

Consultation on Changes to the Office of the Immigration Services Commissioner's Complaint Scheme - Standard of Proof

Introduction

This document summarises the responses received to the Immigration Services Commissioner's (Commissioner) consultation on changing the standard of proof required in determining complaints as stated in the proposed changes to the Office of the Immigration Services Commissioner's *Complaints Scheme*, (the *Scheme*). The Consultation proposed modification of the following paragraph of the *Scheme*:

"In determining complaints, the Commissioner's usual standard of proof is the civil standard, that is the balance of probabilities. However, if dishonest/illegal activity is alleged, the Commissioner will apply the criminal standard of proof to that element of the complaint, being beyond reasonable doubt."

As explained in the consultation document, the House of Lords' decision in *re B (Children)* [2008] UKHL 35 had been brought to the Immigration Services Commissioner's (the Commissioner) attention and in particular the remarks of Lord Hoffman in that case. Considering his comments, she decided to consult on amending the *Scheme* so that the civil standard of proof would apply to all complaints determined by her.

The Consultation Process

In accordance with Schedule 5, paragraph 5(2) of the Immigration and Asylum Act 1999, the Commissioner wrote between the 15th and 25th August 2011 to each of the Designated Professional Bodies (DPBs) and to other persons who appeared to her to represent the views of persons engaged in the provision of immigration advice or immigration services as she considered appropriate.

With respect to the latter category, the Commissioner wrote specifically to the Immigration Law Practitioners' Association (ILPA), the Association of Regulated Immigration Advisers (ARIA) and notified all OISC regulated advisers of the consultation. The Commissioner advised the United Kingdom Border Agency (UKBA) that the consultation was taking place.

Respondents

The Commissioner received replies from the following DPBs:

The General Council of the Bar of Northern Ireland

Bar Standards Board (BSB)

The Faculty of Advocates (FOA)

The Institute of Legal Executive (ILEX)

ILEX Professional Standards

The Law Society of England and Wales

The Law Society of Scotland

Legal Services Board (LSB)

Solicitors Regulation Authority (SRA)

The Commissioner also received a response from ILPA and 11 responses from regulated advisers.

Comments Received

All of the DPBs which responded with the exception of the Law Society of England and Wales were either in favour of the change or had no comment to make on the proposal. In particular, certain regulators of legal professionals (SRA, BSB, ILEX, FOA) as well as the LSB supported the change proposed.

ILPA suggested that the Commissioner discuss the matter with the SRA, ILEX and the LSB. As mentioned above, all of these bodies were consulted.

Six of the regulated advisers who responded were in favour of the change, while four were against and one used the consultation to comment on another issue.

Decision

Having considered the responses received, and, in particular, those bodies which regulated the legal sector, the Commissioner has decided to amend the *Scheme* as from 1st November 2011 to read as follows:

"In determining complaints, the Commissioner's standard of proof is the civil standard being the balance of probabilities."

Suzanne McCarthy

Immigration Services Commissioner

27 October 2011