



Home Office

UK Border Agency

DRAFT

Title	<u>Instructions on drafting replies to MPs' Correspondence</u>		
Process	Drafting of letters to enquiries from MPs' and their offices		
Implementation Date	DRAFT	Expiry/Review Date	September 2010

CONTAINS MANDATORY INSTRUCTIONS

For Action ***Author***

All Ministerial drafting units within the UK Border Agency

For Information ***Owner***

To all units in the UK Border Agency handling correspondence.

Contact Point

Processes Affected

All processes relating to answering correspondence from Members of Parliament

Assumptions

Drafters have sufficient knowledge of their subject to accurately answer the questions raised by a Member of Parliament.

NOTES

This should be read in conjunction with the MPCS style guide for drafting for MPs

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Version 3.4

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Chapter 1 – MPs' Correspondence Process

1.1 Types of MPs' correspondence

The UK Border Agency categorises MPs' correspondence as either a Ministerial letter or an Official Reply.

- Ministerial letters are when an MP has written directly to the Minister and a Minister, the CEO or her deputy will reply. These are normally written to the Minister direct and are received in the Direct Communications Unit (DCU) based at Marsham Street.
- Official Replies are when an MP has written directly to an official or department in the Agency. Any suitable official within the Agency could reply to these letters. These letters would normally be written to the UK Border Agency post-office box for MPs' letters.

1.2 Targets

The target for replying to all MPs' Correspondence is to answer 95% within 20 working days. Internally this is subdivided as follows:

- The MPs' Correspondence Section (MPCS) – 95% of letters to be allocated within two working days (with less than 10% of cases misallocated).
- Drafting Units – twelve working days from date of receipt in the Agency (so includes MPCS allocation time) to draft the reply.
- Signing – 95% of letters signed and dispatched in four working days.

1.3 Managing MPs' Correspondence

The Correspondence Tracking System (CTS) is a Home Office wide system for recording, tracking, managing and reporting on MPs' Correspondence. All letters from MPs have to be recorded on this system.

Allocation, drafting and signing are all done using the CTS system and letters are answered by dedicated drafting units across the Agency.

While most letters will be received either at DCU or in MPCS an MP could write to any person or department in the Agency. If you receive a letter, even though you may be able to reply, it should be answered by a drafting unit. The letter should be forwarded to MPCS to scan onto CTS. Contact details are available on the MPCS web page.

1.4 Allocation/Enforcement and the 'Two Day Rule'

Once a letter is scanned onto CTS MPCS allocates it to the drafting unit they believe is best able to answer the enquiry. MPCS gives units two working days to decide whether the case is for them. If the case is not for them they should misallocate it back to MPCS explaining why the case is not for them and, if possible, suggesting where it should be answered.

MPCS review misallocated cases and re-allocate accordingly. If a case is rejected by two or more units MPCS will escalate the case to the heads of the units disputing ownership (including other units that may also have an

interest) asking them to decide who will take the case. If no unit accepts the case it is escalated to the Head of MPCS to enforce on a unit.

MPCS hold powers devolved from the Chief Executive to enforce a case upon a unit. At this stage the unit it is enforced upon do not have the authority to refuse the case and must draft the response obtaining contributions from other units as appropriate.

If a unit holds a case for more than two working days (from the date and time of allocation to them) the case will be enforced on them under the 'Two Day Rule'.

For both types of enforcement MPCS will only lift the enforcement if the unit it is enforced upon obtains agreement from another CTS drafting unit to take the case on. The unit must be a CTS drafting unit and the agreement must be confirmed in writing by the unit taking the case on.

1.5 Letters that will not be answered within target

Where a letter has been, or is identified that it will be, significantly delayed (more than a month after the original target date) the drafting unit must contact the MPs office explaining the reason for the delay and give an indication of when the letter will be replied to. Interim replies should only be used in the most exceptional circumstances and the advice of MPCS should be sought in every case where this is proposed.

Where a letter for Ministerial signature is more than six months past its target the drafting unit should contact the MP to see if they still require a reply. If the MP does require a reply then the draft should be submitted to the Minister with confirmation that the MP does want a response in the background note. If the MP doesn't require a response the letter should be rejected back to MPCS for cancelling.

1.6 Quality assurance of replies

It is a matter for each director to decided the most appropriate level for quality assuring of drafts but should always be conducted by a grade at least one higher than the drafting officer. We recommend that all Ministerial drafts are cleared by a G7 or above before being submitted to Private Office for signing.

