



The Complaints Scheme

Office of the Immigration Services Commissioner

Regulating immigration advice



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The Complaints Scheme

General

1. This Complaints Scheme is made under the authority of paragraph 5 of Part 1 of Schedule 5 to the Immigration and Asylum Act 1999 (Annexes A and B). All references to legislation are to the Immigration and Asylum Act 1999 (the Act), as amended, unless otherwise stated.
2. The Complaints Scheme details the way in which the Immigration Services Commissioner (the Commissioner) and his/her staff will deal with complaints regarding the fitness and competence of persons providing immigration advice or immigration services and those persons who are employed by them or work under their supervision. The Scheme outlines the duties and responsibilities placed on all parties and the way in which complaints will be addressed. Statistical analysis of complaint-handling is contained in the Commissioner's Annual Report.
3. Information on the Complaints Scheme and details as to how it can be used have been incorporated into a complaints form, which is available in a range of languages from the OISC at:

Office of the Immigration Services Commissioner
5th Floor
Counting House
53 Tooley Street
London
SE1 2QN

or from its website at www.oisc.gov.uk

Complaints Scheme

(see flow chart at page 21)

4. The Complaints Scheme is applicable to all persons providing immigration advice or immigration services, except for those persons described in paragraph 14 below.
5. As in the Act, 'immigration advice' for the purposes of this Scheme means advice which:
 - a. relates to a particular individual
 - b. is given in connection with one or more relevant matters
 - c. is given by a person who knows that he is giving it in relation to a particular individual and in connection with one or more relevant matters
 - d. is not given in connection with representing an individual before a court in criminal proceedings or matters ancillary to criminal proceedings.

6. As in the Act, 'immigration services' for the purposes of this Scheme means the making of representations on behalf of a particular individual:
 - a. in civil proceedings before a court, tribunal or adjudicator in the United Kingdom
 - b. in correspondence with a Minister of the Crown or government department in connection with one or more relevant matters.

Complaints with which the OISC can deal

7. The Scheme only relates to 'relevant complaints'. As stated in the Act, a complaint is relevant if it relates to:
 - a. the competence or fitness of a person to provide immigration advice or immigration services
 - b. the competence or fitness of a person acting on behalf of a person providing immigration advice or immigration services
 - c. alleged breaches of either the Commissioner's Code of Standards or Rules by those to whom they apply
 - d. an alleged breach by a person regulated by a Designated Professional Body or equivalent EEA regulatory body of the rules of the relevant regulatory body.
8. A complaint may be received from any source.
9. A third party, for example a friend, a solicitor or a voluntary organisation, may make a complaint on behalf of a complainant. In such cases it will be assumed that unless there is evidence to the contrary, the third party has been authorised to make the complaint. Third parties who through their own work have knowledge of the actions of an adviser may also make complaints independently.
10. Complaints should normally be made within six months of the complainant becoming aware of the grounds for complaint. The Commissioner is not however, inhibited in his/her investigations by the timing of when the alleged incident took place.
11. The Commissioner will not reimburse any fees, expenses or cost involved in bringing a complaint by any person or body.
12. As detailed in the Act, the Commissioner may also make investigations on his/her own initiative into matters which could form the subject of a complaint. In such circumstances the investigation will be conducted as if a complaint had been made, and must be investigated in accordance with this Complaints Scheme.

Complaints with which the OISC cannot deal

13. The OISC 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 Asylum and Immigration Tribunal (AIT) and their staff.
14. Ordinarily the Commissioner will not deal with complaints that are already the subject of ongoing legal action. However, the Commissioner may, at his/her discretion, act on such complaints. In any event, he/she will consider taking such action when he/she is made aware of the conclusion of such legal action, but may also, if he/she considers it appropriate, obtain such consent as may be necessary to initiate a complaint.

Making a complaint

15. OISC complaints forms containing information about the Scheme are available in a range of languages from:
- the Office of the Immigration Services Commissioner
 - the OISC website on www.oisc.gov.uk
 - OISC regulated advisers
 - community advice organisations.
16. To be valid a complaint does not, however, need to be made on an OISC complaints form. While an oral complaint can be received, it is expected that complaints will be made in writing. Relevant documents should be included when submitting a complaint.
17. OISC staff can advise on how to complete the complaints form but, because of the need to maintain the Commissioner's independence, they cannot draft the complaint.

