Immigration Advice Authority

Promoting best practice, protecting advice seekers

Complaints scheme

Guidance on the procedures used to assess, investigate, and determine complaints concerning immigration advisers and organisations, including how cases are reviewed, evidence is considered, and appropriate action is taken where necessary.

Introduction

1. The Commissioner can accept a complaint about immigration advice or services from any source. Annex A shows how complaints received by the Immigration Advice Authority (IAA) are categorised and Annex B shows how those against an IAA registered organisation are handled.
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. It is of assistance to our investigation if the IAA is notified soon after a person becomes dissatisfied by the immigration advice or services they have received. Hence, the Commissioner will usually only accept a complaint made within twelve months of when the complainant first became aware of the issue which forms the basis of their complaint.
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 a 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 will normally refer the complaint to the relevant regulatory body. See paragraphs 48 to 51 and Annex A.
6. The Commissioner cannot deal with complaints received about the Home Office or any other government department or the Tribunal Service (Immigration and Asylum Chamber) and their staff.
7. The Commissioner will not usually accept a complaint that is the subject of legal proceedings.
8. The Commissioner will not reimburse any fees, expenses or cost involved in bringing a complaint.
9. If a complaint is about the behaviour of IAA staff, this will be handled according to the procedure which can be found on the IAA website.

Making a complaint against an IAA registered organisation or adviser

10. The IAA's complaint form is available on the IAA website.
11. The complaint form can be completed online or sent to the IAA in hard copy.
12. A complaint should normally be made in writing but does not need to be made on an IAA complaint form to be accepted.
13. When submitting a complaint complainants should attach all relevant documentation.

Where to send complaints

14. Complaints should be sent to the Commissioner via the Portal, or by post:

Immigration Advice Authority
PO Box 567
Dartford
Kent
DA1 9WX
United Kingdom

How complaints will be handled (see Annex B)

15. The IAA 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 IAA 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 IAA 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 IAA expects to confirm if their complaint will be investigated.
19. The IAA 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 IAA will usually request the client's file from the organisation.
21. Having considered the information available to it at this stage, the IAA 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 IAA. 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.
24. If, during the course of the investigation other concerns about the organisation's fitness and/or competence are identified, the Commissioner may 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.
25. In certain circumstances, the Commissioner may at his/her discretion invite the organisation or any other relevant person to make oral representations in respect of all, or part of, the complaint.

Responsibilities of an organisation which is the subject of a complaint

26. 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 as requested; and take such steps as are reasonably required to assist the Commissioner in his/her investigation.
27. Failure to co-operate with the Commissioner's investigation without reasonable excuse may result in the Commissioner cancelling the registration of the organisation.

Responsibilities of an organisation which is subject to a warrant

28. 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 of a registered organisation. 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 6
    - not delay or obstruct the Commissioner or their staff or agents while on the premises

Determining complaints

29. The Commissioner will make his/her decision based on the evidence before them.
30. In determining complaints, the Commissioner's standard of proof is the civil standard being the balance of probabilities.
31. The Commissioner will give his/her determination in writing together with the reasons.
32. The complainant and the organisation will be sent a copy of the determination provided the IAA has their current contact details.
33. The Commissioner will only disclose the identity of a complainant with the complainant's consent or if required by law. Accordingly, the Commissioner will not notify either the Home Office or the Tribunal Service (Immigration and Asylum Chamber) of the investigation or the outcome of a specific complaint unless they are the respective complainant.

Substantiated and unsubstantiated complaints

34. If a complaint is substantiated, in whole or in part, it will be included in the organisations and advisers' regulatory history.
35. The Commissioner may:
    - leave the determination on file for consideration at the next relevant application for registration. Practice points may be issued (see paragraphs 37 and 38 below);
    - consider and conclude that the organisation and/or an adviser should have their authorisation immediately cancelled; or
    - lay a Disciplinary Charge before the First-tier Tribunal (Immigration Services)
36. If a complaint is unsubstantiated, the Commissioner will not apply a sanction but may raise practice points with the organisation (see paragraphs 37 and 38 below).