1.7 Background note

Even in the most straightforward case the draft should be accompanied with a minute which provides to person signing with sufficient information in order that they can properly consider the draft response. This may include:

- Background on the case especially on a complex case.
- Any sensitive aspects which cannot be included in the draft reply.
- If a draft has been delayed the reasons why this has occurred.
- If an application or documents have been lost what efforts have been made to retrieve them.

In all cases the drafting officer's name, location and contact number should be included.

1.8 Signing of letters

Under Cabinet Office guidelines where an MP has written to a Minister about the day to day operations of an Executive Agency the Minister can authorise the appropriate Chief Executive, or their deputy, to reply.

Ministers will sign letters where:

- The MP is a member of the Privy Council (they are a Right Honourable). Under Cabinet Office guidelines they must receive a Ministerial reply if they have written to a Minister;
- The MP is writing on a matter of Government policy. If the question is about the Agency's implementation of Government policy then it may be appropriate for the Chief Executive to reply;
- The MP is asking the Minister to exercise their discretion or personally intervene in an immigration case;
- The Minister has previously been involved in an immigration case.

The Home Secretary will only reply to letters written directly to him from certain MPs, typically Cabinet and Shadow Cabinet colleagues. The full list is published on the MPCS Horizon webpage. If an MP on this list has written directly to a junior Minister rather than the Home Secretary then the reply should come from the junior Minister.

The decision who should sign each letter is taken by MPCS as part of their allocation process.

Directors have discretion to decide the appropriate grade that can sign Official Replies to MPs. While this is likely to be dependent on volumes of letters it is recommended that they should not be signed off lower than SEO level.

1.9 Filing

CTS will only retain scanned copies of MP's letters and replies for a period of two years plus the current year so is not a permanent record. It is important that there is a permanent record of all correspondence between the Agency and/or Ministers on individual immigration cases as it may impact on current or future decisions. Where the MP has written about an individual immigration case it is the responsibility of the drafting unit to ensure a copy of the MP's letter and the reply that went out is put on the applicant's Home Office file.

1.10 Ways of replying

As Ministerial letters have to be answered by a Minister, the CEO or her deputy the reply must be a written letter. With Official Replies the Agency can take the decision to reply either by letter or by e-mail, telephone or the MP Account Manager resolving the issue.

Where Official Replies are not dealt with by letter the drafting unit does have to confirm with the MP that they are happy to accept the alternative response. In all cases CTS should be updated to reflect the reply given – either by 'checking in' a copy of the e-mail as they would a normal letter or adding a

minute summarising how the enquiry has been resolved. The CTS case should be closed on CTS using the same process as answering an Official Reply letter.

Chapter 2 - Enquiries from MPs

2.1 Types of enquiry

MPs have a long-established constitutional role in promoting the concerns and interests of their constituents. While Ministers expect MPs to respect the convention that they should not take up cases involving other MPs' constituents there is no bar on them doing so. If the MP is writing on behalf of the applicant (irrespective of whether they reside in the MPs constituency or not) they are considered an authorised representative and a full reply should be given.

There are broadly two classes of enquiry:

- An enquiry about the status of an application, seeking information about it or asking for an update on progress.
- Representations supplying new evidence or invoking compassionate factors.

Our response to the first type of enquiry should be to advise the MP of the current position and supply any information they seek. Where possible we should indicate when a decision is likely to be made. The only exception would be when we identify an application has been mishandled. In such cases we should look at whether a decision can be taken in the case.

Our response to the second type of enquiry should be more substantive. It should address the specific concerns raised, assessing whether the new information supplied or compassionate circumstances justify exceptional treatment or priority processing. Where it is judged that accelerated consideration is merited a decision should be reached as soon as possible, or any evidence lacking should be sought and a timeframe for decision given.

Where a case is expedited on the basis of an MP's letter all local recording and tracking procedures should be followed so a clear audit trail is maintained. This should explain the nature of the intervention by the MP, the reason for expediting a case and any decisions or actions taken in direct response to the intervention.

2.2 Removal action following an MP's letter

An MP's letter is a barrier to removal and where an MP has intervened in a case with ongoing removal action it should be deferred until a reply has been sent.

In the event the MP is supporting the removal and removal is imminent then the drafting unit can take the decision to lift the barrier to removal before replying to the MP. However, even under these circumstances the unit should make every effort to reply to the MP before removal takes place.