Where to send complaints

18. Complaints should be sent to the Commissioner at:

Office of the Immigration Services Commissioner
 Complaints Team
 5th Floor
 Counting House
 53 Tooley Street
 London
 SE1 2QN

or by email to info@oisc.gov.uk

19. The Commissioner will accept an oral complaint, but a complainant will always be encouraged to confirm their complaint in writing.
20. If the details provided are sufficient, then the letter, e-mail, etc. may form the basis of a complaint. Some complainants may be contacted by OISC staff to obtain further details of their complaint and the circumstances surrounding it before the matter is taken further.

Confidentiality and process

21. The Commissioner will not disclose the identity of the complainant save to the extent that such disclosure is necessary to enable the person who is the subject of the complaint to make representations or in other such circumstances as necessary in order to pursue any legal action that may arise from the complaint.
22. The Commissioner will comply with the relevant provisions of the Data Protection Act 1998.
23. Should the complaint refer to matters that indicate a criminal offence may have occurred, the Commissioner may need to discuss the complaint with the police or other authority. In such instances, he/she will, if necessary, disclose the identity of the complainant to the relevant authority. The Commissioner will also decide whether in these circumstances his/her own investigation should be suspended.
24. It is not the Commissioner's policy to notify either the Home Office or the Asylum and Immigration Tribunal (AIT) of his/her investigation or the outcome of a specific complaint unless they are the complainant. Making a complaint should not have any effect on the complainant's immigration status. However the Commissioner will, if asked by the immigration authorities, confirm whether a complaint is being or has been investigated.

Standard of proof

25. In determining complaints, the Commissioner's usual standard of proof is the civil standard, that is the balance of probabilities. However, if dishonest/illegal activity is alleged, the Commissioner will apply the criminal standard of proof to that element of the complaint, being beyond reasonable doubt.

How complaints will be addressed

26. The OISC aims to acknowledge a complaint in writing within five working days of its receipt, explaining how it will be dealt with. If the Commissioner cannot deal with the particular complaint, the complainant will be informed accordingly.

27. The Commissioner will at his/her discretion decide whether a complaint is to be investigated.
28. The Commissioner can decide at any stage during the investigation that there is no case to answer. When this is the case, he/she will write to both the complainant and the subject of the complaint informing them of this as soon as possible.
29. The Commissioner will write to the subject of the complaint, notifying them that a complaint has been made against them and including the alleged breaches of the Commissioner's Codes of Standards or Rules. This letter, called a Statement of Complaint, will also contain a date by which the Commissioner must receive their written response to the allegations.
30. Having had sight of available evidence, and noting that the nature of the alleged breach or breaches is such that it requires the criminal standard of proof – i.e. beyond reasonable doubt – the Commissioner may provide the person complained of with a reasonable opportunity to make oral representations. In such circumstances, the Commissioner will invite the respondent to make oral representations in respect of the complaint or part of a complaint.
31. There may be a need for the Commissioner to undertake further enquiries. These may result in requests for further written information or persons to be interviewed. Where appropriate, the parties will be afforded the opportunity to further respond to information that may be disclosed during the investigation.
32. The Commissioner will make a decision based on the evidence before him/her.

Notification of the outcome

33. The Commissioner will notify the parties to the complaint of his/her decision by way of a written statement including the reasons for the decision.
34. Where complaints are made by a third party, the person(s) involved in the matter complained of will also be informed of the outcome, if their identity has been made known to the Commissioner.

Possible action following a complaint

Practice points

35. During the course of a complaint investigation, the Commissioner may identify areas of improvement – areas where the standard of service or a particular process could be improved – even if the issues are not serious enough to warrant the upholding of a breach of the Code or Rules or that merit any sanction. In such instances the Commissioner may choose to raise 'practice points'.

