



# The Complaints Scheme

Consultation

3 November 2014- 30 January 2015

## Consultation on amending the OISC's Complaints Scheme

### Introduction

1. The Immigration Services Commissioner (the Commissioner) has complaint-handling powers under the Immigration and Asylum Act 1999 (paragraph 5, Part 1 of Schedule 5), as amended (the 1999 Act). The Complaints Scheme explains how the Commissioner and his/her staff will deal with complaints that the Office of the Immigration Services Commissioner (OISC) receives.
2. There are several reasons why we have decided to consult on the Complaints Scheme at this time. The Immigration Act 2014 (2014 Act) made important changes to the Commissioner's powers, which need to be reflected in the Complaints Scheme. Further, the current Scheme is three years old and requires refreshing, including making it more user-friendly. For all of these reasons it was felt that the time was right to review the Complaints Scheme and to consult on the proposed amended Scheme. Subject to the responses received, the intention is for the new Complaints Scheme to be implemented in 2015.
3. This consultation is being conducted in accordance with the requirements of Part V of the 1999 Act<sup>1</sup>. The consultation is conducted in line with the guidance set out in the Consultation Principles that govern the activities that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation ( <https://www.gov.uk/government/publications/consultation-principles-guidance>). This consultation was launched on 3 November 2014 and will remain open for thirteen weeks until 30 January 2015.
4. An initial assessment of the consultation's proposals has indicated that they will have minimal impact. Therefore no impact assessment has been produced. We accept that there may be some impacts 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.
5. We would find it helpful if respondents provided responses that were as full as possible including evidence and reasons and, if appropriate, suggest alternative wording if respondents are of the opinion that the suggested drafting is not sufficient.

### How to respond to this consultation

6. By email or post - You can download a copy of the response form by completing the attached form

Please send your completed response forms no later than 30 January 2015 to one of the following addresses:

Electronic: [consult@oisc.gov.uk](mailto:consult@oisc.gov.uk)

By post: Sharon Harris  
Complaints Scheme Consultation  
Office of the Immigration Services Commissioner  
5th Floor  
21 Bloomsbury Street  
London  
WC1B 3HF

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

Clyde James  
Head of Policy, Publications and Stakeholders  
Office of the Immigration Services Commissioner  
5th Floor  
21 Bloomsbury Street  
London  
WC1B 3HF

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

## Confidentiality and Freedom of Information

7. 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.
8. 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.
9. 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.

## Background

10. The Commissioner and her Office, the OISC, was created by the 1999 Act. The Commissioner has regulatory, complaint-handling and law enforcement functions in respect of the giving of immigration advice or services in the UK<sup>2</sup>. Full information about the Commissioner's functions and the types of organisations and advisers which the OISC regulates can be found using this hyperlink <https://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner>.
11. Currently the Commissioner's regulatory scheme is based on four separate documents (which can be found via these hyperlinks)
  - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/322737/code\\_of\\_standards.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322737/code_of_standards.pdf) ;
  - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/322740/the\\_complaints\\_scheme\\_2012.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322740/the_complaints_scheme_2012.pdf);
  - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/327534/guidance\\_on\\_competence\\_2012.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/327534/guidance_on_competence_2012.pdf) .

These set out what she 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. These documents are:

2. Unless regulated by another body or exempted by Ministerial Order, it is illegal to offer immigration advice and/or services without being regulated by the Immigration Services Commissioner. The Commissioner also has oversight regulatory responsibility for persons regulated by a Designated Professional Body in Scotland or Northern Ireland who provide immigration advice or services.

The *Code* (incorporating the *Rules* is currently the subject of a separate consultation);  
The *Rules*;  
The Complaint Scheme; and  
The Guidance on Competence.

12. 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.

### **Why this Complaints Scheme is different from previous versions**

13. As explained above, the new Complaints Scheme has been reviewed and redrafted to reflect legislative changes and to be in line with OISC policies and processes. In particular the Scheme being consulted on reflects the fact that the 2014 Act has deleted the previous registered/exemption categorisation of immigration advice organisations and has replaced this with one category to which all OISC regulated organisations must belong – registered. The Commissioner has also been given powers under the 2014 Act that are relevant to the Commissioner’s handling and use of complaints.

### **The new Complaint Scheme**

14. Pages 1 to 8 of this consultation contain the new Complaint Scheme.

*Please provide any comments you may have on the Complaints Scheme. You can give general comments on the document as well as specific comments on any element of the Scheme. Please also tell us if you think anything requires amendment, deletion or addition. Please also include any comments you may have on any range and scale of costs, benefits and risks associated with any specific element of the scheme or generally.*

*We would find it very helpful if respondents would give the reasons for their comments and suggestions for improvement and/or clarification. If you think a particular paragraph in the Scheme requires amendment or a new paragraph is required, it would be helpful if you would include in your response suggested drafting or alternative wording.*

*The final comment box at the end of the response form may be used for any other comments you may wish to make.*

We would like to thank you for considering the contents of this consultation and we very much look forward to receiving your comments.



