback together with evidence, if possible, on the potential range and scale of costs, benefits and risks that they believe may be associated with any proposal contained in this consultation.
8. We would find it helpful if respondents provided responses that were as full as possible including evidence and reasons.

**How to respond to this consultation**

1. By email or post. Please send your completed response forms (see Annex B) no later than 22 January 2020 to one of the following addresses:

Electronic: consult@oisc.gov.uk

By post:

Katrina Poll

Complaints Scheme Consultation

Office of the Immigration Services Commissioner

5th Floor

21 Bloomsbury Street

London

WC1B 3HF

1. If for any reason you are dissatisfied with the consultation process, please contact:

Deirdre Gilchrist

Head of Operational Regulation

Office of the Immigration Services Commissioner

5th Floor

21 Bloomsbury Street

London

WC1B 3HF

1. If you have any questions, please write to Katrina Poll at the above address or email her at [consult@oisc.gov.uk](mailto:consult@oisc.gov.uk).

**Confidentiality and Freedom of Information**

1. The information you send us may need to be passed to colleagues within the OISC, published in a summary of responses received and referred to in the published consultation report.
2. All information contained in your response, including personal information, may be subject to publication or disclosure, if requested under the Freedom of Information Act 2000 (as amended). By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.
3. The OISC is subject to the Freedom of Information Act 2000 (as amended) and will consider any request for information relating to responses made to this consultation in accordance with that Act.

**Proposed revisions to the 2015 Complaints Scheme**

Introduction

1. The current Complaints Scheme has been reviewed, and feedback received from regular surveys indicates that it is generally operating successfully for both advisers and complainants. The amendments being proposed for the 2020 edition seek to introduce only relatively minor changes to the scheme in order to address comments received from regulated organisations that have been subject to a complaint.
2. Specifically, advisers were concerned that they did not understand the complaints process and were not permitted sight of the original complaint made to the Commissioner.
3. The proposed amendments also aim to introduce a wider range of complaint remedies. It is best practice in complaint handling to consider what outcomes the complainant may desire and seek to deliver these, if they are within the OISC’s power to give and proportionate to the complaint findings.

**Proposal 1 - Information provided to the regulated organisation**

1. The revised Complaints Scheme will require the Commissioner to provide the regulated organisation with a complaints map outlining the basic complaints process. In addition, where the complainant’s consent is given, the Commissioner will send to the regulated organisation a copy of the original complaint in addition to the Statement of Complaint as drafted by the Commissioner.
2. *Amendments to this section of the Complaints Scheme are likely to be introduced at Paragraph 21 of the document (see Annex A).*

**Q1. Do you agree that it would be beneficial for a simple complaints process map to be sent to the organisation alongside the Statement of Complaint?**

**Q2. Do you agree that where the Commissioner has permission to do so, the original complaint document should be sent to the regulated organisation?**

**Proposal 2 - Complaint Remedies**

1. The revised Complaints Scheme will note that where a complaint is substantiated against an organisation the Commissioner may make a recommendation that the organisation consider implementing an appropriate remedy. This might include, but will not be limited to, the following:

* The Adviser/Organisation to complete further work e.g. appeal at no additional cost to the complainant or re-doing the work at no additional cost to the complainant.
* The Adviser/Organisation to issue a written apology to the complainant.
* The Adviser/Organisation to complete specific training or attend a specific OISC workshop.
* The Adviser/Organisation to refund fees or issue financial compensation.

A failure to implement an appropriate remedy may affect the organisation’s continued registration with the Commissioner.