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 issue a written apology to the complainant
    - the adviser/organisation to complete specific training or attend a specific IAA workshop
    - the adviser/organisation to complete further work e.g. appeal at no additional cost to the complainant or re-do the work at no additional cost to the complainant
    - the adviser/organisation to refund fees (including Home Office fees) or offer financial compensation
40. A failure to comply with the Commissioner's recommendations may affect the organisations continued registration.

Dissatisfaction with the Commissioner's decision

41. If the complainant or the organisation complained about is dissatisfied with the determination, either can request a review of that determination on the ground that the determination is substantially factually incorrect.
42. If the organisation complained about is dissatisfied by a complaint determination, it can request a review of the determination on the ground that it did not have an opportunity to respond to one or more of the allegations that were substantiated against it.
43. The Commissioner will not undertake a review of a complaint determination if the reason for the request made by the complainant or the organisation is based on one or more of the following:
    - the production of information that could have been available during the original investigation unless there were good reasons for its non- disclosure
    - disagreement with the complaint determination
    - failure to identify and provide clear evidence as to why the determination is substantially factually incorrect; and/or
    - failure to respond to the allegations due to not notifying the Commissioner of a change in contact details
44. The complainant or the organisation requesting a review of a complaint determination should usually put their request in writing to the Commissioner via the Portal, or by post:
    Immigration Advice Authority
    PO Box 567
    Dartford
    Kent
    DA1 9WX
    United Kingdom
45. That request should set out the reasons for their request together with any supporting evidence. The request must be made within 20 working days of the date of the complaint determination.
46. The Commissioner will inform the complainant and the organisation as to whether a review will be conducted. Notification will be given within 15 working days of receiving the request. Any review will be conducted by a person other than the original complaint investigator. 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, the complainant, organisation and all parties to the complaint will be informed in writing.

47. If, having reviewed the complaint determination, the Commissioner concludes that the original complaint determination was incorrect, all or in part, he/she will take such action which may include re-issuing the determination and altering the sanction imposed, as appropriate. The Commissioner's review decision is final.

Request to re-open a complaint

48. A complainant can bring forward to the Commissioner new information that was not available when the complaint was closed. This information should be brought to the Commissioner's attention as soon as possible. Having considered this new information, the Commissioner may decide to reopen the complaint.

Parliamentary and Health Service Ombudsman

49. Should a person be dissatisfied with the way the Commissioner has dealt with a complaint, they may raise their concerns with the Parliamentary and Health Service Ombudsman (PHSO). This must be done by following the PHSO's procedure, which includes gaining the support of a Member of Parliament. Details may be obtained from:
    The Parliamentary and Health Service Ombudsman:
    Millbank Tower Millbank,
    London,
    SW1P 4QP
    www.ombudsman.org.uk
    (Telephone: 0345 015 4033)

Complaints about persons regulated by the Designated Professional Bodies* or Designated Qualifying Regulators**

50. 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.
51. The Commissioner can investigate all relevant complaints in respect of the provision of immigration advice or 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 it regulates.
52. Complaints made to the Commissioner against such persons will normally be referred to the relevant DPB for investigation and determination (or in Scotland, the Scottish Legal Complaints Commission). The Commissioner will be kept informed of the outcome of such investigations.
53. Similarly, complaints made about authorised members of a Designated Qualifying Regulator who provide immigration advice and services will normally be referred to the

