

Report and responses on the Consultation on the Complaints Scheme

June 2015



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Introduction

1. The Immigration Services Commissioner (the Commissioner) has complaint-handling duties 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. The decision to consult on the Complaints Scheme was made for three reasons: the changes introduced by the Immigration Act 2014 (2014 Act) which need to be reflected in the Complaints Scheme particularly the fact that the 2014 Act has replaced the previous Registered/Exemption categorisation of OISC regulated immigration advice organisations with one category – Registered – and given the Commissioner new powers which are relevant to the handling and use of complaints by the OISC; the fact that the Scheme required refreshing and to be made more user-friendly; and to ensure that the Complaints Scheme remained in line with current OISC policies and processes.

3. The consultation was conducted in accordance with the requirements of Part V of the 1999 Act and in accordance with the guidance set out in the Consultation Principles which govern the activities of Government departments and other public bodies.

4. An initial assessment of the consultation's proposals by the OISC indicated that they would have minimal impact. Therefore no impact assessment was produced. We accepted that there may be some impacts on immigration advisers in understanding the changes, but these were expected to be small. No consultation respondent included any feedback together with evidence on the potential range and scale of costs, benefits and risks that they believed may be associated with any proposal contained in the consultation. One respondent, the **Immigration Law Practitioners' Association (ILPA)** said that they felt that the level of information provided especially as no baseline data was included resulted in them not being able to provide any observations on this subject.

5. The consultation was launched on 3 November 2014 and remained open until 30 January 2015. The consultation invited respondents to:

"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 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 improvements 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.”

6. Eight substantive responses were received. Not all respondents provided general comments or commented on every aspect of the Complaints Scheme.

7. This Report is not meant to be a comprehensive response to every point raised by respondents, accepted or not, although all were considered. Some comments, for example, reflected what was already in the Complaints Scheme. Unless otherwise indicated the paragraph numbers referred to are those contained in the revised complaints scheme.

8. A list of respondents is at Annex A with the full responses reproduced at Annex B. The Commissioner is grateful for all the responses received and has carefully considered each in the production of the revised Complaints Scheme. The revised Complaints Scheme can be found [here](#).

General Comments

9. The great majority of general comments received were complimentary, with respondents particularly commenting on how the revised Complaints Scheme was easier to understand than the previous version and written in a way that would make it helpful to potential complainants and those complained about both as to the process and what they could expect. This is reflected in the selection of comments below:

"Very positive – clear, easy to understand and follow. Good use of language – supportive tone." **Citizens Advice**

"The ...Complaints Scheme is well written and clear." – **The Legal Ombudsman**

ILPA agreed with the above points, but also commented that there were *"changes to individual provisions that make it more difficult to complain."* We have carefully reflected on where ILPA has highlighted these when referring to specific elements of the Complaints Scheme.

Summary of responses on specific elements of the Complaints Scheme

Introduction

10. **ILPA** in particular commented that they were “pleased” that complaints could be accepted from third parties and that the Commissioner could investigate complaints on his/her own initiative.

11. A number of respondents, including **ILPA** and **Smith Stone Walters Ltd**, were concerned about the six months’ time limit for bringing a complaint and compared this with The Legal Ombudsman’s complaint processes.

12. In considering these comments we have noted that the Commissioner is not an ombudsman, does not necessarily first require that complaints be directed to the organisation against which they were made (as is the case with The Legal Ombudsman) and that he/she has discretion under the Complaints Scheme to accept a complaint irrespective of how old it is. Having said that, the time period in paragraph 3 has been increased to 12 months.

13. **ILPA** and **The Faculty of Advocates** also commented on paragraph 5 and Annex A. As a result we have made it clear that the Commissioner will refer complaints made against persons regulated by a Designated Professional Body (DPB) to the relevant DPB. We have also revised Annex A.

Making a complaint against an OISC registered organisation or adviser

14. Several respondents (**Citizens Advice, ILPA, London Visa Services Ltd**) commented on the reference to complaints needing to be made in writing. Paragraph 10 (now paragraph 12) of the Complaints Scheme makes it clear that a complaint can be accepted even if it is not in writing.