36. Practice points are recommendations of good practice that the Commissioner expects an adviser to implement. It will be expected that their implementation would be checked at the adviser's next audit to ensure compliance. If the same problem is repeated at a later date the Commissioner may, at his/her discretion, consider whether the adviser is in his/her opinion fit to provide immigration advice or services. Where this results in a 'relevant decision', this may be appealed to the Immigration Services Tribunal (see paragraph 49).
37. The Commissioner's aim in using practice points is to assist advisers to improve their standards in a manner that is supportive and not punitive. Their use does not constitute a 'relevant decision' under section 87 of the Act and consequently cannot be appealed to the Immigration Services Tribunal. When raised in the context of a determination that upholds a breach of another Code or Rule, the issue that gave rise to the practice point will be treated separately.

Actions by the Commissioner if complaints are substantiated

38. On determining a complaint, the Commissioner may apply the following sanctions:
 - a. Where the complaint is against a registered person or persons employed by or under the supervision of a registered person, record the fact that the complaint has been made and the outcome of the investigation. This will then be considered if and when the registered person next applies for their registration to be continued
 - b. Where the complaint is against a registered person or persons employed by or under the supervision of a registered person, and the complaint is considered to be sufficiently serious to require immediate action, the registered person will be required to apply immediately for continued registration. The complaint and the matters raised during its determination will be taken into account in determining the reapplication for registration
 - c. If the complaint relates to a person the Commissioner has granted a certificate of exemption, or is working for or under the supervision of an exempted person, consideration will be given as to whether the exemption should be withdrawn
 - d. With respect to any relevant person subject to a relevant complaint, other than those regulated by the professional bodies, the Commissioner can lay a disciplinary charge against them before the Immigration Services Tribunal. This would generally apply only to the most serious matters or where there was a history of complaints. 'Relevant person' includes all persons providing immigration advice or immigration services. This includes those who have been exempted by the Immigration Services Commissioner or are in a category of persons subject to a Ministerial Order under s. 84 (4) (d) of the Immigration and Asylum Act 1999.

39. If the complaint is made against a person who:
- is authorised to practise and regulated by a Designated Professional Body or works under the supervision of such a person
 - is registered or authorised by a person in another EEA State, responsible for the regulation of the provision of such advice and services or exempted by them
 - is authorised by a body in another EEA State, which is responsible for the regulation of legal services within that state
 - is employed or supervised by someone regulated by a person or body within another EEA state.
40. The Commissioner can refer the complaint and his/her decision to the relevant regulatory body as detailed in the section on Designated Professional Bodies (see paragraphs 58 to 75 below).

Powers and duties

Commissioner's entry into premises

41. The Commissioner has power to enter premises as specified in Schedule 5 paragraph 7 as amended by s.140 of the Nationality, Immigration and Asylum Act 2002 and s.38 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (see Annex B) these powers only relate to complaints about:
- the competence or fitness of a person to provide immigration advice or immigration services
 - the competence or fitness of a person acting on behalf of a person providing immigration advice or immigration services
 - alleged breaches of the Commissioner's Rules and/or Code of Standards.
42. The above powers of entry do not apply to complaints alleging a breach of the Commissioner's Code of Standards by a person regulated by a Designated Professional Body or equivalent EEA regulatory body or the rules of that relevant regulatory body.
43. The powers of entry can be used by the Commissioner or by his/her staff who have been authorised in writing by the Commissioner to so enter. In addition, where the Commissioner has authorised others to act as his/her agent, investigating complaints on his/her behalf, that person or persons is/are also authorised to use the Commissioner's powers, provided that they have been appropriately authorised as if they were a member of the Commissioner's staff.

44. The Commissioner has the power:
- to enter premises without force at a reasonable time, to take copies of any document or information held on computer
 - to take into the premises any equipment thought necessary.
45. The Commissioner cannot enter premises to the extent that they constitute a private residence.

