



COMPLAINTS MANAGEMENT GUIDANCE

<b>Process</b>	Handling, management and resolution of complaints and the information obtained from complaints		
<b>Implementation Date</b>	5/11/2009	<b>Next Review Date</b>	February 2010

CONTAINS MANDATORY INSTRUCTIONS

<b>For Action</b>	<b>Author and Unit</b>
All Agency staff who handle complaints from external customers.	<REDACTED> Complaints and Correspondence Standards and Performance Directorate
<b>For Information</b>	<b>Owner</b>
All Agency staff and stakeholders	<REDACTED> Complaints and Correspondence Standards and Performance Directorate
<b>Contact Point</b>	
<b>Processes Affected</b>	
All processes around complaints, compensation and Ombudsman investigation handling within the Agency	
<b>Assumptions</b>	
Complaint handlers have sufficient knowledge of their areas to be able to substantively address the issues raised by customers. Customer Service Units will have their own local processes for managing complaints but these must be consistent with the principles outlined in this guidance.	

NOTES

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## Section 1 Introduction

### 1.1 Overview of this guidance

1.1.1. The UK Border Agency is committed to providing a professional, fair, efficient, courteous and helpful service to the public. Dealing with complaints effectively and efficiently is a core element of the Agency's service to our customers. Complaints provide essential feedback so that the Agency can learn lessons, improve its service and provide the opportunity to put things right. The Agency should not be defensive about complaints but should use them as an opportunity to listen, learn and improve.

1.1.2. A complaint is defined as **“any expression of dissatisfaction about the services provided by or for the UK Border Agency and/or about the professional conduct of UK Border Agency staff including contractors”**.

1.1.3. This guidance is about managing complaints from or on behalf of external customers only. It is not designed for dealing with internal complaints concerning UK Border Agency staff, or issues for which there are other remedies, policies or procedures in place, such as Freedom of Information requests, requests under the Data Protection Act or the Agency's Human Resources policies.

1.1.4. Nor is the complaints system intended to provide a remedy for those dissatisfied with the actual decision in their case or complaints about legislation or policy. More detail about what will be treated as a complaint can be found in [Section 3](#).

1.1.5. This guidance provides essential information about complaint handling for:

- any staff who may receive or deal with complaints;
- Nominated Responsible Owners (NROs) for complaints within the business;
- Customer Service Units (CSUs);
- Staff in the Complaints and Correspondence Standards and Performance Directorate (CCSPD).

### 1.2 Complaints about HMRC functions and customs officers

1.2.1 Following Royal Assent of the new Borders, Citizenship and Immigration Act 2009 certain customs functions and staff at the border will transfer from HMRC to the UK Border Agency. From 5 August 2009 they will formally become part of the Agency and the Agency will assume responsibility for existing complaint cases on hand and new complaints arising after the transfer but which relate to the actions of HMRC officers prior to transfer.

1.2.2 An operational protocol has been agreed between the Agency and HMRC covering the transitional arrangements for the management of complaints before, during and after the formal transfer. This protocol can be found on Horizon at:

[http://horizon/IND/Manuals/OperatingProtocols/Resources/word/Complaints\\_Handling.doc](http://horizon/IND/Manuals/OperatingProtocols/Resources/word/Complaints_Handling.doc)

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## Section 2 **Complaint management structure**

### **2.1 Introduction**

2.1.1 All staff have a responsibility to ensure that any complaint the Agency receives is dealt with appropriately. The Agency's internal complaint management structure consists of:

- Customer-facing staff
- Nominated Responsible Owners (NROs) within each business area
- Customer Service Units (CSUs) within each region or centrally-managed operational area
- The Complaints and Correspondence Standards and Performance Directorate (CCSPD)

### **2.2 Customer-facing staff and managers**

2.2.1 Customer-facing staff are those that deal with the customer personally; either face-to-face, by phone, letter or email. They may receive a complaint or be required to respond to one. Managers in customer-facing areas also have a role to play. Full details of responsibilities of customer-facing staff and managers can be found in Chapters [3](#), [4](#), [5](#) and [6](#).

### **2.3 Nominated Responsible Owners (NROs)**

2.3.1 The NRO is the main point of contact within each business area. They ensure that complaints are dealt with within time and that responses are full and accurate. They are also the person the CSU will liaise with to monitor the progress of complaints. CCSPD will liaise direct with the NRO to progress Parliamentary and Health Service Ombudsman (PHSO) cases. The NRO is likely to be a Team Leader or Case Owner in the relevant business area.

2.3.2 For practical purposes not every area within the business will have NROs. In these cases the CSU will assume all the responsibilities of the NRO as well as their own duties.

2.3.3 While this guidance will assume that each area has both an NRO and a CSU where it refers to an NRO and your region/area does not have one that part of the process will be carried out by your CSU.

### **2.4 Customer Service Units (CSUs)**

2.4.1 CSUs are responsible for the management of complaints about delivery of services and minor misconduct in relation to services or staff located in their region or operational area. CSUs ensure that complaints are answered on time by the correct person and will assess any compensation claims arising. Serious misconduct complaints are managed by the Professional Standards Unit (PSU) of CCSPD owing to the specialised and serious nature of these complaints.

2.4.2 In addition to each region, a number of central business functions have their own CSU.

- Detention Services
- Border Force
- Case Resolution Directorate
- Immigration Enquiry Bureau (IEB) Croydon
- Criminal Casework Directorate
- International Group

2.4.3 Contact details of the CSUs can be found [on the UK Border Agency website](#).

## **2.5 The Complaints and Correspondence Standards and Performance Directorate (CCSPD)**

2.5.1 CCSPD has overall responsibility for complaint management within the UK Border Agency. Its responsibilities include:

- Ownership of the complaint policy and this guidance
- Supporting CSUs in understanding and delivering their objectives; e.g. where an Agency wide unified approach is required (see [11.3.4](#))
- Investigation of complaints alleging serious misconduct on the part of a UKBA member of staff or contractor towards a customer (through its Professional Standards Unit)
- Management of the Agency's handling of complaints referred to it by PHSO
- Maintaining and developing the independent oversight arrangements for the Agency's most serious complaints, incidents and conduct matters (where police-like powers are used).
- Monitoring and ensuring compliance with the complaints management process
- Providing management information to senior managers
- Communicating the complaints process to customers
- High level stakeholder engagement
- User support for the electronic Complaints Management System (CMS)

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## Section 3 Types of complaint handled

### 3.1 Definition of a complaint and main categories

3.1.1 Complaints are defined as “**any expression of dissatisfaction about the services provided by or for the UK Border Agency and/or about the professional conduct of UK Border Agency staff, including contractors.**”

3.1.2 Complaints dealt with under this guidance are from members of the public or their representatives relating to all aspects of the Agency’s service delivery and the professional conduct of its staff. Complaints about the conduct and efficiency of those contracted to act on behalf of the Agency also fall within this guidance. Letters from an MP representing a customer are dealt with under normal procedures for answering MPs Correspondence.

3.1.3 The three main categories of complaint are: service, minor misconduct and serious misconduct.

3.1.4 Service complaints are related to the way that the Agency works (typical complaints would be about delay, lost documents or administrative failings). These complaints are both about the actual service provided and the operational policies that the Agency operates. The handling of service complaints is covered in detail in [Chapter 5](#).

3.1.5 Minor misconduct is usually to do with isolated instances of rudeness and unprofessional conduct which are not serious enough to warrant a formal investigation and if substantiated they would not lead to criminal or disciplinary proceedings. The handling of minor misconduct complaints is covered in [Chapter 6](#).

3.1.6 Serious misconduct is any unprofessional behaviour which, if substantiated, would lead to disciplinary action. The handling of serious misconduct complaints is covered in [Chapter 7](#).

### 3.2 Forms of complaint accepted

3.2.1 Complaints will be accepted in English and Welsh only (*in accordance with the Welsh Language Act 1993.*) Complaints may be accepted in any of the following formats (where local facilities are available):

- Letter
- Telephone
- Fax
- E-mail
- Face to face

3.2.2 If complaints are received in any other language they should be returned requesting they are re-submitted in English or Welsh.

3.2.3 The one exception to this is in the detention centres. Complaints are accepted in other languages and translation costs are met either by the Agency or the Detention Contractor. Replies are sent only in English.

### 3.3 Timescales for the submission of complaints

3.3.1 Complaints alleging misconduct should be made within **three months** of the date on which the matters complained of first occurred or came to their notice. An investigation may be

conducted into a complaint not made within this period if it is considered that there are exceptional circumstances to warrant one.

- **Complaints involving allegations of minor misconduct:**  
It is for the Customer Service Unit (CSU) to decide whether the circumstances are so exceptional as to warrant an investigation.
- **Complaints involving allegations of serious misconduct:**  
It is for the Professional Standards Unit (PSU) to decide whether the circumstances are so exceptional as to warrant an investigation.

3.3.2 Apart from delay service delivery complaints should be made within 3 months of the date on which the matters complained about first occurred or came to their notice. It will be for the CSU to decide if complaints made after three months are so exceptional as to warrant answering.

3.3.3 The timescales for the PHSO to consider complaints referred by MPs are also longer than misconduct complaints. The PHSO normally won't investigate a complaint sent to an MP more than 12 months after the event although she does have discretion to do so.

3.3.4 Timescales for the handling and resolution of complaints are covered in [Sections 5, 6 and 7](#) with guidance on handling each type of complaint.