How complaints will be handled (including Annex B)

15. **Citizens Advice** and **ILPA** were both concerned about the need for the Commissioner to provide timeframes for certain actions. Several have now been included in this section at paragraph 15 (acknowledgement of receipt of the complaint within five working days) and at paragraph 17 (informing the complainant usually within ten working days of receipt of their complaint as to whether it will be investigated). In addition, at paragraph 18 (if it is not possible to confirm within the above mentioned time period that a complaint will be investigated) we have made it clear that the complainant will be informed and given an indication of when it is expected that a decision to investigate will be made.

16. **ILPA** also raised issues regarding further possible breaches being identified in the course of an investigation. If the OISC becomes aware during the course of an investigation of other possible breaches of the *Code of Standards*, then it will pursue

these in accordance with the Commissioner's regulatory powers and the complainant will be made aware of developments.

17. In addition **ILPA** raised the issue of oral representation being made to the Commissioner. We felt that the Commissioner should retain discretion in this area, but we agreed with **London Visa Services Ltd** that oral representations may be invited from the organisation or from any other relevant person.

18. **London Visa Services Ltd** also raised whether there should be a requirement on the Commissioner to accept further information. Again, we concluded that this should remain within the Commissioner's discretion.

19. As a result of the comments received and in light of further discussion within the OISC, changes have been made to Annex B, and that Annex is now specifically referred to as suggested by **Smith Stone Walters Ltd**.

Determining complaints

20. We have made clear in paragraph 32 that both the complainant and the organisations complained about will be sent a copy of the determination, as suggested by **ILPA**. As paragraph 31 makes clear, the determination will contain reasons.

Confidentiality

21. **ILPA** made several comments regarding our section on confidentiality; as a result that section has been rewritten.

Substantiated and unsubstantiated complaints

22. We have redrafted paragraphs 34-36 in light of light of comments from **ILPA** clarifying in paragraph 35 that an application refers to an application for registration. They particularly raise the question of what is meant by a substantiated complaint remaining part of an organisation's and adviser's regulatory histories. In assessing any future application for registration or continued registration of an organisation, or adviser named within a particular complaint, the OISC will consider the findings made in a substantiated complaint as part of the overall decision to approve such an application.

Practice Points

23. **Citizens Advice** said that they liked the language used about Practice Points and thought this was "very positive".

If you are dissatisfied with the Commissioner's decision

24. Having considered **ILPA's** point we have amended paragraph 39 to read that the complainant or the organisation complained about can request a review of the determination on the basis that it is factually incorrect. We have also substituted the

word “good” for the word “exceptional” as they suggested in paragraph 41, first bullet point. However, we have not amended the last bullet point as it is a mandatory Code requirement that Registered organisations keep the Commissioner informed of any change in their organisation’s contact details.

25. We have also, as a result of **ILPA’s** suggestion, made it clear at paragraph 44 that the person who will carry out the review will not be the same person who originally investigated the complaint.

Consideration of a complainant’s request to re-open a matter

26. The heading of this section has been changed to concentrate on the consideration of the request and not the request itself.

Judicial Review

27. On consideration it was thought more helpful to refer to the Parliamentary and Health Services Ombudsman rather than include a general reference to judicial review.

Complaints about a person regulated by the Designated Professional Bodies and Annex A

28. **The Faculty of Advocates** highlighted several points regarding Designated Professional Bodies and particularly the Scottish Legal Complaints Commission. We have noted these and made certain changes to Annex A. Further, with regards to paragraph 28, we have made it clear that an application by the Commissioner for a warrant is specifically made in respect of a Registered organisation. We have, as suggested by **ILPA**, listed at Annex A all the Designated Professional Bodies, and, in addition, included all of the Designated Qualifying Regulators.