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# The Complaints Scheme

## Introduction

1. The Commissioner can accept a complaint about immigration advice and services from any source. Annex A shows how complaints received by the OISC are categorised and dealt with.
2. In addition to the client, a complaint can be accepted from, for example, a third party such as a friend, another advice organisation or a voluntary organisation.
3. The Commissioner will normally only accept a complaint made within six months of when the substance of the complaint occurred and the complainant knew about it.
4. The Commissioner can investigate on his/her own initiative any matter which could form the subject of a complaint. In such circumstances the investigation will be conducted as if a complaint had been made to the Commissioner.
5. If the complaint is made against a person authorised to practise and regulated by a Designated Professional Body or Designated Qualifying Regulator or who works under the supervision of such a person, the Commissioner can refer the complaint to the relevant regulatory body.
6. The Commissioner cannot deal with a complaint if it relates to someone who holds office under the Crown when acting in that capacity, or is employed by, or for the purposes of, a government department, when acting in that capacity, or is acting under the control of a government department or is otherwise exercising functions on behalf of the Crown. The Commissioner cannot address complaints made to him/her about the Home Office or Tribunal Service (Immigration and Asylum Chamber) and their staff.
7. The Commissioner will not usually deal with complaints that are or become the subject of legal action or criminal investigation.

## Making a complaint against an OISC registered organisation or adviser

8. The OISC's complaint form is available from:
  - The OISC website <https://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner>;
  - Office of the Immigration Services Commissioner,  
5th Floor  
21 Bloomsbury Street,  
London  
WC1B 3HF  
(telephone 0345 000 0046); and
  - OISC Registered organisations.
9. The complaint form can be completed on line or sent to the OISC in hard copy.

10. A complaint should be made in writing, but does not need to be made on an OISC complaint form to be accepted.
11. When submitting a complaint every effort should be made to attach all relevant documentation.
12. The Commissioner will not reimburse any fees, expenses or cost involved in bringing a complaint.

### **Where to send complaints**

13. Complaints should be sent to the Commissioner at:  
Email: [info@oisc.gov.uk](mailto:info@oisc.gov.uk); or  
  
By post: Office of the Immigration Services Commissioner  
5th Floor  
21 Bloomsbury Street,  
London  
WC1B 3HF

### **How complaints will be handled**

14. The Commissioner has discretion to decide if a complaint should be investigated.
15. The Commissioner will inform the complainant as soon as possible whether they will or will not investigate their complaint.
16. The OISC may contact complainants, organisations and advisers to obtain further information about the complaint. This will usually include requesting the client's file.
17. The OISC will prepare a Statement of Complaint and send this to the organisation notifying it that a complaint has been made against it and including the alleged breach(es) of the Commissioner's Code of Standards (the *Code*). The Statement will also include the date by which the organisation must provide a written response to the allegation(s). A copy of the Statement of Complaint will be sent to the complainant.
18. During the investigation the Commissioner may accept additional material from either the complainant or the organisation.
19. The Commissioner can decide at any stage during an investigation that there is no case to answer. If this happens, they will write to both the complainant and the organisation informing them of this decision.
20. If, during the course of an investigation other concerns about the organisation's fitness and/or competence are identified, the Commissioner can undertake further enquiries. If these enquiries result in possible further breaches of the *Code*, the Commissioner will notify the organisation in writing and give it an opportunity to comment on those matters.
21. In certain circumstances, the Commissioner may invite the organisation to make oral representations in respect of all, or part of, the complaint.



## **Responsibilities of an organisation which is the subject of a complaint**

22. Any organisation which is the subject of complaint must:
  - comply with any reasonable requirement imposed on it by the Commissioner, such as, the production of documents in a timely manner; and
  - take such steps as are reasonably required to assist the Commissioner in their investigation.
23. The Commissioner may make an application to a Justice of the Peace (or in Scotland the Sheriff) to issue a warrant authorising the Commissioner to enter premises. If a warrant is granted, an organisation must:
  - allow access to its premises for the investigation of the complaint;
  - comply with the requirements of the Commissioner or their staff or agents when they are on those premises investigating the complaint; and
  - not delay or obstruct the Commissioner or their staff or agents while on the premises.
24. Failure to cooperate with the Commissioner's investigation without reasonable excuse may result in the Commissioner cancelling the registration of the organisation.