### **3.4 Factors to consider in deciding whether to investigate an out of time complaint**

3.4.1 The following is a guide of what factors to consider but is not exhaustive:

- Allegations of criminal activity
- Discrimination of any kind
- Cases where the customer could not reasonably have been expected to make their complaint within this timescale, e.g. they were out of the country or had medical issues
- Risk to the business if the complaint is not dealt with

### **3.5 Issues that will not be dealt with under the complaints process**

3.5.1 The process set out here is not relevant for complaints about:

- The merits of an individual decision (e.g. refusal to renew leave to remain) for which there are established appeal routes
- Legislation or Government policy: which would be dealt with under normal correspondence handling processes. (Operational policy, how the Agency directs and controls its officers and officials is dealt with as a service complaint, see [Section 5](#).)
- Refusal to disclose information requested under the Freedom of Information or Data Protection Acts; these should be referred to the appropriate team
- Allegations made against other Agency customers; these should be referred to the Evidence and Enquiry Unit
- A complaint lodged by an MP. (If an MP's complaint alleges serious misconduct then it would still need to be referred to the PSU to investigate.)

3.5.2 Complaints which are considered to be unreasonably persistent or are abusive, offensive or threatening will not be investigated. For more detail please see [Section 10](#).



## **3.6 Serious incidents**

3.6.1 Serious incidents are not in themselves complaints but can lead to them as well as necessitate investigation similar to serious misconduct complaints.

3.6.2 Serious incidents are incidents and events outside of the usual business that have serious consequences. Serious incidents can include:

- Death of a person
- Serious injury to any person
- Hostage taking of any person
- Attempt or threat of suicide
- Riot/public disorder

3.6.3 If a serious incident involving UK Border Agency personnel is happening now or it is 'live' it must be relayed immediately to the Command and Control Unit (CCU). The CCU operates a 24 hour service, 7 days a week.

3.6.4 The CCU is the single point of contact for the Independent Police Complaints Commission and all 'live' incidents MUST be referred by staff to CCU at the first possible opportunity. Where cases are referred to PSU by CCU PSU will need to identify the area that the incident is about and notify the respective CSU.

3.6.5 Once a 'live' incident is brought under control, CCU will then hand responsibility for managing the case and ongoing liaison with the IPCC to the Professional Standards Unit.

3.6.6 The Agency's policy on handling critical incidents can be found in [Chapter 44 of the Operational Enforcement Manual](#).

## **3.7 Parliamentary and Health Service Ombudsman (PHSO) complaints**

3.7.1. The PHSO deals with complaints from members of the public who claim they have suffered injustice due to maladministration by a Government department or agency.

3.7.2 It is expected that the customer should follow the Agency's internal complaints and review procedures before referring their complaint to the PHSO. If the customer remains unhappy after their case has been reviewed by the Agency they can ask their MP to refer their case to the Parliamentary and Health Service Ombudsman for investigation. Details about the PSHO and managing these complaints can be found in [Section 9](#).

## **3.8 Prisons and Probation Ombudsman (PPO) complaints**

3.8.1 The PPO deals with complaints from people held in detention so within the UK Border Agency its remit is complaints from people held in immigration detention facilities, short-term holding facilities and prison service establishments. The Ombudsman also produces an annual report detailing anonymised examples of complaints received; recommendations made and

responses received; selected summaries of fatal incidents and number and type of investigations mounted.

3.8.2 As with the PHSO, the PPO will only usually get involved after the customer has been through the Agency complaints process. Unlike the PHSO people in detention can approach them direct; the referral does not need to be made via an MP. See also [5.6.6](#) and [5.6.7](#) of this guidance.

3.8.3 The PPO will approach the detention centre the complaint is about and deal with them direct. A copy of their report into the complaint is passed back to the detention centre as well as the Detention Services CSU.

### **3.9 Independent Police Complaints Commission (IPCC) referrals**

3.9.1 The IPCC's remit is limited to England and Wales.

In regard to serious complaints, incidents or conduct allegations if certain criteria are met the matter must be referred to the IPCC. The criteria for a mandatory referral to the IPCC requires that it must involve one of the following: a death or serious injury; serious assault; serious sexual offence; serious corruption; criminal offence aggravated by discriminatory behaviour; or any incident which engages Articles 2 (the Right to Life) or 3 (against inhuman or degrading treatment) of the European Convention on Human Rights.

- a. if the matter relates to a UKBA officer or official performing immigration/asylum functions then a police-like power (such as arrest, detention, search) must also have been exercised.
- b. if the matter relates to a UKBA officer or official performing customs functions then the matter is referable whether or not a police-like power has been exercised.

The police-like powers are listed in section 41 of the Police and Justice Act 2006 and include:

- Powers of entry
- Powers to search persons or property
- Powers to seize or detain property
- Powers to arrest persons
- Powers to detain persons
- Powers to examine persons or otherwise to obtain information, (including power to take fingerprints or to acquire other personal data), and
- Powers in connection with the removal of persons from the United Kingdom

Please note that these powers include:

- Surveillance and associated activity
- The non-exercise of the above powers (e.g. the failure to use a power when required to do so. This will be restricted to matters relating to officer's conduct and will not cover UKBA Policy decisions for example, not to detain in certain cases)

The powers do not include:

- The making of an immigration decision
- The making of any decision to grant or refuse asylum
- The giving of any direction to remove persons from the UK

3.9.2 The IPCC also has the power to ‘call in’ and oversee any complaint or conduct matter due to its gravity or exceptional circumstances. Similarly, the UK Border Agency can voluntarily refer any complaint or conduct matter to the IPCC.

3.9.3 Depending on the nature of the incident or complaint, the Professional Standards Unit (PSU) (see section 8 on serious misconduct) may be appointed by the IPCC to undertake an investigation into the matter. Alternatively, PSU will provide support and a single point of contact for a Police or IPCC investigation.

3.9.4 The Commissioner will inform PSU in writing of which of the following modes of investigation will be employed:

- **IPCC independent investigation:** in which the IPCC would use its own investigators to look into the incident or complaint but a PSU investigator might be required to compile some evidence and act as single point of contact for UKBA. There is no right of appeal to the IPCC in these cases.
- **IPCC-managed investigation:** in which the Police or UKBA PSU undertakes the investigation under IPCC’s direction and control. The IPCC would agree the Terms of Reference for the investigation and monitor progress against them. There is no right of appeal to the IPCC in these cases.
- **IPCC-supervised investigation:** in which the Police or UKBA PSU would have control and direction of their own investigation. The IPCC would agree the Terms of Reference for the investigation and monitor progress against them. These cases give a right of appeal to IPCC.
- **Local investigation:** in which the Police would make their own investigation (if there is alleged criminal activity); or UKBA PSU make their own investigation, with no further involvement from IPCC. These cases give a right of appeal to IPCC.

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## Section 4 Dealing with complaints: general principles

### 4.1 Introduction

4.1.1 Some general principles apply to the handling of all categories of complaint. You should read this section in conjunction with the sections that discuss the specific handling of the different complaint categories ([service](#), [minor misconduct](#) and [serious misconduct](#)).

### 4.2 Categorisation

4.2.1 When you receive a complaint decide whether the complaint is about standards of service or about the conduct of staff, or both. This will determine the process to be followed for resolving the complaint and will help to determine who should take ownership of it.

### 4.3 Registering and recording

4.3.1 All complaints must be registered on the Complaints Management System (CMS) in order to keep track of its progress and enable tracking and reporting on complaints received. CMS must be used by all Customer Service Units (CSUs) and Nominated Responsible Owners (NROs) where it is available and all complaints, their outcomes and any compensation claimed for and paid must be logged on the system. Where the complaint is received direct by the business it should be copied to the CSU or NRO for inputting onto CMS.

4.3.2 CMS will only be available to people involved in managing complaints so the complaints and their resolutions will also need to be captured on CID (where a CID record is available) and a copy kept on file.

4.3.3 At the time of publication of this guidance not all CSUs are on CMS. Where a CSU does not have access to CMS then they must record all complaints on the Data Capture Sheet provided by CCSPD. The Data Capture Sheet for each month must be sent to CCSPD within two working days of the month ending.

4.3.4 Where the complaint has been received verbally, you should record the details of the customer's complaint and copy this to your CSU who will register the complaint directly onto the Complaints Management System (CMS). In some business areas, where local processes allow, NROs may also be able to register complaints onto CMS.

4.3.5 In some business areas it may not be practical to attempt to record all verbal complaints, received and resolved to the customer's satisfaction at the initial point of contact. Where this is the case a decision can be taken not to record these. This decision must be taken by a Director (G5 or equivalent) but only with the prior approval of the Director of CCSPD.

4.3.6 It is important for the Agency to learn lessons from complaints and where a decision is taken not to record immediately resolved verbal complaints consideration must be given to how the area will monitor and identify trends in these complaints.

4.3.7 When a service or minor misconduct complaint is resolved, by someone other than the NRO, a copy of the response should be sent to the CSU or NRO, highlighting any outstanding compensation or other next steps, so that they can update CMS with the outcome (e.g. whether the complaint was substantiated or not, date of the response etc) and attach the response to the complaint record.

4.3.8 CCSPD has produced a Complaint Registration Form (CRF) that the customer can use to make a written complaint. These can also be used by staff to log a complaint from a customer. CRFs can also record each part of the process as the complaint is progressed so that the CSU or NRO can update CMS as required.

4.3.9 Individual CSUs can take the decision not to use CRFs when processing complaints. If they do the onus is on them to provide a robust system for ensuring that the minimum subset of information recorded on the CRFs is captured to allow CMS to be updated.

#### **4.4 Ownership**

4.4.1 Serious misconduct complaints are never dealt with by the business area in which the alleged misconduct took place. Instead, these should be sent on immediately to the relevant Customer Service Unit (CSU) for onward referral to the Professional Standards Unit (PSU) within 24 hours. Allegations of discrimination and racism are classed as serious misconduct and are for PSU to investigate; see [section 7](#) and particularly [7.2](#) for further information. (Any serious critical incidents that are 'live' involving a member of staff with police-like powers should be referred to the Command and Control Unit.)

4.4.2 Complaints about service or minor misconduct should be dealt with by the business area in which the matter complained about took place.