Full Responses to the Consultation

Annex A

1. Overall impression of the new Complaint Scheme	Response/Comments
Aaryas Career Ltd	The new complaints scheme is covering all complaints about immigration advice and services from any source which is more impressive.
Citizens Advice	Very positive – clear, easy to understand and follow. Good use of language – supportive tone.
Dynamic Immigration Consultants	Having gone through the draft of the proposed review of the Complaint Scheme, I cannot see any major, significant or substantial impacts this will have on the side of the advisers in understanding the changes. Harmonising all the organisations as registered is a positive change to be applauded. This will prevent unnecessary complexes that might have been existing between them. All organisations practising immigration advice must be the same umbrella or regulating body.
Faculty of Advocates	There is a contradiction between the statement that the Commissioner can refer a complaint against a member of a Designated Professional Body to the relevant body and footnote 1 to the flow chart at Annex A which says that if a complaint is against a person regulated by a Scottish DPB, it is referred to the Scottish Legal Complaints Commission.
Immigration Law Practitioners' Association (ILPA)	<p>The level of information provided is not sufficient to permit ILPA to comment on “the potential range and scale of costs benefits and risks.” For that we require to see an impact assessment because we require baseline data which is not in our possession. If an impact assessment is provided we shall be happy to comment on it.</p> <p>We have endeavoured to comment on matters that have changed from the previous complaints scheme but because these are not set out in the consultation paper we do not distinguish in what follows between comments on matters that have changed and comments on the proposed procedure as a whole. We should be grateful if future consultation could be more explicit as to specific changes.</p> <p>In general we consider that positive features of the proposed new version of the scheme are that it is shorter than its predecessor and overall more clearly drafted. Both make it easier for potential complainants to use and the latter makes clearer to those complained against what they can expect. Negative features are changes to individual provisions that make it more difficult to complain.</p> <p>Paragraph I of the introduction to the consultation paper refers to powers to handle complaints. Paragraph 5 Part I of Schedule I to the Immigration and Asylum Act 1999 refers to a <i>duty</i> to establish a complaints scheme.</p>
London Visa Services Ltd	<p>The complaint scheme does not deal with circumstances of conflict of interest.</p> <p>There should be a general duty in the scheme to cooperate, on all parties to a complaint. There should be a duty of</p>

	candour, on all parties to the complaint. Redaction should be covered.
Smith Stone Walters Ltd	The new Complaint Scheme is clearer and more succinct than the current version.
The Legal Ombudsman	The Legal Ombudsman believes the Complaint Scheme is well written and clear.

2. Specific paragraphs of the Complaint Scheme	Response/Comments
Aaryas Career Ltd	Responsibility of an organisation which is the subject of a complaint must comply with a reasonable request imposed on it by the Commissioner such as the production of documents in a timely manner; take the steps as are reasonably required to assist the Commissioner in their investigation.
Citizens Advice	<p>Paragraph 10 – This requires complaints to be made in writing; this has the potential to exclude some complainants from accessing the scheme. We think there should be something explicitly included in the scheme about commitment to make reasonable adjustments to ensure there is equality of access to the scheme.</p> <p>Paragraph 14 – It appears that there is no commitment to respond to complainants within defined timescales including initial acknowledgement or for determination of the complaint. However, there are timescales set out for seeking and responding to a review of a complaint determination. This feels inappropriate; the former should be included and could include flexibility that will either happen within so many days or, where this cannot be met, will keep complainant advised of likely timescales for response.</p> <p>Paragraph 33 and 34 – We like the language around good practice points; very positive.</p>
Dynamic Immigration Consultants	<p>Paragraph 2: The rationale behind allowing a friend to bring a complaint against an adviser is not really understood. The relationship that exists between adviser and client is fiduciary in nature that culminates trust and confidence, when this is breached then the adviser is liable for an explanation but a friend can bring a complaint out of jealousy.</p> <p>This will then take me to an observation under paragraph 32 about non-disclosure of the ID of the complainant without his or her consent. Why the Commissioner is created is to investigate any wrong doing on the part of the adviser, complainant should not be shielded from being known by the adviser especially when the complaint is not anonymous.</p> <p>Paragraph 33-34 Practise Points: It will bring an improvement to the standard of works of the advisers.</p>