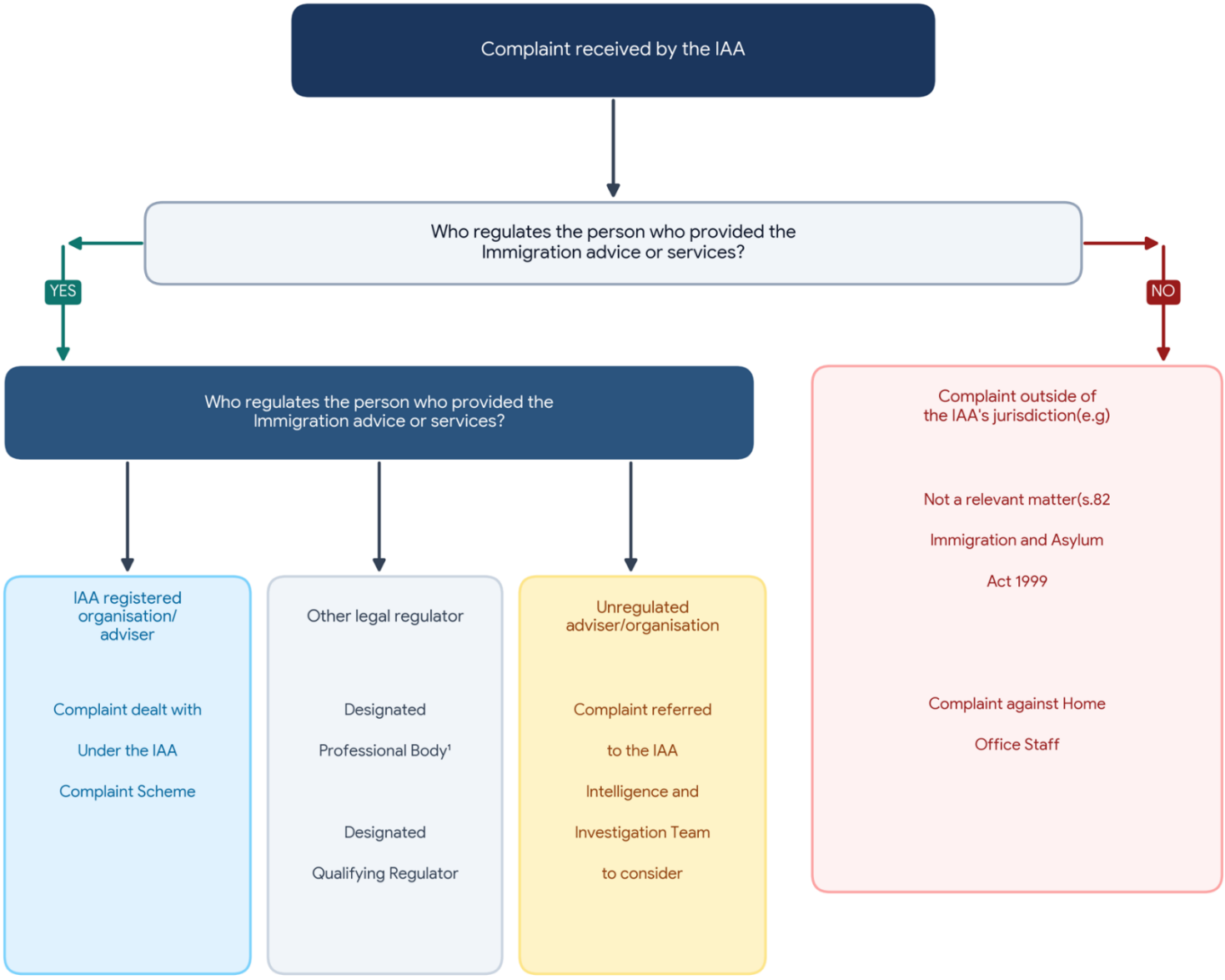
Legal Ombudsman for investigation and determination.