4.4.3 Minor misconduct complaints must be referred to the line manager of the subject of the complaint, or to another relevant manager if the line manager is not available, to resolve through the local resolution process.

4.4.4 Where a complaint contains elements of more than one category all separate elements should be investigated and resolved. Sometimes a complaint contains elements that cannot all be answered by the same business area. In these cases the receiving business area should co-ordinate responses on all the separate elements seeking help from the NRO or CSU as necessary.

#### **4.5 Transferring complaints**

4.5.1 If the complaint cannot be dealt with by the business area receiving the complaint send it to your CSU for re-allocation. This will stop complaints from getting "lost" by being passed from person to person. Some NROs with high complaint volumes may have scanning equipment and be able to register complaints. If this is the case local processes may allow the NRO to register and reallocate complaints to other local teams.

4.5.2 If the complaint comes in directly to the CSU, the CSU must either allocate to the correct NRO or transfer to another CSU if it is for another region or business area. The CSU should scan the letter onto CMS, register the complaint and allocate it to the appropriate CSU.

#### **4.6 Acknowledgements**

4.6.1 If the complaint cannot be resolved within two working days of receipt by the owning business area, the NRO or CSU will send a written acknowledgement to the customer with contact details of the person who is handling the complaint. If it is likely that the response cannot be sent within the published timescale of 20 working days of receipt within the Agency the acknowledgement letter should tell the customer when they can expect to hear from us.

## **4.7 Complaints which can be resolved immediately**

4.7.1 Sometimes a complaint about service or minor misconduct can be resolved straightaway. This may come about when all that is needed is a simple explanation and apology, or a straightforward problem can be fixed for the customer. Where a complaint can be resolved immediately it should be. If the customer is present then written confirmation of resolution may not be necessary however a record of how the complaint has been resolved will need to be maintained and copied to the CSU or NRO for inputting onto CMS.

## **4.8 Responding to the customer**

4.8.1 All customers have to be informed of the outcome of their complaint, whether it is substantiated or not as well as any steps the Agency is taking as a result of it. This does not necessarily need to be in writing, sometimes it is sufficient to give a verbal response to a customer who has complained.

4.8.2 Where a written response is provided the line or duty manager must quality assure that response (whether for posting or e-mail). A copy of the response; confirmation of who quality assured the reply; and a summary of any other steps that need to be taken, including who is responsible for taking them, must be sent to the CSU or NRO so that they can be logged onto CMS.

4.8.3 If the response was not in writing let your NRO or CSU know straightaway that you have resolved the complaint, whether or not the complaint was substantiated and any pertinent points arising from discussions with the customer. The CSU or NRO must log these details onto CMS.

4.8.4 Any written response is potentially going to contain personal information as defined by the UK Border Agency Information Management policy and must be protected accordingly. The full policy on handling personal data can be found at <http://horizon/ind/im/index.asp>. In particular personal information should not be sent by electronic means without being encrypted. If a customer requests that we respond to their complaint by e-mail we should inform them that this is not a secure channel and recommend that the reply be encrypted. The customer can choose to waive this but must explicitly put in writing that they don't want any e-mail reply encrypted.

## **4.9 When a customer remains dissatisfied**

4.9.1 If a customer is dissatisfied with how the Agency has dealt with their complaint, there are processes for reviewing this internally, and in some cases externally as well. See chapters [5](#), [6](#) and [7](#) for the review processes appropriate to each type of complaint. The right to a review should be signposted in any written response to complaints.

## **4.10 Compensation**

4.10.1 The CSU or NRO should consider whether the customer has suffered an actual financial loss or extreme distress. If this is the case the CSU will consider the appropriate level of compensation in accordance with the guidance in [section 11](#).

## **4.11 Management of risk**

4.11.1 Complaints may indicate areas of risk for the business. This may be through the nature of individual complaints (usually serious misconduct), the volume of complaints being received, or an increase in the number of complaints being received in a particular area or about a particular issue.

4.11.2 CSUs and NROs should be alert to risks in their own region or business area and manage any identified through the appropriate local or regional risk register in accordance with the UK Border Agency's risk management processes. More details on the management of risk can be found on [Horizon](#).

4.11.3 The Complaints and Correspondence Standards and Performance Directorate (CCSPD) will identify national trends that individual regions may not be able to identify in isolation. Where risks are identified that impact a strategic business area or the organisation as a whole, CCSPD will flag them up to the relevant business area risk leads.

#### **4.12 Learning from complaints**

4.12.1 Complaints are an important source of information for improving customer service and business performance. Lessons can be learned from individual cases and from regional, national and business area trends. Learning lessons may prevent repeated complaints about the same issue.

4.12.2 Lessons may be identified by staff who received the complaint, by local managers, NROs, CSUs or by CCSPD. The business is accountable for implementing changes resulting from the lessons learned process.

4.12.3 The NRO or CSU should record under the "next steps" screen of CMS details of issues identified for further action in relation to individual complaints. The CSU can also do this. The CSU is responsible for tracking progress and should chase the action owner within 24 hours of the agreed action deadline passing.

4.12.4 CCSPD will gather information on complaint trends and volumes on a national basis. CCSPD will be responsible for identifying national or cross-cutting issues and will identify action owners and keep a lessons learned log for these issues.

#### **4.13 Complaints surrounding detention and removals**

4.13.1 Detention Services have a complaints procedure that follows the prison service model whilst following UK Border Agency principles. This means that there are some differences. Staff and contractors working in immigration removal centres, short term holding facilities, holding rooms or escorting should read the Detention Services guidance manual in conjunction with this guidance. This procedure is available at:

<http://horizon/IND/Manuals/Detention/Resources/dso/13-2008%20Complaints%20Handling%20within%20Detention%20Services.doc>.

#### **4.14 Complaints from children**

4.14.1 It is particularly important that complaints from children are accepted, managed and resolved properly. Customer facing staff need to undertake the Agency's 'keeping children safe' training and be aware of the Agency's ['keeping children safe from harm' code of practice](#) to ensure that children with whom the Agency has contact have easy access to complaints procedures. A complaint made by a child should be handled sensitively and staff should be alert to any indications that a child may be at risk and take appropriate action.

## **4.15 Anonymous complaints**

4.15.1 Whether or not a customer chooses to disclose their identity does not affect the need for the Agency to consider the issues raised and deal with them appropriately. Anonymous complaints should be dealt with under these procedures insofar as possible.

## **4.16 Third party complaints**

4.16.1 Legal representatives, sponsors or others (e.g. family members or even casual observers) may complain on behalf of someone else. Disclosure of any personal or case information to third parties should follow the guidelines set out in [IDI Chapter 24](#). If the person who made the complaint is not an authorised representative of the customer in question or legally responsible for them it may not be appropriate to disclose the outcome of a complaint investigation (e.g. if the response would update on the progress of an application), or even to conduct an investigation (where a misconduct case involves seeking further information from the customer). In these cases you should send an acknowledgement and explain that the complaint cannot be investigated without a written authorisation from the customer. However where serious misconduct has been alleged, the case should always be passed to the CSU to refer to PSU for possible investigation.

## **4.17 Withdrawn complaints**

4.17.1 If a customer decides to withdraw their complaint the Agency should try to establish the reason. The fact that a complaint is withdrawn does not necessarily mean that there is no issue to address. If the complaint raises serious issues you should consider whether the complaint should be investigated in the usual way.

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## Section 5 **Service complaints**

### 5.1 **Examples of service complaints**

5.1.1 Service complaints are related to the way that the Agency works. They are usually categorised under one of the following headings:

- Delay (e.g. in delivery of a service)
- Administrative/process error (failings in the process, administrative error, poor service or failure to meet service standards)
- Poor communication (failure to keep customers informed; failure to answer correspondence, return calls etc)
- Wrong information (provision of poor, misleading, inadequate or incorrect advice)
- Lost documents (e.g. passports or birth certificates submitted by customers that have been mislaid)
- Customer care – physical environment (complaints relating to tangible, physical aspects of the service such as access, up to date equipment and accommodation as well as the ease and convenience with which it can be used)
- Customer care – availability of service (loss of access to services, for example IT or other equipment breakdown)
- Customer care – provision for minors (failure to take the particular needs of children into account)
- Customer care – complaint handling (failure to respond to a complaint or dissatisfaction with the response)
- Direction and control of officers and officials (see section 5.2 for more details)

5.1.2 For management purposes the Complaints Management System (CMS) can be configured to collect local sub-categories of these.

### 5.2 **Direction and control**

5.2.1 A member of the public is entitled to ask questions about the way in which immigration, asylum and customs functions are delivered and if dissatisfied to complain about that service.

5.2.2 A complaint that relates to direction and control is one that relates to:

- Operational enforcement policies (where there is no issue of conduct)
- Organisational decisions
- General operational standards of relevant officers, relevant officials of the Secretary of State or officials exercising customs revenue functions
- Operational management decisions (where there is no issue of conduct)
- Local policies and operating procedures (where there is no issue of conduct)

5.2.3 Direction and control is exercised by UK Border Agency managers who have legitimate independent operational responsibilities and discretion as to how best fulfil those responsibilities. They operate by virtue of a formal delegated authority from the UK Border agency's Chief Executive Officer/Director of Border Revenue either directly or indirectly.

5.2.4 For example a local enforcement office manager has discretion in how they provide enforcement functions for their locality. They may develop local policies and operating procedures within the overall Agency framework. Such local policies and procedures are covered by the term 'direction and control'.

5.2.5 Operational enforcement policies may be national, regional or local in form and set out the standard, expected, ways of working which should ordinarily be carried out in prescribed conditions. It is accepted that in exceptional circumstances it is both appropriate and acceptable to depart from these policies. Such decisions are made by way of operational management decisions.