Faculty of Advocates	There is a contradiction between the statement that the Commissioner can investigate a complaint against a member of a Designated Professional Body and footnote 1 to the flow chart at Annex A which says that if a complaint is against a person regulated by a Scottish DPB, it is referred to the Scottish Legal Complaints Commission.
Immigration Law Practitioners' Association (ILPA)	<p>Paragraphs 2 and 4 We are pleased that complaints are accepted from third parties and that the OISC can investigate complaints on its own initiative.</p> <p>Paragraph 3. We disagree with the proposal that the OISC will “normally” only accept a complaint made within six months of when the substance of the complaint occurred and the complainant knew about it.” Many persons under immigration control are extremely reluctant to complain, especially until their status is resolved. Even in straightforward cases that progress smoothly, this frequently takes more than six months. They may gain confidence only when they have better networks of support around them. Or a subsequent representative or other person may persuade them that there is merit in complaining. While the passage of time may make some complaints very difficult to investigate, this will not be the case for all. Where the conduct of a previous representative has compromised that client vis a vis UK Visas and Immigration, for example a change of address was not notified and documents went astray, it may be important to submit evidence of having complained to UK Visas and Immigration. Contrast the Legal Ombudsman, which is moving to an approach whereby it will accept complaints up to six years from the date of act/omission or three years from when the complainant should have known about the case. We see no reason why those who go to an OISC regulated advisor should have lesser protection. If they do, this should be made clear to them at the outset.</p> <p>Paragraph 5 – Says simply that the Commissioner “can” refer a complaint to the relevant Designated Professional Body. By contrast paragraph 47 states that the Commissioner “will normally” do so. Given that only the Designated Professional Body can discipline and impose penalties on those they regulate, we are strongly in favour of referral being made to the Designated Professional Body. We consider that the wording in paragraph 47 should be used in paragraph 5 and that the circumstances in which the Commissioner will not refer the complaint should be set out. We do not know what they are. Persons should also be advised that they can go directly to the relevant Designated Professional Body. It would be helpful and more transparent were the limitations on the Commissioner’s powers vis a vis those regulated by a Designated Professional body set out in paragraph 5, rather than just in paragraph 47, to help to inform this choice.</p> <p>Paragraph 6 In its current form is extremely difficult for a non-native speaker, and a person not familiar with UK systems and procedures, to understand.</p>

Paragraph 7 It would be helpful to set out what happens to a complaint that becomes the subject of legal action etc. part way through its handling.

Paragraph 9 It should be possible to download an electronic version of the form so that it can be worked on, saved, sent to others for assistance and comment if required and then submitted at a later date. This will encourage use of the form. Many persons will want to spell check their form, get help with translation, or will find half way through writing it that they need information that they do not have to hand.

Paragraph 10 We disagree with the insertion of a requirement that a complaint must be made in writing. By contrast, the Legal Ombudsman, for example, accepts complaints by phone, as well as by e-mail or letter. See <http://www.legalombudsman.org.uk/downloads/documents/factsheets/FactsheetHere%20to%20help.pdf>.

We see no reason why those who have a complaint against an OISC-regulated advisor should be placed in a position where it is more difficult to make a complaint. This is all the more so given that the OISC is dealing solely with immigration advice and services and thus it is likely that a higher proportion of complainants will not have English as a first language and will be unfamiliar with UK procedures. The requirement that a complaint be made in writing is likely to be discriminatory as it has a differential impact on persons depending upon their nationality. Gender is also a factor. In 2008 UNESCO indicated that globally 64% of those unable to read and write were women so a requirement to submit a complaint in writing is likely to have a differential impact upon women. The OISC is better placed to render a complaint into written form than many complainants and it should do this.

Paragraph 15 The requirements that the OISC inform the claimant "as soon as possible" whether or not they will investigate the complaint is unsatisfactory. We suggest that there should be a time limit, even an indicative one, as to how soon the OISC will inform a person that it will investigate their complaint. If a decision is unable to be reached within that time frame the OISC should write to the complainant giving reasons for the delay and an estimated date of response.

Paragraph 20 This is unclear. Will the OISC undertake further enquires under the auspices of the complaint's scheme, or under other powers? Will the complainant be made aware (absent the matter becoming public) of these enquires and/or their outcome?

Paragraph 21 We consider that an organisation should always have the right to be heard if it wishes to make oral representations.