Duties on the person who is the subject of a complaint

46. Any person who is the subject of complaint must:
- comply with any reasonable requirement imposed on him/her by the Commissioner
 - take such steps as are reasonably required to assist the Commissioner in his/her investigation.
47. A registered or exempt person must:
- allow access to their premises (see paragraphs 41 to 45 above) for the investigation of any relevant complaint
 - comply with the requirements of the Commissioner or his/her staff or agents when they are on those premises investigating a complaint
 - not delay or obstruct the Commissioner or his/her staff or agents.
48. Failure to comply with paragraphs 46 and 47 above without reasonable excuse may result in the Commissioner imposing sanctions up to and including the cancellation of registration or removal of exemption, or requesting that similar sanctions be imposed by the Immigration Services Tribunal.

The Immigration Services Tribunal

49. The Immigration Services Tribunal ('the Tribunal') was established under s.87 of the Immigration and Asylum Act 1999 to hear appeals against 'relevant decisions' made by the Commissioner and to consider disciplinary charges that he/she may bring against advisers.
50. Only a relevant decision made by or on behalf of the Commissioner can be appealed to the Tribunal. As stated in section 87 of the Act as amended, a decision is relevant if it is a decision:
- to refuse an application for registration made under paragraph 1 of Schedule 6; to withdraw an exemption given under section 84(4)(a)
 - under paragraph 2(2) of that Schedule to register with limited effect or to refuse an application for continued registration made under paragraph 3 of that Schedule
 - to vary a registration on an application under paragraph 3 or 3A of that schedule.

51. The Tribunal also has the function of hearing disciplinary charges laid by the Commissioner under paragraph 9(1)(e) of Schedule 5. Where the Tribunal upholds such a charge, it can impose a range of sanctions depending on the status of the person charged including:
- direct the Commissioner to record the charge for consideration on application for continued registration
 - direct the person to seek continued registration without delay
 - direct the Commissioner to consider whether to withdraw exemption
 - direct the restriction, suspension or prohibition of the provision of immigration advice or immigration services including advice or services provided by employees or those working under their supervision.
52. The Tribunal can also give directions requiring the Commissioner to recover a penalty and for clients to recover fees from those who have been found by the Tribunal to have asked for unreasonable fees. In addition the Tribunal may also direct the person charged to pay a penalty, in accordance with Section 89 of the Act.
53. If requested by the Commissioner, the Tribunal may give directions imposing restrictions on any relevant person or any person employed by them or working under their supervision, prohibiting them from providing immigration services or advice while they are dealing with the charge against them.
54. Advisers or their representatives requiring further information about the Tribunal or their procedures should contact the Tribunal at:
- Immigration Services Tribunal
 Procession House
 55 Ludgate Hill
 London EC4M 7JW
www.immigrationstribunal.gov.uk

Right to appeal the Commissioner's decision

55. A complainant has no formal right of appeal to the Commissioner in respect of the Commissioner's dismissal of a complaint. This is separate from the complainant bringing forward to the Commissioner new information for his/her consideration. Having considered this new information, the Commissioner may, at his/her discretion, decide to reopen the case.

56. Complainants have the right to bring any concerns they may have regarding the Commissioner's decision-making process via their MP to:

The Parliamentary and Health Service Ombudsman
 Millbank Tower
 Millbank
 London SW1P 4QP
www.ombudsman.org.uk

57. The complainant and the adviser who is the subject of the complaint may challenge the Commissioner's decision-making process by way of judicial review.

Complaints about persons regulated by Designated Professional Bodies

(see Annex C for full list and Annex E for a flow chart of the relevant complaint process)

58. Members of Designated Professional Bodies are required to work in accordance with the standards set by their respective professional body. Failure to act in accordance with the rules of the profession can result in the professional body taking disciplinary action against them.
59. This disciplinary action in serious cases may result in the individual losing the right to be a member of the profession and/or the right to practice.
60. The OISC can investigate all relevant complaints in respect of the provision of immigration advice and services, whether or not they concern a member of one of the Designated Professional Bodies. However, only a Designated Professional Body can discipline and impose penalties on those regulated by them.
61. Complaints made to the OISC against such persons will normally be referred to the relevant Designated Professional Body for investigation and determination. However, the Commissioner retains the right to exercise his/her powers of investigation where he/she deems it to be the appropriate course of action. In such cases, the Commissioner will inform the Designated Professional Body of his/her reasons.
62. The Commissioner will make an initial assessment of any complaint regarding a member of a Designated Professional Body. The Commissioner may identify areas of a complaint that he/she believes require investigation. It may be necessary for the Commissioner to make some enquiries as part of his/her initial assessment of the complaint, but, as a matter of