5.2.6 Operational management decisions are the result of decision making in reference to an assessment of available evidence. Such decisions include:

- The agreement of business plans
- The decision to make specific recommendations to senior managers/ministers on policy and practical matters
- How to best manage resources (decisions relating to prioritisation)
- Those made in reference to available intelligence, gathered surveillance information and risk assessments (where there is no issue of conduct)

### **5.3 Timescales for dealing with service complaints**

5.3.1 If you cannot resolve a complaint about service straightaway (within two working days of the correct business area receiving it) then an acknowledgement should be sent within two working days (normally by the NRO) and a substantive reply within 20 working days of the date that the UK Border Agency first received the complaint.

### **5.4 File management and complaint storage procedures**

5.4.1 Service complaints are kept on the personal file (Home Office file) of the customer. They remain on the file at all times and a copy of the reply to the customer must also be kept on file. If a customer does not have an existing personal file, a local file will need to be created in which to store the complaint. Files should carry the appropriate protective marking in accordance with the Agency's information management policies.

5.4.2 Where the customer has a CID record a summary of their complaint and the Agency's response should also be recorded there.

### **5.5 Risk management**

5.5.1 Owing to the large number of service complaints received it is not viable to individually risk assess every case that is received. However it is important to identify and manage risks associated with the most common categories of complaints. Information on the categories of complaints received is accessible via the Complaint Management System (CMS) to both the Customer Service Units (CSUs) and the Complaints and Correspondence Standards and Performance Directorate (CCSPD) and will identify:

- The highest volumes of complaints by category, region and business area
- Emerging trends
- Performance against tackling previously identified trends

### **5.6 Learning lessons**

5.6.1 The majority of lessons learned from service complaints are likely to arise through the analysis of trends. If the CSU identifies an issue which needs to be addressed, they should determine the action owner.

5.6.2 In a small number of cases lessons may be learned from individual service complaints and further actions may arise (for example, if a complaint were to relate to a leaflet containing incorrect information). In this case the person checking the response should decide if the action can be dealt with locally. If there is an issue which cannot be dealt with within the immediate team then it should be referred to the CSU to determine the correct action owner.

5.6.3 In rare cases, an individual service complaint might suggest action to be taken at a national or strategic level. This may be because it affects a whole operational area or the entire organisation, rather than being limited to a specific team or region. Any cases like these should be urgently referred to CCSPD.

## **5.7 Review process**

5.7.1 CSUs are responsible for reviewing the handling of service complaints by the business. They will not however reinvestigate individual cases themselves.

5.7.2 The CSU will acknowledge a request to review a complaint within two days of receipt. They will review the steps taken to resolve the complaint and if they deem the investigation to have been insufficient they will consult the Nominated Responsible Owner (NRO) to find out what went wrong and ensure that the issue is addressed.

5.7.3 If the CSU judges that the process was so flawed as to affect the outcome of the complaint they will ask the NRO to re-consider the complaint under the correct process.

5.7.4 The CSU will provide a response to the complainant with their findings within 20 working days of the request to review the complaint.

5.7.5 If a customer remains unhappy they can ask their MP to raise their complaint with the Parliamentary and Health Service Ombudsman (PHSO) For more information see [section 9](#).

5.7.6 If a customer who was, or still is, subject to immigration detention is unhappy with the outcome of their complaint they also have the opportunity to take their complaint to the Prisons and Probation Ombudsman (PPO).

5.7.7 Customers submitting their case to the PPO must do so within three calendar months of receiving a substantive reply through the Agency's own complaints procedure, or no reply to their complaint after 6 weeks of making it. The PPO will not normally accept complaints where there has been a delay of more than 12 months between the complainant becoming aware of the relevant facts and submitting their case to the PPO, unless the delay has been the Agency's fault and the PPO considers that it is appropriate to do so. However, the PPO has discretion to investigate those where there is good reason for the delay, or where the issues raised are so serious as to override the time factor.

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## Section 6 **Minor misconduct complaints**

### **6.1 Introduction**

6.1.1 Misconduct complaints relate to the conduct or behaviour of individual members of Agency staff, including contractors.

6.1.2 Minor misconduct is usually to do with isolated instances of rudeness and unprofessional conduct which are not serious enough to warrant a formal investigation and if substantiated they would not lead to criminal or disciplinary proceedings.

6.1.3 Some examples are:

- Incivility
- Brusqueness
- Isolated instances of bad language
- An officer's refusal to identify themselves when asked
- Poor attitude, e.g. being unhelpful, inattentive or obstructive

6.1.4 Any behaviour which, if substantiated, would lead to disciplinary action is classed as serious misconduct and such allegation must be passed via the Customer Service Unit (CSU) to the Professional Standards Unit (PSU). [Section 7](#) sets out the kinds of behaviours which would warrant a formal investigation under the serious misconduct procedure. If in any doubt, consult your CSU for advice.

6.1.5 Addressing minor misconduct has always been part of local line management responsibility. Where the complaint is an isolated instance of minor misconduct it should be resolved through the local resolution process below.

6.1.6 If the complaint is part of a larger pattern of repeated minor misconduct concerning a staff member it may be more appropriate to address it through the Agency's [disciplinary procedure](#). A formal investigation by PSU would not be part of this process. Aspects relating to the processing of the complaint and responding to the customer will still be handled under this policy.

### **6.2 Timescales for dealing with minor misconduct complaints**

6.2.1 If the line manager (or other relevant local manager) cannot resolve a complaint about minor misconduct straightaway (within two working days of the correct business area receiving it) they should send an acknowledgement within two working days and reply substantively within 15 working days of the date that the UK Border Agency first received the complaint.

### **6.3 Local resolution**

6.3.1 Local resolution is about resolving, explaining, clearing up or settling a complaint. The aim is to provide a speedy and satisfactory resolution to a complaint. It involves management commitment to improving services and a willingness to acknowledge that a situation could have been handled differently or better.

6.3.2 In many cases, if the customer is present, it offers the opportunity to resolve the complaint immediately by talking to the customer to clarify the issues, explain our operating procedures, agree the actions to be taken and where appropriate offering an apology.

## **6.4 Guidance for managers conducting local resolution**

6.4.1 The manager should act as quickly as possible in seeking a resolution. Resolving minor issues promptly benefits the customer, the official against whom the complaint was made as well as the business.

6.4.2 If the complaint lacks specifics a telephone conversation with the customer may help to clarify issues and avoid additional correspondence. The line manager may also need to talk to other people who witnessed the incident. Due to the nature of the incidents dealt with under minor misconduct it will generally not be necessary to seek out information from sources which are not readily available.

6.4.3 Local resolution should be proportionate to the complaint. Line managers will always need to talk with the staff member the complaint was about but have discretion to determine how formally they need to proceed.

6.4.4 When speaking to the staff member the line manager should explain:

- Why the matter is being treated as a minor misconduct complaint
- The purpose of local resolution
- That there will be no disciplinary action taken as a result of the complaint (unless it is as part of a larger bundle of evidence)
- That any training needs that are identified will be followed up.

6.4.5 In a local resolution, the staff member does not have the same right to representation from a trade union or other colleague as in a disciplinary investigation. If at any stage serious issues emerge and a disciplinary investigation or PSU investigation is deemed necessary the staff member concerned will have the right to representation as part of the formal process.

6.4.6 Where the complaint is resolved on the spot a note of all contact with the customer and actions taken should be maintained and copied to the NRO or CSU for logging onto the Complaint Management System (CMS). Where it is decided to issue a written response to the customer a copy should be set to the NRO or CSU for logging onto CMS.

6.4.7 The customer should be informed of how their complaint was resolved. If they are unhappy with the outcome they should be advised of the review process.

## **6.5 File management and complaint storage procedures**

6.5.1 All paperwork relating to a minor misconduct complaint must be kept securely at all times. On completion of the complaint all paperwork must be sent to the Complaints and Correspondence Standards and Performance Directorate (CCSPD). The Performance and Assurance Unit (PAU) will raise one 'Personal – Protect' file per region per quarter for minor misconduct complaints. When the files have been audited PAU will return them to General Registry for storage.

## **6.6 Risk management**

6.6.1 Minor misconduct complaints are considered to be low risk cases. A risk assessment of individual cases is not required. However, as with service complaints, it is important to identify and manage risks associated with the most common categories of these complaints. Information on the categories of complaints received is accessible via CMS to both the CSUs and CCSPD and will identify:

- The highest volumes of complaints by category, region and business area
- Emerging trends
- Performance against tackling previously identified trends

## **6.7 Learning lessons**

6.7.1 Many minor misconduct cases will result in feedback or training for the individual staff member concerned. Some cases may additionally indicate points for wider learning or consideration within the Agency.

## **6.8 Review process**

6.8.1 If a customer is unhappy with the handling of a minor misconduct complaint they can ask the CSU to review the process. The CSU must review the case within 20 working days. They will look at the paperwork to ensure that local resolution was appropriate and that the conclusions were warranted from the evidence provided.

6.8.2 Where staff with police-like powers are involved the CSU will seek advice from the PSU. Only where PSU decide that local resolution was inappropriate will a formal investigation be carried out by PSU.

6.8.3 If the evidence suggests that the manager handling the complaint showed bias; the investigation was incomplete, inadequate or flawed; or appropriate steps to address unprofessional behaviour were not taken the CSU should contact the Nominated Responsible Owner (NRO) (or their manager if the concern is about the NROs handling of the case) to take the matter further as appropriate.

6.8.4 The customer retains the right to take their complaint to the Parliamentary and Health Service Ombudsman (PHSO) or, in the case of a customer who was, or still is, subject to immigration detention, to the Prisons and Probation Ombudsman (PPO). See sections [5.6](#) and section [9](#).

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## Section 7 **Serious misconduct complaints**

### 7.1 Introduction

7.1.1 Before action is taken to resolve a misconduct complaint consideration needs to be given as to whether it constitutes an allegation of minor or serious misconduct. Serious misconduct is any action or behaviour of a UKBA staff-member or contractor which, if substantiated, would lead to disciplinary action.