## **Determining complaints**

25. The Commissioner will make their decision based on the evidence before them.
26. In determining complaints the Commissioner's standard of proof is the civil standard being the balance of probabilities.
27. The Commissioner will give their determination in writing, which will include the reasons for that decision.
28. All parties will be sent a copy of that determination if possible.
29. If a complaint is substantiated, it will form part of the organisation's and/or adviser's regulatory history.
30. If a complaint is substantiated the Commissioner may:
  - leave the determination on file for consideration at the next relevant application. Practice points may be issued;
  - consider and conclude that the organisation and/or the adviser should have their registration immediately cancelled; or
  - lay a Disciplinary Charge before the First-tier Tribunal (Immigration Services).

31. If a complaint is unsubstantiated, the Commissioner will not apply a sanction but may raise practice points with the organisation (see paragraphs 33 and 34 below)

### **Confidentiality**

32. The Commissioner will only disclose the identity of a complainant with the complainant's consent or if required by law. It is not the Commissioner's policy to notify either the Home Office or the Tribunal Service (Immigration and Asylum Chamber) of their investigation or the outcome of a specific complaint unless they are the respective complainant.

### **Practice points**

33. As a result of the complaint investigation the Commissioner may identify areas of 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.

34. 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.

### **If you are dissatisfied with the Commissioner's decision**

35. Complainants, advice organisations and advisers who are dissatisfied with a complaint determination issued by the Commissioner can request a review of that determination on the following ground:

- that the determination is factually incorrect and consequently that the Commissioner's decision, all or in part, should be changed.

36. The advice organisation and the advisers who are dissatisfied by a complaint determination issued by the Commissioner can request a review of the determination on the following ground:

- that they did not have an opportunity to respond to one or more of the allegations that were substantiated against them in the determination.

37. The Commissioner will not usually undertake a review of a complaint determination if the reason for the request is based on one or more of the following:

- Information that the complainant, organisation or adviser did not make available during the original investigation, unless there were exceptional reasons for its non-disclosure;
- The complainant, organisation or adviser disagrees with the complaint findings;
- The complainant, organisation or adviser fails to identify and provide clear evidence as to why the determination is factually incorrect;
- The organisation or adviser was not given the opportunity to respond to the allegations because of their failure to notify the Commissioner of a change in their contact details.

38. A complainant, organisation or adviser requesting a review of a determination should put this request in writing to the Commissioner by sending it to:

Email: [info@oisc.gov.uk](mailto:info@oisc.gov.uk); or

By post: Office of the Immigration Services Commissioner  
5th Floor  
21 Bloomsbury Street,  
London  
WC1B 3HF

39. That request should set out the grounds on which they are basing their request together with any supporting evidence. This request must be made within 20 working days of the date of the determination.
40. The Commissioner will inform the complainant, organisation or adviser requesting a complaint determination review as to whether a review will be conducted. Such notification will be given within 15 working days of receiving their written request. The Commissioner will aim to complete the review within eight weeks of agreeing to review the complaint determination. If the Commissioner agrees that a complaint should be reviewed all parties to the complaint will be informed of this in writing.
41. If, having reviewed the complaint determination, the Commissioner concludes that the original complaint determination was incorrect, all or in part, they will take such action as appropriate. This can include re-issuing the determination and, if appropriate, altering the sanction imposed. The review decision will be final.
42. If the complaint is about the behaviour of OISC staff, the matter will be dealt with under the OISC policy for such complaints, which can be found at:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/324489/complaints\\_against\\_OISC\\_procedures1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324489/complaints_against_OISC_procedures1.pdf)

### **Consideration of a complainant's request to re-open a matter**

43. A complainant can bring forward to the Commissioner new information which was not available at the time for their consideration after a matter is closed. Having considered this new information, the Commissioner can decide to reopen the matter.

### **Judicial Review**

44. The complainant, organisation or adviser who were the subject of the complaint, may challenge the Commissioner's decision by way of Judicial Review.