- policy, efforts will be made to limit duplication and delay prior to passing it on. Following this assessment he/she will decide whether to refer the case to the Designated Professional Body for it to undertake an investigation and report back to the complainant and the Commissioner on its findings.
63. Normally the Designated Professional Body will not initiate its complaints procedure until the Commissioner has formally referred the complaint to it.
64. If there is a formal complaint, the Commissioner will inform the complainant in writing as soon as possible of which Designated Professional Body will be investigating the complaint and provide contact details for that body. The OISC will also provide the complainant with copies of its letter to the Designated Professional Body referring the complaint to that body.
65. When referring a complaint to a Designated Professional Body, the Commissioner may set a timetable to be followed by that body with regard to the investigation of that complaint. However, before a timetable is set, the Commissioner will first consult with the body as to what would be a reasonable timetable, taking note of the nature and complexity of the complaint and the statutory framework within which the body must operate.
66. Once a complaint is referred to a Designated Professional Body that body will be responsible for investigating and determining that complaint.
67. The Commissioner has Memorandums of Understanding with relevant Designated Professional Bodies that provide for arrangements to be put in place to ensure that the Commissioner is kept informed of the progress of investigations and outcomes.
68. Once a complaint has been referred to a Designated Professional Body the Commissioner will monitor the investigation so as to ensure that the complaint is handled fairly, thoroughly, correctly and in a timely fashion. During the course of the investigation the Commissioner may provide comments to the investigating body.
69. The Commissioner may contact the complainant to discuss the investigation. The complainant can also contact the Commissioner to discuss the case at any stage during the course of the investigation.
70. At the conclusion of the investigation of a complaint by the relevant body, the Commissioner will consider the outcome of the case and, where he/she deems it appropriate, will comment to that body as to the decision reached.
71. The Commissioner may ask the investigating Designated Professional Body to carry out further investigations. On such occasions, having considered the Commissioner's comments, the investigating body will decide whether to carry out further investigations.
72. Notwithstanding the above, the Commissioner reserves the right to exercise his/her powers of investigation on all relevant complaints.
73. Complainants can challenge decisions made by a Designated Professional Body, except ILEX (see below), by means of a complaint to the relevant ombudsman.
- In England and Wales this is:
Office of the Legal Services Ombudsman
3rd Floor
Sunlight House
Quay Street
Manchester M3 3JZ
www.olso.org
- (Note: challenges to decisions made by the Institute of Legal Executives (ILEX) Investigation Committee is by appeal to their Appeals Committee. Information on this process can be obtained by contacting ILEX directly at www.ilex.org.uk.)
- In Scotland this is:
The Scottish Legal Services Ombudsman
17 Waterloo Place
Edinburgh EH1 3DL
www.slso.org.uk
- In Northern Ireland such complaints should be referred to:
The Lay Observer for N.I.
4th Floor
Brookmount Buildings
Fountain Street
Belfast BT1 5EF
74. In making his/her annual report to the Secretary of State, the Commissioner must take into account any failure on the part of a professional body to provide effective regulation of its members.
75. Details of the relevant UK Designated Professional Bodies are at Annex C.