7.1.2 Allegations of serious misconduct must be investigated independent of line management and are not suitable for local resolution. The Professional Standards Unit (PSU) or the Security and Anti Corruption Unit (SACU) are responsible for investigating all allegations of serious misconduct where a complaint has been received from non-UKBA staff or contractors.

7.1.3 Cases can only be referred to PSU internally by CSUs or through the Command and Control Unit (CCU) following a serious incident.

7.1.4 All serious misconduct complaints should be sent through to PSU who will decide whether it is within the remit of SACU and should be for them to investigate. PSU will then refer the complaint onto SACU.

7.1.5 Serious misconduct complaints can fall into one of the following categories:

- A specific allegation of racism or other discrimination
- Allegations of criminal behaviour (4 types: Assault/Sexual Assault/Fraud/Theft)
- Unfair treatment (including harassment)
- Unprofessional conduct (this may include: incapacity when dealing with customers either through the influence of alcohol or substance abuse or behaviour that could bring the Agency into disrepute)

7.1.6 Minor misconduct, which would be suitable for local resolution (see [Section 6](#)), can include:

- Isolated instances of offensive language
- Isolated instances of rudeness
- Isolated instances of not responding to complaints

7.1.7 Repeated instances of minor misconduct complaints should normally be dealt with by line managers (through either additional training and/or the discipline procedure) and are unlikely to need a formal investigation by PSU. Advice about this can be sought from the Human Resources Advisors in the first instance.

7.1.8 Once a complaint has been referred PSU will decide whether the case should be accepted for investigation by them or where it is considered a minor misconduct matter whether it is suitable for local resolution, in which case it will be referred back to the CSU.

### 7.2 **Allegations of discrimination**

7.2.1 Not every complaint that alleges discrimination or racism will be for PSU to investigate. PSU uses the 'D x 3 + E' formula, recommended by the Independent Police Complaints Commission (IPCC), for considering whether complaints show possible discrimination. The formula stands for:

- Has there been a **Difference** in treatment? i.e. was a customer subjected to different treatment than another customer in the same circumstances
- Is there a **Difference** in race? i.e. between the customer and subject(s) of the complaint
- Has the difference in treatment been to the **Detriment** of the customer? i.e. if the customer was treated differently was that a worse service or poorer treatment than others received
- Has there been an **Explanation** for these differences available from any source? i.e. would race appear to be the sole or major factor, or was there something about their circumstances that would account for them being treated differently

**7.2.2 If there is strong initial evidence available that the customer's treatment can be explained by factors other than race then the CSU may choose to refer the complaint for local action rather than referring it to PSU.** This type of case would likely include complaints where no specific racist behaviour is referred to but the complainant states, for example, an immigration decision against them such as refusal of Leave to Enter, or a provision of service in itself, indicates *implicitly* a racist attitude; **correct** application of the formula test is important.

**7.2.3 If there is any doubt whether an allegation is about discrimination the CSU must refer the matter to PSU.** PSU will then make the determination as to whether it requires formal PSU-led investigation. Where an allegation specifically states that an *explicitly* racist statement was made this will always be sent to PSU for formal PSU-led investigation.

### **7.3 Investigation into allegations of criminal behaviour**

7.3.1 When a complaint relates to an allegation of potentially criminal behaviour, for example an individual alleged to have accepted payments or rewards related to their official activity, the complaint should be referred by the CSU to PSU as with other serious misconduct complaints. In corruption cases PSU will consult SACU who will advise whether a police investigation or internal misconduct investigation would be appropriate in the circumstances of the case. SACU will also advise whether an investigation should continue under these investigation guidelines and take the lead role in corruption cases.

7.3.2 In complaints relating to both criminal behaviour and inappropriate conduct the investigation of the non-criminal aspect of the complaint may not always proceed where there is an outstanding criminal enquiry. This is to ensure that the criminal enquiry is not prejudiced. It is important the Police are notified of criminal allegations at the earliest opportunity to ensure that neither investigation is prejudiced by the other.

### **7.4 Who will investigate the complaint?**

7.4.1 Investigations into serious misconduct are undertaken by PSU or the Security and Anti-Corruption Unit (SCAU). All investigating officers within PSU are trained and have appropriate level of knowledge, skill and experience to plan and conduct investigations; including those into allegations made against officers who exercise police-like powers.

- PSU investigating officers are at least HEO grade or equivalent.
- The investigating officer will have had no prior social acquaintance with the officer under investigation
- They will not have had any operational involvement in the circumstances surrounding the complaint
- They are not obliged to answer questions from interviewees of their representatives about their personal career history or experience.



#### 7.4.2 The role of PSU investigating officers is:

- To establish the facts of the complaint and provide conclusions as to whether, on balance of probability, the evidence available substantiates the complaint
- To highlight any procedural shortcomings that may become apparent during the course of the investigation

7.4.3 It is not the role of the investigating officer to decide what action should be taken as a result of their investigation. See [7.9](#) below.

### 7.5 File management of serious misconduct cases

7.5.1 A file must be created for each serious misconduct complaint. These must be classified as 'Personal - Protect' and be stored securely at all times. Where the information compiled becomes oversized, it will be necessary to request an additional file with a new IMG reference. All files relating to the same case should be held together and, in case they become separated, all files should be marked with the IMG references of the files they are linked with. All paperwork related to the complaint must be kept on the file, including the original complaint, the investigation report and a copy of the reply letter to the customer. PSU have the responsibility for creating these files by raising a request with General Registry.

7.5.2 Completed files will be forwarded to CCSPD's Performance and Assurance Unit (PAU) for potential audit. If there is an appeal subsequently, PSU will request that PAU return the file so that it can be made available for review by the PPO or IPCC. It is then returned to General Registry for storage.

7.5.3 If a misconduct complaint file is raised in error and needs to be cancelled a full and detailed minute must be written and kept on the file to explain why the file is being cancelled. (These files are retained in the General Registry store) For example:

- A complaint mistakenly classified as a misconduct complaint that should be dealt with as a service complaint – the minute should state that this is the reason for the cancellation request, why it is being dealt with as a service complaint, who has authorised the reclassification and give the details of the file the service complaint will be kept on
- A file is raised and then it is realised that a file already exists for the complaint – the minute should state this reason and give details of the file that has already been raised

7.5.4 A misconduct complaint file cannot be destroyed without the authorisation of PAU. If the CSU or PSU thinks a file should be destroyed they must contact PAU for advice. If a decision is made to go ahead with the destruction of the file the requestor must complete a pro-forma to send to General Registry. The pro-formas must be requested from General Registry and when complete sent to PAU to authorise.

### 7.6 The investigation – preparation

7.6.1 PSU will draw up the terms of reference for investigating the complaint; in cases where it is appropriate this will be done in consultation with the Independent Police Complaints Commission (IPCC). PSU will appoint an investigating officer to undertake the investigation. In IPCC cases that have a supervised or managed mode of investigation the IPCC must approve the proposed investigation officer.

7.6.2 The investigation should be proportionate to the matter under investigation. There will be some cases where the facts are not in dispute and others where it is an issue of inference. In the

latter instance the amount of investigation, including questioning of all parties, will be greater in order to establish on balance what has occurred.

7.6.2 The investigating officer should:

- Compile an investigation plan clearly showing how the investigation will proceed, including who should be interviewed, a timeframe for interviews and the compilation of the report so that the investigation can be completed within the set timescale of 12 weeks.
- If the investigation exceeds, or is expected to exceed, 12 weeks PSU will provide the relevant CSU with updates on the progress of the investigation and the CSU should in turn keep the relevant parties aware of progress. PSU will also inform the customer if the investigation has or is expected to exceed 12 weeks, similarly they will provide regular updates on the progress of the investigation.

7.6.3 It is essential that, wherever possible, the investigation is undertaken within this timeframe, or sooner, while memories of events are still fresh in the minds of those interviewed and to avoid any subsequent complaint about delay in the process.

7.6.4 The investigating officer will need to consider the information contained in the complaint to decide who to interview to ensure that the full facts can be established. The subject of the complaint and the customer should always be interviewed. There may however be reasons why this is not practical (for example the customer is abroad) but in these situations alternatives such as telephone interviews should be considered. If the investigating officer decides not to interview certain individuals pertinent to the complaint they should provide reasons for this in their report.

7.6.5 Consideration should also be given as to whether there are files, electronic records or papers relevant to the investigation that are required and arrangements made to obtain them. These may include, but are not limited to, completed IS forms, notebook entries or witness statements; electronic evidence e.g. CID records, e-mails from POISE, text messages on Agency-issued mobile phones; and, CCTV, including from third parties. The PSU investigator will obtain and preserve all such evidence as it appears to them is relevant and available. All information will be obtained, stored and/or shared or disclosed in a manner consistent with internal guidelines and with relevant legislation e.g. the Data Protection Act 1998.

7.6.6 When deciding which people to interview or obtain evidence from due consideration will be given to any witnesses put forward by either party.

## **7.7 The investigation - communication**

7.7.1 It is essential that all parties involved with the investigation disciplinary process are kept informed about how matters are proceeding. The key communications during an investigation are as follows;

### **Notification Letters**

7.7.2 PSU will send an acknowledgement letter to the customer within 2 days of receipt of the complaint at PSU. The acknowledgement letter also informs the customer that they have 7 days in which to provide any further relevant information for consideration.

