**2019 Consultation on Changes to the Office of the Immigration Services Commissioner’s Complaint Scheme**

**Introduction**

This document summarises the responses received to the Immigration Services Commissioner’s consultation on several minor changes to the 2015 Complaints Scheme.

Although, there have been no changes to the Commissioner’s powers in relation to the complaints process, the Commissioner through the consultation, sought views on amendments to help advisers better understand the complaint being put to them and how the OISC will consider the matter. The consultation also sought views on the range of possible outcomes that the complaint decision might make for consumers.

The changes that were proposed during the consultation are set out at Annex A to this document.

**The Consultation Process**

In accordance with Schedule 5, paragraph 5(2) of the Immigration and Asylum Act 1999, the Commissioner launched a consultation on its website which opened on 30 October 2019 and ran for 12 weeks closing on the 22 January 2020.

**Respondents**

Only two responses were received in relation to the consultation which reflected the relatively minor and uncontentious nature of the amendments being proposed.

The first response was received from theImmigration Law Practitioners’ Association (ILPA) and the second from an OISC regulated adviser.

**Comments Received**

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?

Both respondents appeared to be in agreement, or did not disagree, with the proposals for the complaints investigation procedure to include a simple complaints process map to be issued to advisers alongside the Statement of Complaint being put to them. It was suggested that the consultation document would have benefited by including more detail regarding the proposed process map.

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

ILPA agreed with the proposal that where the Commissioner has permission to do so, the original complaint document should be sent to the regulated organisation.The OISC adviser who responded indicated that the copy of the original complaint should be “a certified true copy of the complaint/transcript” and that this should be sent to the organisation prior to a decision being taken by the Commissioner as to whether the complaint should be opened at all.

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

ILPA agreed with this proposal but the OISC adviser who responded disagreed stating that Paragraph 38 of the document required more elaboration and clarity. The adviser also noted on the issue of remedies, that the award of refund of fees or financial compensation is the prerogative of tribunals and courts.

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?

ILPA agreed with these recommendations. The OISC adviser who responded disagreed indicating recommendations are not obligations. The adviser believed that the OISC should work more closely with organisations and advisers to understand factual reasons behind any failure to comply and sort out such matters mutually. Only habitual and repeat defaulters may, after careful consideration, be considered non-compliant.

Additional comments

Respondents were invited to supply any additional comments. Comments which were supplied that are relevant to the proposals being made, or the Complaints Scheme more generally included the following comment from ILPA:

“*It would be good to provide clarity as to whether the refund remedy would ever include Home Office fees and, if so, whether the OISC has had conversations with insurers as to whether professional indemnity insurance would cover such a remedy*.”

And the following comment from the OISC regulated adviser:

“*That the heading prior to paragraph 37 be amended to read* ***Practice points/Remedies*”** and that “*Paragraph 5 of the ‘OISC Complaints Form 2016’ needs more clarity*”. This was explained as relating to the need for the complainant to provide permission to disclose the original complaint to the regulated organisation.

Additional comments about other aspects of OISC operations such as the website or other OISC procedures were noted but fall outside the scope of this consultation.

**Decision**

Having considered the responses received, the Commissioner has decided to amend the *Scheme* as from 1st April 2020 in the following areas:

1. Paragraph 21 of the Complaints Scheme will be amended to note that the regulated organisation will receive a process map explaining the complaints process and what the organisation must do, which will accompany the Statement of Complaint drafted by the OISC and issued to the organisation.

2. Paragraph 21 will be amended to note that where possible the Commissioner will also send to the organisation a copy of the original complaint. The need for this to be certified by the complainant who will have submitted it to the OISC, was deemed to be unnecessary, as was the need for the Commissioner to hold off opening the complaint until the regulated organisation had commented upon it. This step forms part of the investigative process.

3. Paragraph 38 of the Complaints scheme does not relate to the issue of Remedies but a separate issue about the Commissioner issuing ‘practice points’ to the regulated organisation. It is not accepted that it would be beneficial to combine these two separate matters.

4. In relation to the suggested remedies set out at Paragraph 39, the Commissioner believes it is appropriate and helpful to provide registered organisations with suggestions as to remedies that they may wish to offer to clients, where complaints have been substantiated. While the Commissioner accepts that it is the prerogative of the courts and tribunals to order remedies, this in no way prevents him from making recommendations as to remedies that he considers appropriate. The Commissioner has amended the proposed wording in this section to refer to Home Office fees and to indicate that financial compensation would be for the organisation to offer. The OISC note ILPA’s concerns about whether adviser’s indemnity insurance would cover such fees, but we believe this is a matter for advisers to discuss with their insurance providers.

5. The Commissioner indicates at Paragraph 39 that that a failure to implement appropriate remedies may affect the organisations continued registration with the Commissioner. We have amended slightly the wording here, but the principle remains. Any such action would be subject to a right of appeal to the First Tier Tribunal (Immigration Services) and would only ever be taken following careful consideration and discussion with the regulated organisation. As such the Commissioner believes it is correct that advisers are made aware that this is a possible ultimate outcome of a failure to comply with recommendations.

**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 expects the organisation to consider whether it should implement an appropriate remedy. The Commissioner may in fact recommend that the organisation implement an appropriate remedy. 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.