* 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

** Designated Qualifying Regulators: The Law Society of England and Wales; The General Council of the Bar; The Chartered Institute of Legal Executives

Categorisation of complaints

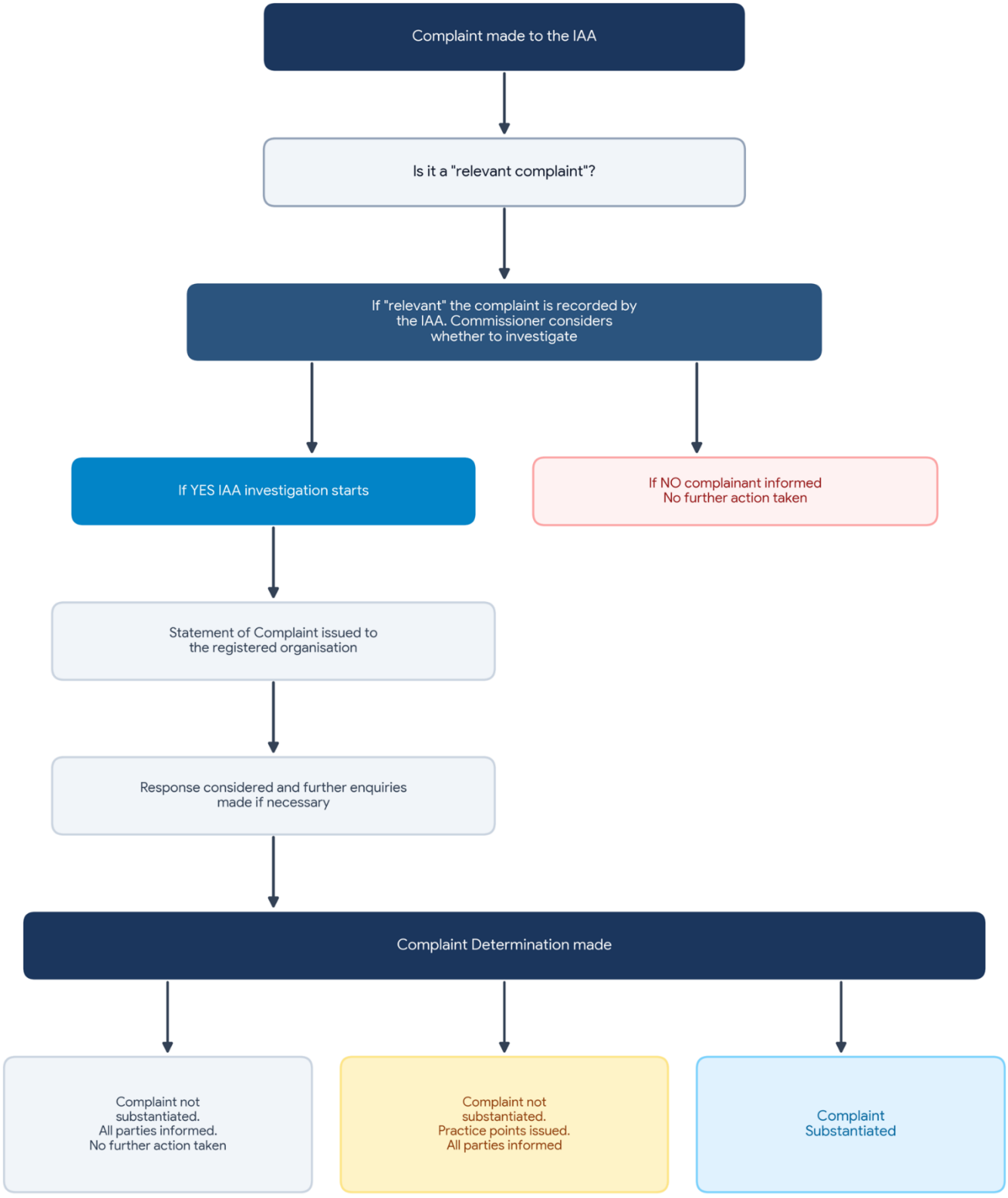
Annex A: Complaint received by the IAA



1. If the complaint is against a person regulated by a Scottish Designated Professional Body, it is normally 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 normally referred to the Legal Ombudsman for investigation http://www.legalombudsman.org.uk.

Annex B: Complaint made to the IAA




Consider the complaint determination at the next relevant application for registration
Cancel immediately the registration of the organisation/ adviser
Lay a disciplinary charge before the First-Tier Tribunal (Immigration Services)