7.7.2 Once the full details of the complaint have been established the issues being investigated should be put in writing to the subject of the complaint. The notification letter should also state that the officer may have committed a criminal offence or behaved in a manner which would

justify the bringing of disciplinary proceedings. Any information available at that stage about the allegation should be provided along with the notification letter; this would usually be a copy of the complaint letter, an excerpt from it, or a summary of its contents. In some instances complaints/allegations are made against a specific team and it will not be clear which member of the team is the actual subject of the complaint. In these cases all the allegations must be referred to during the interviews so that those involved have the opportunity to respond to all the allegations

7.7.3 Where the complaint is about a contractor within Detention Services a copy of the complaint letter will have been sent to the relevant contractor's Complaints Co-ordinator by the Detention Complaints Section to forward to the contracted staff. It is the responsibility of Detention Services and the contractor to consider whether or not the staff against which the complaint has been made should have their accreditation to work with detainees' suspended.

7.7.4 In non-Detention Service cases PSU will write to the relevant Assistant Director (AD) to inform them of the complaint received and the staff members it concerns (if identified at that stage). It is the AD's responsibility to inform the relevant line managers within their command and to consider, in liaison with HR Business Partner or Advisor, whether to suspend any member of staff pending further enquiries. The PSU will send an initial letter informing the staff member of the complaint as soon as possible.

### **Invitations to interview**

7.7.5 Once the allegation has been set out in writing interviews will be arranged with the customer(s), the subject(s) of the complaint and any witnesses within an agreed timescale. If the subject(s) of the complaint so wishes they can provide a written response to the allegations that can serve as a basis for the interview. However, the investigator will inevitably ask additional questions during the interview until they are satisfied that all relevant information has been obtained.

7.7.6 If the invitation is to a UK Border Agency member of staff the letter should give at least five days notice and advise them of their right to be accompanied by a trade union representative or workplace colleague.

### **Final report and reply**

7.7.7 Once the investigation has been completed, the complainant will be sent a reply letter explaining fully the findings of the investigation into each aspect of their complaint. It will also set out any relevant appeal procedures e.g. to the Independent Police Complaints Commission (IPCC).

7.7.8 A copy of the full investigation report will be provided to the relevant line management. The line management, in liaison with the relevant HR Advisor or Business Partner, will determine what, if any, disciplinary action to take. It is for the line management to issue a copy of the report to the staff member who was the subject of the complaint. NB: If the investigation is an IPCC 'local' or 'supervised' investigation, the complainant has rights of appeal against disciplinary action not being recommended and/or taken. Therefore, when the line management has made a decision regarding the taking of disciplinary action it will inform PSU. In turn, PSU will inform the complainant of that decision in writing. A disciplinary hearing should not be undertaken until either 28 days have elapsed and the complainant has not appealed, or, the IPCC has made a decision on the complainant's appeal.

### **Update letters**

7.7.9 Although it is the intention to complete all investigations within 12 weeks this will not always be possible. Where a case is delayed beyond 12 weeks all parties should be informed in writing of progress and, if possible, a revised timescale for completion, at least every 4 weeks. (In IPCC investigations all parties will also be updated in writing at least every 4 weeks from the outset of the investigation.)

## **7.8 The investigation process – interviews and evidence gathering**

7.8.1 The purpose of the interview is to establish the facts of the case. All aspects of the complaint and any corroborative evidence must be put to the subject(s) of the complaint during the course of the interview and they should be given every opportunity to respond to each individual allegation. If there are allegations against more than one officer they should be interviewed separately. The Investigating Officer may choose to disclose other evidence available to them at interview. This will be done in line with the Disclosure guidance at Section 7.10.

7.8.2 Ideally witnesses should then be interviewed either face or face or over the telephone, depending on the extent of the information sought, with due consideration given to any witnesses put forward by either party. If it is not practicable to interview the witness the investigating officer may require a written statement instead.

7.8.3 Any interviewee should be asked if they are fit and well enough to be interviewed before the interview is begun. Interviews themselves should not last longer than an hour and a half without a break. After an agreed interval the interview can then recommence. The investigator should also allow other reasonable requests for breaks e.g. to allow private consultation between the interviewee and their representative.

7.8.4 It is important that an accurate record of the information provided at interview by customers, subject(s) of complaint and witnesses is produced. How the information is recorded will be decided by the investigating officer in advance. The investigating officer's decision is final and must be co-operated with. In the majority of cases interviews will be recorded so that a full objective record of the interview is available for reference. The recording will be used to prepare either a full verbatim transcript, interview summary or a statement. The interviewee will be provided with a copy of the recording and a draft copy of the transcript or statement which they will be asked to sign off, with amendments if necessary.

7.8.5 If it is not possible for the interview to be recorded, the investigating officer or a person appointed by the investigating officer, will take a written note of the interview. The notes should be provided to the interviewee at the end of the interview for them to confirm that they are an accurate record. The notes will then be used to draft a statement which will again be provided to the interviewee to sign off as an accurate summary.

7.8.6 The investigating officer must remain objective and act in the interests of natural justice and fairness and should bear in mind that those interviewed are likely to be apprehensive. Equal consideration should be given to all accounts. Assumptions and conjecture should be avoided and an officer's previous conduct or a customer's immigration history should not be taken into account unless it is fully justified in having an important bearing on the case.

7.8.7 All staff members interviewed in connection with the complaint will be expected to give the investigating officer their full co-operation and be open and honest in providing their account of events. Any attempt to obstruct the investigation process by them or their representative could lead to the consideration of disciplinary action by line management. This also applies if at any time during the investigation it becomes apparent to, or is reported to, the investigating officer that

there has been an attempt to intimidate or interfere with witnesses. If this occurs it should be reported to the CSU who should refer the matter to the individual's line manager. The investigating officer should also ensure there has been no breach of confidentiality or collusion between the subject(s) of the complaint and witnesses. If any breach of confidentiality or collusion is suspected this should be referred to in the investigating officer's report.

7.8.8 The investigating officer should explain to the subject(s) of the complaint that they can be accompanied by a trade union representative or workplace colleague if they so wish. The role of the representative is to provide support, ensure the officer is aware of procedures and is treated fairly. They are not there to answer questions on the officer's behalf or behave in a way that prevents the investigating officer from establishing the information required. Details of the rights to be accompanied in certain circumstances are set out in the [Staff Handbook Chapter 14](#).

## **7.9 The Investigating officer's report**

7.9.1 The investigating officer should submit a full report to the CSU on completion of their enquiries including the statements obtained. The report must set out the following:

- The terms of reference for the investigation
- Details of evidence obtained and witnesses interviewed (with reasons why not if appropriate) and observations where appropriate on the relative credibility of the evidence
- A summary, consideration and balancing of the evidence addressing each point of the complaint objectively and an assessment of the extent to which they are justified
- If the issue turns solely on the credibility of the parties involved this should be made clear with comment made as to why the account of one party is given greater credence than the other
- Whether any local procedures or instructions might need to be changed or modified as a result of the conclusions reached
- Whether there is any suspected breach of confidentiality or collusion
- A conclusion based on the balance of probability of whether the complaint has been substantiated or not
- Details of any recommendations made

7.9.2 The investigating office will also state whether they would expect a disciplinary hearing to be held for the purpose of considering a disciplinary sanction. The line manager, in consultation with HR will decide to hold a disciplinary hearing and what sanctions to consider. See section [7.11](#) below.

## **7.10 The investigation process – Disclosure of evidence**

7.10.1 It is in the very nature of investigations that more evidence becomes available to the investigating officer during the course of an investigation than is available at the outset when only a complaint letter or form has been received.

7.10.2 Prior to being interviewed the subject of the complaint should have been provided with sufficient evidence to allow them to make representations to the investigating officer. In essence this means that they will have been provided with details of the circumstances of the matter complained of e.g. time, date, location, persons involved; and the actions, conduct or behaviour which have been alleged.

7.10.3 Beyond that, it is for the investigating officer to determine at what stage any further evidence should be provided to relevant parties. The investigating officer will consider, for example, whether disclosure of certain information before an interview may lead to the

contamination of the evidence of the interviewee or have other adverse effects to the investigation.

7.10.4 The overriding obligation is that all allegations and corroborative evidence must be put to the subject of the complaint at some point during the investigation process and for the subject of the complaint to have had the opportunity to make representations in response.

7.10.5 All the evidence available to the investigating officer and how it has been considered in coming to a conclusion about the alleged misconduct will be included in the Investigation Report. A copy of the report will be provided to the subject of the complaint by their line management as soon as possible and always prior to any disciplinary hearing.

## **7.11 The outcome of the investigation**

7.11.1 The CSU should ensure that all aspects of the allegation(s) set out in the terms of reference have been properly addressed.

7.11.2 If the CSU has any concerns they should refer the matter to the Head of the PSU.

7.11.3 Once the report is completed the PSU will write to the customer advising them of the investigation's findings, unless the relevant Director has indicated that they wish to send the reply. The letter should state if they have a right of appeal to the Prison and Probations Ombudsman (PPO) or Independent Police Complaints Commission (IPCC) and include any relevant leaflets for doing so.

7.11.4 PSU will provide a copy of the investigation report to the CSU, who will in turn notify the relevant Assistant Director/HMI who will have the responsibility for ensuring the relevant managers and those subject to the complaint are informed of the outcome and the review process.

7.11.5 In Detention Services cases, the completed report and a copy of the letter to the complainant should be sent to the Detention Services CSU who will be responsible for disseminating them within Detention Services, including to the relevant contractors. All findings should also be shared by the Investigating Officers with the relevant line management of the subject of the complaint, ordinarily Assistant Director for the operational office or UK Border Agency Immigration Removal Centre (IRC) manager concerned.

7.11.6 The investigating officer's report and witness statements and any other documents gathered during the course of the investigation are management documents. These documents contain personal information about individuals that would be disclosable under the Data Protection Act (DPA). The information could also potentially be disclosable under Freedom of Information (FOI). Requests for this information under DPA or FOI will need to be considered on a case by case basis in discussion with the Data Protection Unit, FOI team or the Information Access Policy Team. See also section [8.4](#) and [8.5](#) of this guidance.

7.11.7 Additional papers (for example, copies from casework files) should not normally accompany an investigation report unless the investigating officer considers it essential. In these cases the relevant issues within such papers should be fully addressed within the body of the report.