Annex A

Immigration and Asylum Act 1999, Schedule 5, paragraphs 5–6 as amended

Investigation of complaints

5. (1) The Commissioner must establish a scheme (“the complaints scheme”) for the investigation by him of relevant complaints made to him in accordance with the provisions of the scheme.
- (2) Before establishing the scheme or altering it, the Commissioner must consult:
- each of the designated professional bodies; and
 - such other persons appearing to him to represent the views of persons engaged in the provision of immigration advice or immigration services as he considers appropriate.
- (3) A complaint is a relevant complaint if it relates to:
- the competence or fitness of a person to provide immigration advice or immigration services,
 - the competence or fitness of a person acting on behalf of a person providing immigration advice or immigration services,
 - an alleged breach of the Code,
 - an alleged breach of one or more of the Commissioner’s rules by a person to whom they apply, or
 - an alleged breach, of a rule of a relevant regulatory body, but not if it relates to a person who is excluded from the application of subsection (1) of section 84 by subsection (6) of that section.
- (4) The Commissioner may, on his own initiative, investigate any matter which he would have power to investigate on a complaint made under the complaints scheme.
- (5) In investigating any such matter on his own initiative, the Commissioner must proceed as if his investigation were being conducted in response to a complaint made under the scheme.
6. (1) The complaints scheme must provide for a person who is the subject of an investigation under the scheme to be given a reasonable opportunity to make representations to the Commissioner.
- (2) Any person who is the subject of an investigation under the scheme must:
- take such steps as are reasonably required to assist the Commissioner in his investigation, and
 - comply with any reasonable requirement imposed on him by the Commissioner.
- (3) If a person fails to comply with sub-paragraph (2)(a) or with a requirement imposed under sub-paragraph (2)(b) the Commissioner may:
- in the case of a registered person, cancel his registration;
 - in the case of a person certified by the Commissioner as exempt under section 84(4)(a), withdraw his exemption; or
 - an alleged breach, of a rule of a relevant regulatory body.

Annex B

Immigration and Asylum Act 1999, Schedule 5, paragraph 7 as amended

Power to enter premises

7. (1) This paragraph applies if:

- the Commissioner is investigating a complaint under the complaints scheme;
- the complaint falls within paragraph 5(3)(a), (b) or (d); and
- there are reasonable grounds for believing that particular premises are being used in connection with the provision of immigration advice or immigration services by a registered person.

This paragraph also applies if the Commissioner is investigating a matter under paragraph 5(5) and:

- the matter is of the kind described in paragraph 5(3)(a), (b) or (d) (for which purpose a reference to an allegation shall be treated as a reference to a suspicion of the Commissioner), and
- there are reasonable grounds for believing that particular premises are being used in connection with the provision of immigration advice or immigration services.

(2) The Commissioner, or a member of his staff authorised in writing by him, may enter the premises at reasonable hours.

(3) Sub-paragraph (2) does not apply to premises to the extent to which they constitute a private residence.

(4) A person exercising the power given by sub-paragraph (2) (“the investigating officer”) may-

- take with him such equipment as appears to him to be necessary;
- require any person on the premises-
 - (i) to produce any document which he considers relates to any matter relevant to the investigation; and
 - (ii) if the document is produced, to provide an explanation of it;

- require any person to state, to the best of his knowledge and belief, where any such document is to be found;
- take copies of, or extracts from, any document which is produced;
- require any information which is held in a computer and is accessible from the premises and which the investigating officer considers relates to any matter relevant to the investigation, to be produced in a form-
 - (i) in which it can be taken away; and
 - (ii) in which it is visible and legible.

(5) Instead of exercising the power under sub-paragraph (2), the Commissioner may require such person as he may determine (“his agent”) to make a report on the provision of immigration advice or immigration services from the premises.

(6) If the Commissioner so determines, his agent may exercise the power conferred by sub-paragraph (2) as if he were a member of the Commissioner’s staff appropriately authorised.

(7) If a registered person fails without reasonable excuse to allow access under sub-paragraph (2) or (6) to any premises under his occupation or control, the Commissioner may cancel his registration.

(8) The Commissioner may also cancel the registration of a registered person who-

- without reasonable excuse fails to comply with a requirement imposed on him under sub-paragraph (4);
- intentionally delays or obstructs any person exercising functions under this paragraph; or
- fails to take reasonable steps to prevent an employee of his from obstructing any person exercising such functions.