2.3 Intervention by Ministers with a constituency interest

Where a Home Office Minister wishes to raise a case acting as a constituency MP they will normally write from the constituency office to the responsible Minister. Such an intervention should be dealt with as any other MP case.

In no circumstances should the Minister raising the case take the decision on the case. A second Minister has been designated to deal with the constituency cases of a Minister. MPCS identify these when they come in and categorise them accordingly.

2.4 Requests from MPs for meetings

An MP may request a meeting with an official to discuss an individual case. Phil Woolas and Meg Hillier would not meet with MPs on casework issues. The following lines should be used where an MP asks to meet regarding an individual case:

'Regarding your request to meet I am always happy to meet with Members of Parliament to discuss individual cases. I find it is most practical to do this on an informal basis in the lobby.'

Phil Woolas and Meg Hillier might agree to a meeting on policy issues. In this instance the drafting unit will need to refer to the relevant Private Office.

2.5 Interventions on behalf of UK Border Agency staff

Care should be taken when responding to any MP who is writing on behalf of an existing UK Border Agency staff member. Representations will generally fall into one of two areas.

- The UK Border Agency staff member has asked the MP to intervene about an ongoing dispute with the Agency.
- The staff member is writing in about an ongoing case (for example they are the sponsor of someone applying for a visa).

It is a long established rule that civil servants should not attempt to bring political or outside influence to support their own personal claims as a civil servant. The MP should still receive a substantive reply to their enquiries but it should also be flagged with the staff member's line manager to investigate if they have breached the Civil Service Code by engaging their MP.

No preferential treatment should be given to a case solely because a member of staff is involved. Particular case needs to be taken if the staff member has access to CTS as they should not have advance notice of any answer that might be sent to the MP. In these cases the letter should be answered off of CTS. Guidance on these cases should be sought from MPCS.

2.6 Enquiries from multiple MPs

Where more than one MP has written about the same person a substantive reply should be sent to one of them and a copy of the reply with a short covering note to the other MP. The constituency MP, where involved, should receive the substantive reply. Where each MP has raised different points it may be appropriate to send substantive replies to each MP – if in doubt contact MPCS for guidance.

Chapter 3 - Third Party replies

3.1 What is a third party?

The UK Border Agency has legal obligations to protect applicants' personal data under the Data Protection Act 1998 and should only be disclosing personal information to an applicant or an authorised representative.

A third party reply is used where it would be inappropriate to disclose case information to a correspondent. For example:

- The constituent writing to the MP is not the applicant or an authorised representative of them.
- The person used to be a sponsor to the application but that relationship has now ceased (for example an estranged partner).
- The person has been a victim of a foreign national offender.

A template to use when replying to third parties can be found at [section 3.6](#). The Home Office reference is not included on third party letters as this would constitute personal information.

The full guidance on responding to third parties from members of the public, representatives or people other than MPs can be found in IDI Chapter 24.

3.2 Enquiries from family members or sponsors

MPs often write on behalf of a family member of an applicant or the sponsor of an applicant. This may occur where the applicant is unable to approach the MP directly, for example if they are in detention or are abroad applying for entry clearance.

Limited information can be given where:

- The relative/sponsor clearly supports the applicant's case.
- There is evidence (either from the correspondence or in UK Border Agency records) which confirms the relationship.
- There is no evidence that disclosure would have an adverse effect on the applicant (for example evidence of a forced marriage)

The information disclosed should be limited to factual details about the immigration case – for example what is currently happening on a case, when a decision is likely or if a decision has been made what it was, when it was issued and so on.

Information should not be disclosed that it could reasonably be assumed the applicant would not want disclosed, for example a criminal record or adverse immigration history. This may mean we can tell a third party that an application has been refused but not disclose the reasons why.

Under no circumstances should the address of an applicant be disclosed. If there is any doubt about what can or can't be disclosed contact MPCS for guidance.

3.3 'In Confidence' replies

In some cases it may be appropriate to provide an MP with information about a case that is not appropriate for them to pass onto their constituent. In these cases we can provide a reply to the MP in confidence. 'In confidence' replies could be appropriate if the constituent is either the applicant themselves or a third party to the case.

The reply to the MP should always be accompanied with a separate reply, sent under cover of the 'in confidence' reply, that the MP can forward to their constituent.

Issuing an 'in confidence' reply may put the MP in a difficult position by requiring them to withhold information from a constituent that they may wish to know. Therefore such replies should be used sparingly and only where it is essential both for the information to be passed to the MP and for it not to be disclosed to the constituent.