## **7.12 Possible action following an investigation**

### **Disciplinary action**

7.12.1 When an allegation is substantiated and misconduct found to have taken place it will be the responsibility of the line manager to consider whether disciplinary action is appropriate in consultation with the Human Resources Advisor. With regard to Detainee Custody Officers (DCOs) employed by contractors, the matter of any disciplinary action is one for the contractor. Any decision to revoke a DCOs accreditation is one for Detention Services Contract Monitors.

7.12.2 Under new IPCC regulations where a complaint has been referred to and overseen by the IPCC it has the power to direct UKBA to hold a disciplinary hearing if it feels it to be appropriate. It can not however direct the outcome of that hearing.

### **Other action**

7.12.2 In cases where there are lessons to be learnt by those involved, whether or not the complaint was found to be substantiated, local line management will decide how to take this forward and whether advice, guidance or further training is appropriate.

7.12.3 CCSPD reviews quarterly any recommendations made by PSU and identifies common themes and 'lessons learned' for inclusion in a quarterly report to Directors.

## **7.13 Risk management**

7.13.1 Serious misconduct complaints can be anything from low to high risk with potential for serious reputational damage to the Agency as well as potential legal action taken against us. A risk assessment of each case will need to be conducted. PSU should assess each misconduct case for potential risk upon receipt of the case and upon completion of the investigation.

## **7.14 Learning lessons**

7.14.1 Every PSU report should be reviewed by the Director of the area the complaint is about to review the lessons identified and the recommendations made by PSU. The report should be reviewed as soon as possible after it is available.

7.14.2 The lessons learnt from serious misconduct investigations will range from looking at individual line management through to the operational processes used by the Agency. It is important for each unit to keep a detailed record of the lessons learnt from each investigation and what action they have taken to prevent its re-occurrence.

## **7.15 Review process**

7.15.1 Unless the customer provides evidence as to why an investigation was flawed or the conclusion unsound the Agency will not review serious misconduct investigations. Where the customer does provide sufficient grounds for reviewing a serious misconduct investigation these must be raised with the Head of PSU.

7.15.2 The customer retains the right to take their complaint to the Parliamentary and Health Service Ombudsman (PHSO) or, in the case of detainees, to the Prisons and Probation Ombudsman (PPO) or where the complaint involved a UKBA officer with police-like powers the Independent Police Complaints Commission (IPCC). See sections [3.8](#), [3.9](#) and [section 9](#).

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## Section 8 **Special circumstances**

### 8.1 **Closing complaints before resolution**

8.1.1 There are some circumstances in which complaints may be closed without a full resolution. These are:

- Complaints where the customer has not provided enough information and it is not possible to even begin an investigation into the complaint. In these cases the CSU or NRO should write to the customer requesting more information. The case should be marked as 'Invalid' on CMS. When the customer provides sufficient information to investigate then a new complaint should be raised on CMS.
- Service complaints more than three months old where the customer has been removed from the UK and the Agency is out of contact.
- Service or minor misconduct complaints more than twelve months old when the customer hasn't pursued since making the initial complaint.
- If the complaint is solely about the delay taken to make a decision then the complaint can be closed when a decision is made on the case. The customer should be told, either in the decision letter or by separate letter, that their complaint has been closed. If there are other aspects to the complaint they must be separately addressed.

8.1.2 In these circumstances, except the last, a case can be marked as closed but not resolved. A clear audit trail should be kept explaining why the complaint is not being pursued. Where the Agency has closed a complaint before resolution it can be re-opened at the request of the customer.

8.1.3 Serious misconduct cases should not be closed without an investigation even where circumstances limit the type of investigation that can be made.

### 8.2 **Action while a complaint is under investigation**

8.2.1 The fact that a complaint has been made and is under investigation should not interfere with the Agency's consideration of the immigration or Customs aspects of a case. Removal or excise seizure action, for example, should not be postponed pending the outcome of the complaint unless it is likely that criminal charges may be brought and the customer required as a witness. In cases of doubt the business area concerned should consult with the Professional Standards Unit (PSU).

### 8.3 **Complaints received in grounds of appeal**

8.3.1 Complaints about the Agency's service or the conduct of members of staff can be contained in grounds of appeal. In such cases the fact that a complaint has been lodged should not delay the appeal process; nor should it be assumed that the complaint would be dealt with as part of those procedures. Preparation of the appeal statement should continue in the normal way, with the following sentences being included:

*"Included in the grounds of appeal was a complaint about the service provided by /conduct of United Kingdom Border Agency staff. This is being dealt with separately under the Agency's complaints procedure."*

8.3.2 A copy of the Grounds of Appeal, together with copies of all other relevant correspondence/minutes, and a note explaining the current situation, should be sent to the relevant Customer Service Unit (CSU). The appeal should not be delayed and appeal statements should be prepared and the appeals process adhered to in the normal way.



8.3.3 The area dealing with the complaint will liaise with the relevant Presenting Officers Unit (POU)/Post Seizure Unit and ensure the complaint is investigated and a reply prepared to cover the complaint aspect of the case.

8.3.4 Where the resolution of the complaint casts doubt upon the validity of the decision under appeal it will be for the business area and the POU/Post Seizure Unit to agree the appropriate action. Cases of doubt should be discussed with the CSU.

#### **8.4 The Data Protection Act 1998**

8.4.1 A customer may refer to the Data Protection Act (DPA) and request details of personal information held on paper or in computer records. Under the Act such requests have to be processed within strict guidelines and within a time limit of 40 days from receipt of a properly made request. (Requests must be made in writing and the customer must also pay a fee of £10. There is no obligation to process any request for subject access until these two requirements have been met.) The Agency faces legal action if this is not adhered to. All such cases should be brought to the immediate attention of:

**Data Protection Unit  
12th Floor East Wing,  
Block B,  
Whitgift Centre,  
Croydon,  
CR9 1AT**

8.4.2 Request for access to such information should not be dealt with by any other section.

#### **8.5 Freedom of Information Act 2000**

8.5.1 The Freedom of Information (FOI) Act came into force on 1 January 2005. It provides the public with a right of access to information held by all public authorities. Any request for such information should be responded to within 20 working days, starting on the date the request is received by the Agency.

8.5.2 A User's Guide for dealing with FOI requests is available [on Horizon](#). Enquiries can be addressed to:

**Central Freedom of Information Team  
11<sup>th</sup> Floor Lunar House,  
40 Wellesley Road  
Croydon  
CR9 2BY**

#### **8.6 Complaints mentioning legal action and County Court claims**

8.6.1 Where the Agency receives a pre-action letter or any complaint that states the customer has begun legal action you should consider what legal support is needed, if any. Answering pre-action letters relating to run of the mill complaints will likely need no legal support. Where litigation is imminent, very likely or in train it will be appropriate to instruct Treasury Solicitors to represent the Agency in that litigation. Where a case is particularly high profile, complex or has a wider knock on effect on policy, operations or practice it may also be appropriate to involve

Legal Adviser's Branch (LAB). Before a reference to LAB is made you should consult with and obtain the approval of your Head of Unit

8.6.2 Claims for compensation in the County Court are governed by the Civil Procedure Rules and in particular the practice direction relating to pre-action conduct.

8.6.3 Before commencing proceedings for compensation against the Agency each party must exchange sufficient information about the matter to;

- allow them to understand each other's position and make informed decisions about settlement and how to proceed, and
- must make appropriate attempts to resolve the matter without starting proceedings

8.6.4 It must be remembered that the obligation under the practice direction extends both ways, namely that the Agency must engage with correspondence or any approach made before proceedings are commenced i.e. it is important to respond to a pre-action letter

8.6.5 The court has the power to ask the parties to explain what steps have been taken to resolve the issues before the case can proceed before the court and if the practice direction has not been complied with the court can impose sanctions such as suspending the proceedings until the practice direction is complied with or ordering the non-compliant party to pay the other party's costs in the court proceedings. The court however is required to act proportionately and will therefore only impose such sanctions where the effect of non-compliance justifies it.

8.6.6 The Agency cannot insist that a customer adhere to the requirements of the practice direction as outlined above. The customer may be penalised by the court if they do not adhere to it but they are not necessarily prohibited from bringing proceedings if they do not.

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## Section 9 **Complaints from the Parliamentary and Health Service Ombudsman (PHSO)**

### **9.1 Introduction**

9.1.1 The Parliamentary and Health Service Ombudsman (PHSO) investigates complaints that government departments, and a range of other public bodies in the UK, have acted improperly, unfairly, or have provided a poor service.

9.1.2 The PHSO is independent of the Government and is not a civil servant. She is an officer of the House of Commons, appointed by the Queen, and reports to Parliament. The PHSO has statutory responsibilities and powers to report directly to Parliament.

9.1.3 In February 2009 the Ombudsman republished her 'Principles of Good Administration', 'Principles of Good Complaint Handling' and 'Principles for Remedy'. These are broad statements of what she considers public bodies should do and how to respond when things go wrong. The same six principles apply to each of the three documents; they are:

- Getting it right
- Being customer focused
- Being open and accountable
- Acting fairly and proportionately
- Putting things right
- Seeking continuous improvement

For more information please see: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

9.1.4 The PHSO's underlying principle is to ensure that the service provider restores the customer to the position they would have been in if maladministration had not occurred. This may include financial redress and/or an apology. They may also recommend that procedural changes are made to avoid similar problems happening again.

9.1.5 The PHSO's recommendations are not binding but there is an expectation that public bodies will abide by them. If the PHSO feels that the Agency has failed to remedy an injustice, or is not satisfied with our response to their enquiry, the PHSO may draw the matter to the attention of Parliament. From time to time the PHSO also reports specifically on individual examples of maladministration.

