



## Amending the OISC's Complaints Scheme – Response Form

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.

**N.B.** If responding using Word, the response boxes are expandable to fit the size of your comments. You may also continue your comments on a separate sheet.

<p style="text-align: center;">Overall impression of the new Complaints Scheme</p> <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.”<sup>1</sup> 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 consultations 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</p>	
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<sup>1</sup> Introduction paragraphs 4 and 14.

complain.

Paragraph 1 of the introduction to the consultation paper refers to powers to handle complaints. Paragraph 5 Part 1 of Schedule 1 to the Immigration and Asylum Act 1999 refers to a *duty* to establish a complaints scheme.

Specific paragraphs of the  
Complaints Scheme

**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.

**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 the 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 Ombuds, 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.

**Paragraph 5** 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 à 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.

**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.

**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 Ombuds, for example, accepts complaints by phone, as well as by email or letter. See <http://www.legalombudsman.org.uk/downloads/documents/factsheets/Factsheet1-Here%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<sup>2</sup> 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 requirement 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 enquiries 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 enquiries 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.

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<sup>2</sup> See <http://www.legalombudsman.org.uk/downloads/documents/factsheets/Factsheet1-Here%20to%20help.pdf> (accessed 26 January 2014).

**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 Immigration and Asylum Act 1999 which requires the commissioner to give copies of the statement to the claimant and person complained against, without caveat. The test of impossibility must therefore be absolute.

**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.

**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 paragraphs 33 and 34 are required.

At the end of the second bullet point we question the use of the word “or”. No “or” appears in paragraph 9(1)(a) of Schedule 5 to the Immigration and Asylum Act 1999.

**Paragraph 31** See comments above re the term practice points.

**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)certainly 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.

**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.

**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.

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.

**Paragraphs 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.

Paragraph 45 “Designated Professional Body” is a term of art. It would be helpful to set out who are the designated professional bodies.

#### Other comments

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.

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.

ILPA said in its August 2013 response to the OISC’s consultation on a code of standards:

“Regular reviews of a log where complaints are collected in one place can highlight weaknesses in an organization and are a useful management tool.”

We consider that a complaints’ log should be required.

## About You

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes, primarily the Freedom of Information Act 2000 and the Data Protection Act 1998.

If you want all, or any part, of your response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the OISC.

The OISC will process your personal data (name and address and any other identifying material) in accordance with the Data Protection Act 1998, and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Please tick if you want us to keep your response confidential.

Reason for confidentiality:

Are you responding to this consultation (please select **one** answer only) in an official capacity (e.g. on behalf of an organisation or company)?

If so, are you (please select **one** answer only):

- Public sector body
- Private sector body
- Voluntary/not for profit organisation
- An OISC regulated REGISTERED body
- A representative/professional body X

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organisations.

Other

If you answered 'other' please specify below:

Name: Adrian Berry, Chair

Please tick if you are responding on behalf of an organisation

X

Name of organisation (if appropriate)

Immigration Law Practitioners' Association

OISC registration number (if appropriate)

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