1. *Amendments to this section of the Complaints scheme are likely to be introduced after Paragraph 38 of the document (see Annex A).*

**Q3. Do you agree that the Commissioner should make recommendations for remedies as an outcome of the complaint findings?**

**Q4. Do you agree that so long as recommendations for remedies are proportionate to the complaint findings, a failure to implement these remedies would be a reason for the Commissioner to find an organisation non-compliant with the OISC’s regulatory scheme?**

1. Annex A of this consultation document contains the proposed amendments to the 2015 Scheme.

**Consultation Responses**

1. The Commissioner would welcome responses to the four questions posed above together with any related comments you may have. Please also tell us if you think anything else requires amendment, deletion or addition in relation to the areas under review in this consultation exercise.
2. Please include any comments you may have on the range and scale of costs, benefits and risks associated with any specific element of these amendments.
3. We would find it very helpful if respondents would give the reasons for their comments and suggestions for improvement and/or clarification.
4. We would like to thank you for considering the contents of this consultation and we very much look forward to receiving your comments on the specific proposals described, or any other aspect of the Complaints Scheme.

**Annex A**

**Proposed amendment to the 2015 Complaints Scheme\***

**\***Amended wording is indicated by underlined text.

**How complaints will be handled**

15. The OISC aims to acknowledge receipt of a complaint within five working days.

16. The Commissioner has discretion to decide if a complaint should be investigated or if an investigation should continue.

17. The OISC will inform the complainant as soon as possible after receipt of their complaint and usually within ten working days whether or not their complaint will be investigated.

18. Should the OISC not be able to confirm within ten working days whether a complaint will be investigated, the complainant will be informed of this and when the OISC expects to confirm if their complaint will be investigated.

19. The OISC may as part of its preliminary investigation of the complaint contact the complainant and make such other initial enquiries as necessary.

20. At this stage of the investigation, the OISC will usually request the client’s file from the organisation.

21. Having considered the information available to it at this stage, the OISC will prepare a Statement of Complaint (SOC) and send this to the organisation formally notifying it that a complaint has been made and including the alleged breach(es) of the Commissioner’s *Code of Standards* (the *Code*). The SOC will include a process map explaining the complaints process and what the organisation must do, along with the date by which the organisation must provide a written response to the OISC. Where possible the Commissioner will also send to the organisation a copy of the original complaint. A copy of the SOC will also be sent to the complainant.

22. The Commissioner may accept additional relevant material at any time during the investigation.

23. The Commissioner may decide at any stage during an investigation that there is no case to answer. If this happens, he/she will write to the complainant and the organisation informing them of this decision.

**Practice points**

37. As a result of the complaint investigation, the Commissioner may identify areas for improvement, such as in the standard of service or a particular process, even if the issues are not serious enough to warrant the upholding of a breach. In such circumstances the Commissioner may choose to raise 'practice points' with the organisation.

38. Practice points are recommendations of good practice that the Commissioner expects an organisation to implement. The Commissioner's aim in using practice points is to assist organisations to improve their standards in a manner that is supportive and not punitive.

**Complaint Remedies**

39. Where a complaint is substantiated against an organisation the Commissioner’s expects the organisation to consider whether it is should implement an appropriate remedy. The Commissioner may in fact recommend that the organisation implement an appropriate remedied. Examples of possible remedies include but are not limited to:

* The Adviser/Organisation to complete further work e.g. appeal at no additional cost to the complainant or re-doing the work at no additional cost to the complainant.
* The Adviser/Organisation to issue a written apology to the complainant.
* The Adviser/Organisation to complete specific training or attend a specific OISC workshop
* The Adviser/Organisation to refund fees or issue financial compensation.

A failure to implement appropriate remedies may affect the organisation’s continued registration with the Commissioner.

**Annex B**

**OISC 2019 Complaints Scheme Consultation Response Form**

**Name of individual/organisation responding:**

**Date:**

**Q1. Do you agree that it would be beneficial for a simple complaints process map to be sent to the organisation alongside the Statement of Complaint?**

**Q2. Do you agree that where the Commissioner has permission to do so, the original complaint document should be sent to the regulated organisation?**

**Q3. Do you agree that the Commissioner should make recommendations for remedies as an outcome of the complaint findings?**

**Q4. Do you agree that so long as recommendations for remedies are proportionate to the complaint findings, a failure to implement these remedies would be a reason for the Commissioner to find an organisation non-compliant with the OISC’s regulatory scheme?**

**Please provide below any additional comments that you would like to make regarding the proposed amendments to the scheme.**