A template for 'in confidence' replies can be found at [section 3.7](#).

3.4 Support letters

Where an MP is writing on behalf of someone other than the applicant and they are solely expressing support for an application (that is not asking for information about a case) then it would not be appropriate to issue to standard third party letter.

In these circumstances the reply should simply acknowledge the constituent's support for a particular outcome and tell the MP that their letter will be placed on the applicant's file to inform any future consideration of the case.

3.5 Allegation letters

Where an MP is writing making allegations about an applicant, illegal working, immigration offence etc it is not normally appropriate to respond to the specific allegations as this could divulge personal information. Neither, unless the MP is specifically asking for information about the allegations and what the Agency will do, is it appropriate to issue a standard third party letter.

In these circumstances the reply should acknowledge the constituent's allegation and inform the MP that the allegation will be passed to the appropriate unit for consideration. It is the responsibility for the drafting unit to pass the letter onto the appropriate channels. The reply should not give any assurances or set expectations on what action the Agency will take as a result of receiving the allegation.

3.6 Standard Third Party template letter

Ann Other MP
House of Commons
London
SW1A 0AA

CTS Ref: M12345/10
Your Ref: *[If provided]*

Thank you for your letter and enclosures of *[Date of MP's letter]* regarding *[Name of constituent who wrote to the MP]* of *[Address of the constituent that wrote to the MP]* about *[Agency applicant]* concerning *[issues]*.

I hope that you will appreciate that in order to safeguard individual's personal information and comply with the Data Protection Act 1998 we are limited in what information we can provide when the request is made by someone, such as your constituent, who is not the subject of the application. Except in a few exceptional circumstances we must ensure we have the written authority of the individual concerned before the information is divulged to anyone else.

We have no record that *[Agency applicant]* has provided us with written confirmation that they wish you or your constituent to act on their behalf. However, if you can provide us with this authority we will be happy to respond to your correspondence in more detail.

We do consider the content of each piece of correspondence carefully and I hope that you can appreciate that this reply is not simply a question of secrecy for its own sake, but is a proportionate response to protecting the privacy of the individual.

There are, as you will be aware, many examples of malicious and sometimes dangerous intent by third parties in an area of such sensitivity. Thank you for your understanding.

3.7 'In Confidence' template reply

Ann Other MP
House of Commons
London
SW1A 0AA

Our Ref: *[If applicable]*
CTS Ref:
Your Ref: *[If applicable]*

IN CONFIDENCE

Thank you for your letter and enclosures of *[Date of MP's letter]* on behalf of *[Name of constituent that wrote to the MP]* of *[Address of constituent that wrote to the MP]* about *[Issue/Person]*.

Please note that this reply is provided to you in confidence and should not be disclosed to *[Name of constituent that wrote to the MP]*. I have enclosed a reply that you can send onto *[Name of person that wrote to the MP]*.

[SUBSTANTIVE REPLY]

Chapter 4 - Correspondence from Members of Devolved Legislatures, the European Parliament and Peers

4.1 Correspondence from Members of Devolved Legislatures (MDLs)

The devolved legislatures are the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.

The Home Secretary has taken the view that immigration is a matter reserved for Westminster MPs and the UK Border Agency will not reply to MDLs writing on individual cases. MDLs will continue to receive substantive replies to letters they write on policy issues. A template reply is available at [section 4.4](#).

Some MDLs are also sitting MPs and in those circumstances should receive a substantive reply to their enquiries as any MP would. Where an MDL is a Minister of a devolved legislature they should also receive a full substantive reply to their enquiries.

Challenges to this policy should be responded to using the template reply at [section 4.5](#). [MPCS are currently awaiting clearance from the Minister of these lines. This section will be updated once they are available.]

4.2 Correspondence from Members of the European Parliament (MEPs)

MPs represent constituencies and MEPs are elected on a regional basis so their interests sometimes overlap. While MEPs do not have a say in UK immigration policy since the passing of the Lisbon Treaty MEPs have been given greater powers in relation to European immigration policy.

MEPs should therefore receive substantive replies when they enquire about policy as well as when they write about individual immigration cases.

4.3 Correspondence from Peers

Members of the House of Lords should be sent substantive replies on both individual cases and policy questions. Where the constituency MP has already made representations the Peer should be sent a copy of the reply provided to the MP.