Paragraph 28 In what circumstances would it not be possible to send all parties a copy of that determination? We are mindful of paragraph 8(3) of Schedule 5 to the

	<p>Immigration and Asylum Act 1999 which requires the Commissioner to give copies of the statement of the claimant and person complained against, without caveat. The test of impossibility must therefore be absolute.</p> <p>Paragraph 29 This is extremely vague. What does “it will remain part of the organisation’s and/or adviser’s regulatory history” mean? What is meant by “regulatory history”? Will a complaint upheld against an organisation, but not involving a particular employee, remain part of that employee’s regulatory history when they move on? Will a complaint made upheld against an individual remain on an organisation’s regulatory history even when that individual has left? In what circumstances? Etc.</p> <p>Paragraph 30, first bullet point. Does application mean application for registration? The term practice points may be meaningful to the regulated, but is unlikely to be so to most complainants. A cross reference to paragraph 33 and 34 are required.</p> <p>At the end of the second bullet point we question the use of the word “or”. No “or” appears in paragraph 9(l) (a) of Schedule 5 to the Immigration and Asylum Act 1999.</p> <p>Paragraph 31 See comments above regarding the term practice point.</p> <p>Paragraph 32 The first sentence “The Commissioner will only” is clearly drafted. It is confusing that the second sentence uses a different form of words “It is not the Commissioner’s policy.” We are unclear whether this is intended to indicate a different degree of (un) certainty about the approach. The wording, “The Commissioner will not” would be preferable. If there are circumstances where the Commissioner will notify the Home Office and / or Tribunal of the outcome of a complaint in circumstances where they are not the complainant, this should be stated clearly. Ambiguity may make persons reluctant to complain.</p> <p>Paragraph 36 An organisation or adviser should also be able to request a review of a determination on the grounds that it is factually incorrect.</p> <p>Paragraph 37 We suggest substituting “good” for “exceptional”. The use of a term such as “exceptional” raises questions as to whether a relative or absolute standard is being applied.</p> <p>We consider that the results of having failed to notify a change of contact details should not be put so starkly. Consideration should be given to all the circumstances.</p> <p>Paragraph 35 to 42 Review. Nothing in these paragraphs suggests that the reviewer will be in any way independent from the original decision maker. This does not suggest a fair and impartial review process.</p> <p>Paragraph 45 “Designated Professional Body” is a term of</p>
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	<p>art. It would be helpful to set out who are the designated professional bodies.</p>
<p>London Visa Services Ltd</p>	<p>This creates an unnecessary burden to individuals with language difficulties or disabilities. This creates a burden on complainants which may dissuade complaints, and given the OISC policy is to request the file. It should be clear that the Commissioner can determine to cease a complaint at any point by discretion. This only gives the Commissioner discretion to commence a complaint. It should be clear that the Commissioner will request the file prior to considering whether there will be a complaint. The complaint should only commence once the Commissioner has examined the file. Reasonable expectations of time lines ought to be made.</p> <p>The Commissioner should be obliged to accept further information. May accept makes it optional, permitting the Commissioner to refuse to accept evidence, raising the risk of procedurally unfair and biased decision making.</p> <p>"No case to answer" requires the Commissioner to find that there are no valid grounds for the complaint at all. It ought to be possible for the Commissioner to cease the complaint, due to their being insufficient case to answer, such as the circumstances where, in the commissioner's view, a very minor breach may have occurred but it is trifling.</p> <p>Any additional breaches identified may not relate to the complainant. It should be clear that if new concerns become apparent, these can be raised by the Commissioner in a new complaint made by the Commissioner. Separating the original complaint from the newly determined additional grounds is necessary, in some circumstances, where simply extending the complaint would expose personal information pertaining to individuals other than the initial complainant.</p> <p>The Commissioner ought to expressly have the power to accept oral submissions from any party, not just the party complained about. The circumstances where this may be appropriate should be indicated.</p> <p>The Commissioner is singular. It should not be referred to as them.</p> <p>It should be expressly declared that the Commissioner will address all issues raised in the complaint. It should be expressly declared that the Commissioner will give her reasons for all determinations made.</p> <p>There are circumstances where the Complaint is made by a party who is acting contrary to the interest of the relevant client. Examples of this would be a complaint made by an embittered spouse, or a party who is the subject of a dispute.</p> <p>The basis upon which challenges can be brought is substantially limited by the requirement it is factually wrong. Review of a decision ought to be able to be brought on the</p>