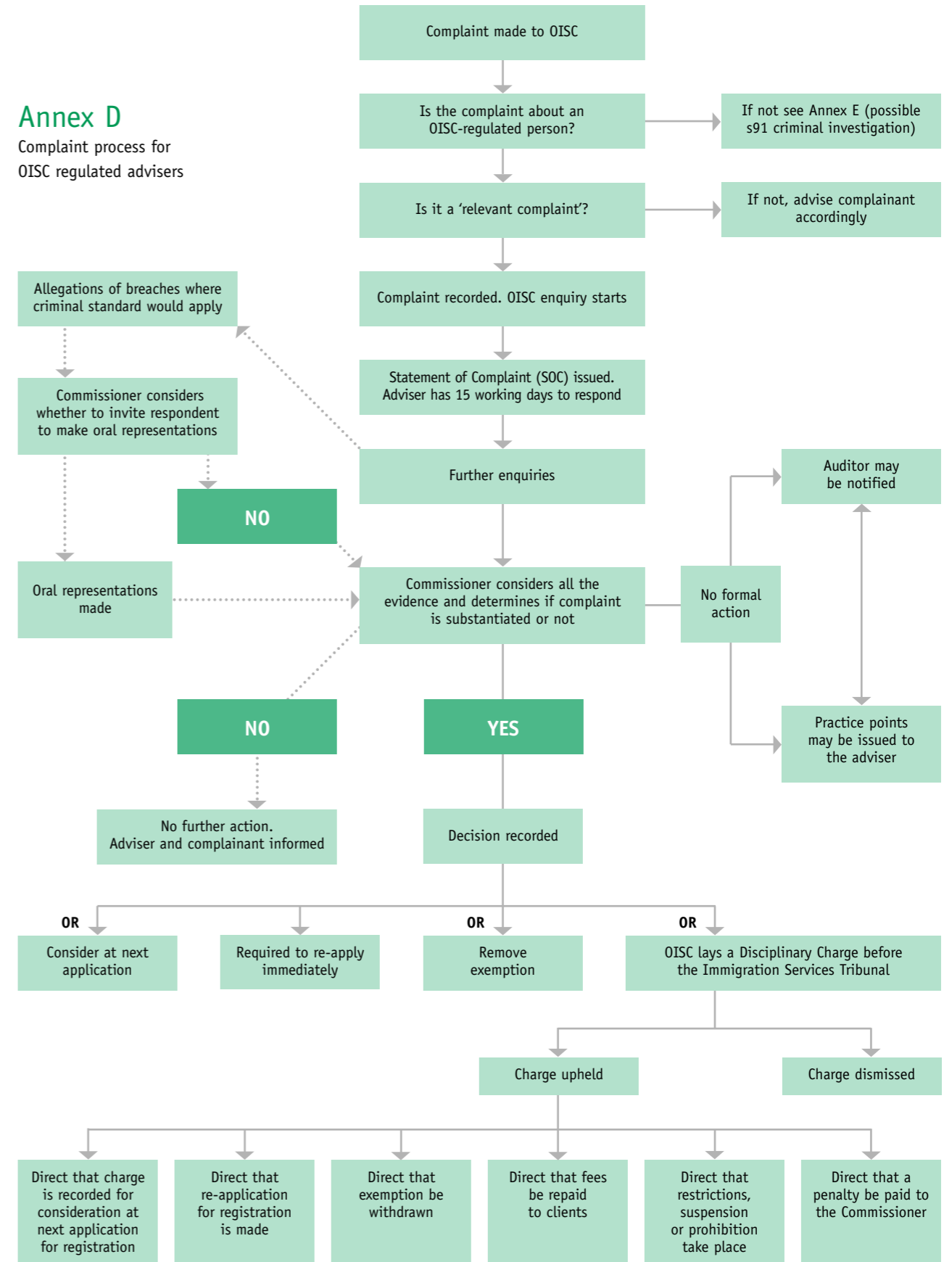
Annex C

Designated Professional Bodies

- The General Council of the Bar
- The Law Society of England and Wales
- The Institute of Legal Executives
- The Faculty of Advocates
- The Law Society of Scotland
- The General Council of the Bar of Northern Ireland
- The Law Society of Northern Ireland

Annex D

Complaint process for OISC regulated advisers



Annex E

Complaint process for a member of a Designated Professional Body