4.4 Template for responding to MDLs

Ann Other MP
House of Commons
London
SW1A 0AA

Our Ref: *[If applicable]*
CTS Ref:
Your Ref: *[If applicable]*

Thank you for your letter of *[Date of MP's letter]* on behalf of *[Name of constituent writing to MP]* of *[Address of constituent writing to MP]* about *[issue]*.

The Home Secretary takes the view that as immigration is a matter reserved for the Westminster Parliament the UK Border Agency should only engage with Westminster MPs in individual immigration cases. We will not therefore be responding to your letter. I would be grateful, if your constituent requires further assistance, that you direct them to their Westminster MP. We will, of course, continue to respond to your correspondence relating to policy or non-case specific issues. This approach also applied to the MPs' Enquiry Line.

The UK Border Agency currently receives in excess of 60,000 letters and 24,000 phone calls from MPs, responding to these requires significant resources from within the Agency. Our approach to correspondence from devolved administrations reflects the need for improved efficiency by reducing the duplication of correspondence.

Thank you for your understanding.

4.5 Template for MDLs challenging policy

[MPCS are waiting on clearance of these lines. This section will be updated once they are available. In the meantime letters challenging this policy cannot be answered.]

Chapter 5 - Other Correspondence Issues

5.1 Death of an MP in office

MPCS is responsible for informing drafting units of the death of an MP.

Drafting units are then responsible for identifying all undrafted letters and those drafted by their unit awaiting signature. Where possible they should arrange for the reply to be sent before the by-election takes place.

Letters should be sent to the late MP's constituency office, addressed to 'The Office of the late *[MP's Name]* and started with 'Dear Secretary'.

Where the letter cannot be answered before the by-election the reply should be sent direct to the constituent who wrote to the MP. The new MP should not be copied into the reply. The opening paragraph should begin with:

'[MP's Name] previously wrote on [Date of late MP's letter] about...'

During the period until a by-election takes place constituency offices may introduce individual interim arrangements such as constituency office staff writing in or a neighbouring MP taking on the casework. In these circumstances a full reply should be sent to the person who has taken on the work.

5.2 Freedom of Information (FOI) requests

A normal request from an MP asking for information about a case, questioning policy or asking about Agency operations is dealt with under this guidance and is not considered an FOI request.

When an MP makes an FOI request it should be dealt with under the FOI process. The drafting unit must immediately contact the Information Access Team so the request is properly recorded.

If a letter contains non-FOI aspects (for example an update on a constituent's case) as well as an FOI request the drafting unit should respond to the non-FOI parts as normal and in our reply state that the FOI request will be answered separately.

FOI requests are not answered on CTS. If there are non-FOI aspects the case should remain on CTS and those parts answered normally. If the letter only contains the FOI request the CTS case should be rejected back to MPCS to cancel on CTS.

5.3 Replies in other languages

All replies to MPs letters will be in English. The only exception to this will be where the constituent's letter to the MP, or the MP's letter to us, is in Welsh and we have been asked to reply in Welsh. In this case the reply should be translated into Welsh as requested.

5.4 Correspondence during a General Election

Before each general election the Cabinet Office issues guidance on the implications of the electoral process for Government Departments and civil servants. Our guidance is amended and re-issued to drafting units once the central advice has been produced.

Once Parliament has dissolved an MP loses their constitutional right to represent his or her constituents to Government. All candidates for an election – whether or not they were MPs in the dissolved parliament – are known as Prospective Parliamentary Candidates and have to be treated equally. The Cabinet Office makes clear however that this should be applied in a reasonable way.

The approach taken during the 2005 and then 2010 election period was:

- Letters written before the date of dissolutions were answered substantively as normal. Ministerial letters were converted to Official Replies once Ministers began to concentrate on the campaign.
- Letters written after the dissolution but responding to requests for Further Particulars made before dissolution were answered as normal.
- Letters about policy were answered substantively.
- Letters about individual immigration cases written after devolution would be treated as third party interventions and answered with a polite reply explaining why we were unable to send a substantive response. Exceptions were made for former MPs writing about cases on which they had previously made representations.
- Where the MP was writing to intervene against removal action a sentence was added to confirm that the case had been reviewed in light of the intervention to see if there were grounds for deferring removal.
- Where a candidate was returned at election any outstanding letters from them were answered substantively.
- Outstanding letters after the election from unsuccessful candidates were answered as third party letters.

It is important to omit 'MP' after the addressee's name once Parliament is dissolved.