



Introduction

The Office of the Immigration Services Commissioner (OISC) issued two consultation papers on their Complaints Scheme and Code of Standards.

We understand they are seeking to incorporate their new powers, conferred by the Immigration Act 2014, into The Complaints Scheme and to refresh the document, making it more user-friendly. We also understand they are consulting on whether their Code of Standards should remain prescriptive or take a more principle based approach.

We have provided our feedback to both consultations in one response as we have just one item of specific feedback for The Complaints Scheme, whereas the rest are general comments or specific to The Code of Standards.

The Complaints Scheme

We believe The Complaints Scheme is well written and clear. Within the introduction of The Complaints Scheme, paragraph 3 refers to the time limits on which a complainant can bring a complaint to OISC. OISC will need to take account of Article 5 (4)(e) in the European Union Alternative Dispute Resolution (EU ADR) Directive which sets out the time limits for a consumer to bring a complaint to an ADR entity.

The Code of Standards

It appears to us that, in comparison to other regulator's schemes, OISC's approach is more prescriptive. Consumer protection is a prominent driver in a more outcome focused approach which the Legal Ombudsman greatly encourages.

We have provided feedback per section as requested below:

Provision of immigration advice and services online

Paragraph 16 – The Legal Ombudsman supports the inclusion of ‘*the generally expected timeframes of delivery of such work*’.

Client care letter

Paragraph 20 – We note the requirement that no work is carried out until a client has agreed their client care letter, other than in exceptional circumstances. Does OISC consider that the nature of immigration work may give rise to situations that require advisers to begin work before a client care letter is issued, particularly given any vulnerabilities in that client group? There is a risk that the potential need for urgent action here may be hampered by process.

Keeping clients informed

We suggest that this section includes that an adviser should inform their client whether any other legal service providers will be directly or indirectly involved with the provision of immigration advice and services online.

Paragraph 26 – We suggest clarification of the statement ‘*each of their clients is kept regularly informed in writing*’ and the addition of ‘*in proportion to the circumstances of the case*’. For example, there may be multiple applicants in the same household (i.e. a couple or a family) where one letter for them all would suffice.

Transferring the client's file

Paragraph 41 – We note that where a client requires that their case be transferred to another organisation, irrespective of whether payment is outstanding, all documents must be transferred as soon as possible and no later than three working days. The Legal Ombudsman notes that other legal services oppose this particular stance and suggests it is unclear where the interests of the service provider lie here.

Fees and accounts

We note this section does not mention VAT (although it is in the Client Care Letter Section). Different provisions may apply to different clients, and these provisions are therefore not clear for either the consumer or the provider as to the relevance of VAT.

Further comments

The Legal Ombudsman is concerned there is a regulatory gap in situations where barristers are supervising OISC registered immigration advisers. If complaints arise in these situations, we can accept a complaint when questions arise about the barrister's supervision of the work carried out. However, it is not clear which complaint would take precedence; the one against the barrister or the one against the OISC adviser (which OISC would deal with).

We consider that a memorandum of understanding should be drawn up between OISC and the Office for Legal Complaints (OLC) that sets out the boundaries of the relevant jurisdictions to provide clarity for consumers and professional services providers.

We are also concerned that there is a lack of provision for consumer redress in both consultations. This could result in a disparity in redress where someone uses an adviser regulated by OISC compared to someone who uses a lawyer who falls under our jurisdiction. We understand there is nothing that OISC can currently do about the lack of consumer redress, as they have no powers under the Act which governs them. However, the Legal Services Board's 2012 paper on the regulation

of immigration advice and services¹ encouraged OISC and the Legal Ombudsman to discuss a voluntary jurisdiction scheme which would allow us to deal with complaints and provide redress in relation to OISC regulated advisers.

We suggest this consultation may be an opportunity for a discussion regarding this before the Code is published with a view to enhancing consumer confidence, and avoiding confusion, about their access to redress.

We suggest an additional section in the Rules which says, for example:

'The Commissioner will determine a complaint by reference to what is, in his/her opinion, fair and reasonable in all the circumstances of the case. In determining what is fair and reasonable, the Commissioner may take into account (but is not bound by) :

- a) what decision a court might make*
- b) the relevant Rules of conduct at the time of the act/omission; and*
- c) what the Commissioner considers to have been good practice at the time or the act/omission'*

This would enable the consideration of the individual merits of a case that is not fettered inappropriately by the rules, and ensures fairness to all parties.

Thank you for giving us the opportunity to feed into these discussions. If you have any queries about any of the points raised in this response, please get in touch with Katherine Wilson (Policy and Research Associate) at katherine.wilson@legalombudsman.org.uk

¹ Legal Services Board Consultation: 01 March 2012 – Regulation of immigration advice and services