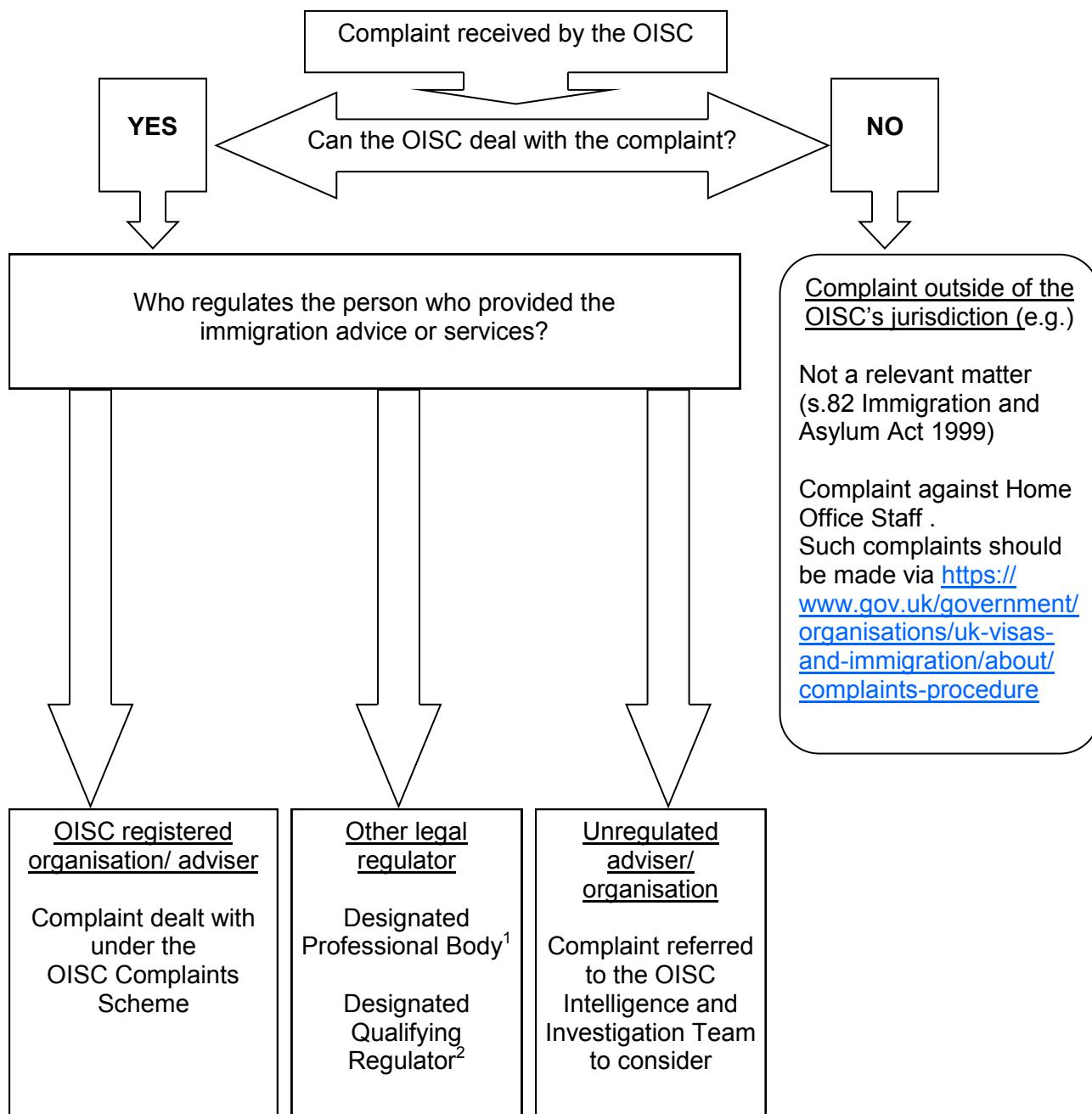
## **Complaints about persons regulated by the Designated Professional Bodies (DPBs) \***

45. Members of Designated Professional Bodies (DPBs) are required to work in accordance with the standards set by their respective profession's regulator. Failure to act in accordance with the rules of their profession can result in their regulator taking disciplinary action against them.
46. The Commissioner can investigate all relevant complaints in respect of the provision of immigration advice and services including a complaint made against a person regulated by one of the DPBs. However, only a DPB can discipline and impose penalties on those they regulate.
47. Complaints made to the Commissioner against such persons will normally be referred to the relevant DPB for investigation and determination. The Commissioner is kept informed of the outcome of such investigations.

**\* Designated Professional Bodies:**

The Faculty of Advocates; The Law Society of Scotland; The General Council of the Bar of Northern Ireland; The Law Society of Northern Ireland

## COMPLAINING TO THE OISC ABOUT IMMIGRATION ADVICE OR SERVICES RECEIVED



1. If the complaint is against a person regulated by a Scottish Designated Professional Body it is referred to the Scottish Legal Complaints Commission for investigation <http://www.scottishlegalcomplaints.com/>
2. If complaint is against a person regulated by a Designated Qualifying Regulator it is referred to the Legal Ombudsman for investigation <http://www.legalombudsman.org.uk/>

**MAKING A COMPLAINT AGAINST AN OISC REGISTERED ORGANISATION OR ADVISER**