	<p>basis of lawfulness. A client who was not the complainant but who has an interest ought to be able to challenge a decision.</p> <p>The effect of this is to allow the OISC to make unsupported findings which cannot be challenged.</p> <p>As an example, Suppose a complainant and the caseworker were involved in a relationship. This should be grounds to review. Review also should be possible where there is a failure.</p> <p>This is an instance of the failure to lawfully make the complaint. Why is it limited?</p> <p>It is necessary to include the word "solely" as in solely on one or more of these reasons. As the review can only be brought on error of fact AND/OR failure to put the question, providing a list of reasons which it would normally not be reviewed for is misleading. It only makes sense if a broader list of grounds to review is permissible.</p> <p>It is unnecessarily burdensome to prescribe how requests for review are to be made. Does this suggest that emailing the caseworker who made the determination cannot start a review?</p> <p>Areas previously covered by the decision and the review process can be subject to no further review, but findings of first instance, made only in the review and not in the decision should be reviewable.</p>
Smith Stone Walters Ltd	<p>We note that, in paragraph 3 a timescale of six months is stipulated in relation to acceptance of a complaint, whereas in paragraph 43 there is no equivalent timescale for complainant bringing forward new information after a matter has been closed. Regarding the first point, it is possible that an individual may wish to raise a complaint long after a registered adviser has helped him, e.g. if he was satisfied with the service provided by the adviser at the time, but he discovers at a much later date that he was wrongly advised and the type of visa he has been granted doesn't allow him to extend his stay in the UK. In such an instance, he could wish to make his complaint about the adviser several years after he received immigration assistance.</p> <p>Under the section "How complaints will be handled" on page 2, it would be helpful to make a reference to Annex B (in the same way that you have referenced Annex A in the Introduction).</p> <p>Under paragraph 30, first bullet point, we suggest rewording as follows so the reference to paragraphs 33 and 34 is made at the first mention of practice points, not the second:</p> <ul style="list-style-type: none"> • Leave the determination on file for consideration at the next relevant application. Practice points may be issued (see paragraphs 33 and 34); <p>You could then remove the reference to paragraphs 33 and 34 under paragraph 31, as the reader's attention has</p>

	<p>already been drawn to further information on practice points:</p> <p>31. If a complaint is unsubstantiated, the Commissioner will not apply a sanction but may raise practice points with the organisation.</p>
The Legal Ombudsman	<p>Within the introduction of The Complaint Scheme, paragraph 3 refers to the time limits on which a complaint can bring a complaint to OISC. OISC will need to take account of Article 5(4) (e) in the European Union Alternative Dispute Resolution (EUADR) Directive which sets out the time limits for a consumer to bring a complaint to an ADR entity.</p>

3. Other comments	Response/Comments
Aaryas Career Ltd	<p>Overall Complaints Scheme is covering all factors that need to be cover.</p>
Faculty of Advocates	<p>It is not clear which of these responsibilities are said to lie on members of a Designated Professional Body. Paragraph 23 does not make it clear that the power to seek a warrant only extends to premises associated with registered persons.</p>
Immigration Law Practitioners' Association (ILPA)	<p>We consider that it is good practice to produce complaint forms. We consider that it is good practice to produce complaint forms in different languages but are concerned that the last non-English language forms published by the OISC date from 2007 and carried an outdated address and website.</p> <p>As set out in ILPA's response of today's date to the consultation on the Code of Standards, we have some concerns that requirement for the OISC to approve complaints' procedures could lead to delays in making minor modifications where glitches are discovered or where something in the organisation changes. Approval should be rapid and at a high level rather than getting into discussions of detail.</p> <p>ILPA said in its August 2013 response to the OISC's consultation on a code of standards:</p> <p>"Regular reviews of a log where complaints are collected in one place can highlight weakness in an organization and are a useful management tool."</p> <p>We consider that a complaints' log should be required.</p>