### **9.2 Overview of PHSO complaints process**

9.2.1 There is an expectation that individuals will follow our internal complaints procedure before they refer their complaint to the PHSO and that complaints should be lodged within 12 months of the event which led to the complaint.

9.2.2 Complaints must be made through a Member of Parliament and cannot be made by customers direct to the PHSO. It is the MP's decision whether to refer a complaint to the PHSO and the PHSO is not obliged to investigate every complaint that has been referred to her by an MP.

9.2.3 If the PHSO decides to launch a full investigation into a complaint against the Agency it will send a summary of the complaint giving us the opportunity to comment and stating exactly what further information is required.

9.2.4 The PHSO has agreed to contact the Chief Executive directly about cases which appear capable of swift resolution and/or raise key or systemic issues. In such cases PHSO will email the Chief Executive directly, copying in the Policy, Oversight and Best Practise Unit (POBU) which in turn will alert the relevant CSU. The Chief Executive's office will contact the relevant business area directly, ask for a response to be prepared, and return the response to PHSO within the agreed deadline.

9.2.5 The PHSO investigator can inspect UK Border Agency files and interview relevant officers in person, either at PHSO or Agency offices. They may also conduct interviews by telephone. When it has considered the information we have provided the PHSO will send a copy of her draft report and findings, giving us further opportunity to comment on the facts and provisional findings before the final report is issued.

9.2.6 The PHSO's report sets out whether it has found maladministration causing injustice and whether that injustice has been remedied. If it has not it will recommend what should be done to put things right.

### **9.3 Premature complaints**

9.3.1 The PHSO receives a number of complaints where customers have not received a substantive response to their complaint from the Agency in accordance with our service standards. In such cases the PHSO will refer these complaints back to the Agency for resolution rather than launching its own investigation.

### **9.4 Handling premature complaints**

9.4.1 The PHSO will email details of the complaint to POBU in line with existing procedures for handling PHSO cases. POBU will acknowledge and allocate the cases to the named contact in the relevant business area copying in the grade 7 / Assistant Director of that business area and the appropriate CSU within two working days of receipt.

9.4.2 The business areas should deal with the complaint in accordance with the standards set out in sections [4](#), [5](#), [6](#) and [7](#) of this guidance and a copy of the substantive response should be emailed to the PHSO and CCSPD.

9.4.3 Where we do not have a record of the complaint being received the CSU should treat the referral as a new complaint indicating that the PHSO has referred the complaint to the Agency.

9.4.4 Where a substantive response has already been sent (but that the customer has not received it) the part of the business which dealt with the complaint originally should send the customer a copy (copying it to the PHSO and POBU).

9.4.5 If there are next steps arising from the premature complaint such as an apology letter or an undertaking to make a decision on the case POBU will arrange with the business area for it to be done within an agreed timescale. The business area should provide evidence to POBU that any next steps have been completed.

### **9.5 Requests for further information**

9.5.1 The PHSO sends the Agency requests for further information in cases where she is deciding whether to launch a full investigation into a complaint. In some cases the information we supply enables the PHSO to conclude that a full investigation is not necessary. Where

appropriate these requests also give the Agency the opportunity to resolve matters before the PHSO launches a full investigation into the complaint.

## **9.6 Handling requests for further information**

9.6.1 The PHSO will email the request for information to POBU in line with existing procedures for handling PHSO cases. POBU will acknowledge and allocate the request to the relevant contact within the business area within two working days of receipt copying in the Grade 7 / Assistant Director of the business area and the appropriate CSU.

9.6.2 The business area is responsible for returning the requested information to POBU within 5 working days.

9.6.3 POBU will draft a response and reply to the PHSO within two weeks of the request being received from the PHSO.

9.6.4 If there are next steps arising from the request for further information such as an apology letter or an undertaking to make a decision on a case, POBU will arrange with the business area for it to be done within an agreed timescale. The business area should provide evidence to POBU that any next steps have been completed

## **9.7 Full investigations**

9.7.1 Full investigations tend to have three stages in the process:

- Initial enquiry
- Draft report
- Final report

In some cases there might also be some further enquiries following the Agency's response to the initial enquiry.

9.7.2 If the PHSO decides to investigate a complaint against the Agency an investigator will email POBU with an enquiry summarising the complaint and asking the Agency to provide a response. The PHSO usually asks us to respond to the enquiry within three weeks.

## **9.8 Handling full investigations**

9.8.1 POBU will acknowledge and allocate the case to the contact within the relevant business area copying in the Grade 7 / Assistant Director of the business area and the appropriate CSU within two working days of receipt.

9.8.2 The business area should draft a reply to the Ombudsman's enquiry ensuring that the draft reply covers the following:

- **Chronology:**  
The PHSO usually asks for a full chronology of the customer's immigration history and the Agency's dealings with them. Even if a chronology has not been requested it is good practice to provide one as it will enable us to put the complaint in context, establish why certain actions were taken, and reach a balanced conclusion about our role in the events.
- **Answer all questions fully:**

Be objective even if it does not reflect well on the Agency. In some cases we will not be able to fully explain why an error was made or why a particular course of action was taken (for example when a file contains inadequate or incomplete minutes). If we are unable to fully explain our actions we should be honest about this.

- **Identify whether correct procedures have been followed:**

It is good practice to set our actions against the policies or procedures that were in place at the time. If we argue that we took a particular course of action because of a policy that was in place at the time we should supply the PHSO with a copy of that policy. We should always explain whether we were correct to take the action we did.

- **Explain delays:**

We should provide full explanations of any delays that have occurred in cases. If cases have been caught up in any backlogs we should provide full explanation of when these backlogs formed; how many cases are caught up in the backlog; what steps are being taken or have been taken to address the situation; what has been done to inform applicants of the situation (i.e. notices put on website, IEB being informed so they can inform applicants when contacted, informing applicants when they write in); and if there are any timescales in place for the backlog to be cleared.

- **Be consistent:**

Responses to the PHSO should be consistent. Many PHSO complaints involve the same issues, such as delay. We should ensure that lines taken in previous cases relating to similar or the same issues are still relevant.

- **Remedies:**

- If we accept that a customer has suffered as a result of our maladministration we should try to offer a remedy in our response. (For example if a customer has been unable to claim benefits because we failed to serve documents confirming a grant of indefinite leave to remain (ILR) we should contact the Department for Work and Pensions and consider making a payment for backdated benefits.)
- Consider if a consolatory payment is appropriate even if the PHSO hasn't specifically asked for it. Guidance on consolatory payments can be found in section [11](#), in particular section [11.5](#).
- Was the correct decision on the case made? (For example was someone granted discretionary leave but actually, upon review, should have been granted ILR.)

9.8.3 The business area should return the draft reply and the customer's files to POBU within two weeks of the case being received by the Agency. POBU will quality assure the draft and send the final reply to the PHSO.

9.8.4 When the PHSO has considered our response they may have some further questions. If this is the case, the investigator will email the questions to POBU and, will usually, specify when a response is required. POBU will acknowledge receipt and forward the questions to the relevant business area within two working days and agree a deadline for when the answers need to be provided. The business area is responsible for returning the response to POBU within the agreed deadline who will submit it to the PHSO.

9.8.5 When PHSO has considered the full response it will send POBU a draft report of its findings by email and ask for comments. The Agency is usually asked to provide comments within two weeks. POBU will acknowledge receipt of the report and forward it to the relevant business area within two working days of receipt agreeing a timeframe for comments to be

returned, usually within 1 week. The business area is responsible for returning the comments to POBU, within the agreed deadline, who will submit them to the PHSO.

9.8.6 The business area should pay particular attention to the following:

- That the PHSO has interpreted the UK Border Agency's response correctly
- That the dates referred to in the report are accurate
- That any legislation, immigration rules, casework guidance, Immigration Directorate Instructions referred to in the report have been correctly interpreted
- That any recommendations made by the PHSO i.e. an apology letter, redress issues, reviewing decisions, reviewing guidance can be dealt with within the timescale set down by the PHSO. If not an explanation will need to be provided and a new timescale suggested.

9.8.7 When the PHSO has considered the comments it will send POBU a copy of its final report by email. POBU will acknowledge receipt of the report and forward it to the relevant business area within two working days of receipt and copy to the appropriate CSU.

9.8.8 If the Agency accepts that the customer suffered an injustice arising from maladministration POBU will liaise with the business area to write to the customer. The letter should identify any errors, offer an apology, and, where appropriate, offer the customer the agreed financial redress. In cases where financial redress is offered the customer should be asked to accept the offer in writing. When this written confirmation is received POBU will liaise with the business area or relevant CSU to ensure payment is made.

9.8.9 POBU will be responsible for ensuring that all recommendations made by the PHSO in their final reports are taken forward and will provide evidence to the PHSO that the recommendations have been complied with.

## **9.9 Legacy referrals**

9.9.1 The Case Resolution Directorate (CRD) exists to resolve the Agency's unresolved asylum applications made before 5 March 2007. It has been estimated that there were between 400,000 to 450,000 electronic and paper records; many of which are duplicates or errors. The aim is to conclude all the incomplete cases by summer 2011.

9.9.2 Priority is given to cases that may pose a risk to the public, those that can be easily removed or given status, and those receiving public support.

9.9.3 The PHSO receive a number of complaints about cases that are caught up within this area and agreed a process for referring these complaints directly to CRD to deal with under their priorities within an 8 week timescale.

9.9.4 The PHSO will email the CRD CSU directly asking if a particular case is suitable for referral under the agreement. CRD CSU will inform the PHSO if the case is suitable for referral.

9.9.5 If the case is suitable the PHSO will email the referral directly to POBU who will acknowledge receipt and refer the case to the relevant Case Resolution Team (CRT).

9.9.6 The CRT should write to the applicant within 20 working days. A copy of the letter and background note should be sent to POBU who will forward them onto the PHSO.

9.9.7 If the CRT decides that the application falls under one of their priorities then the application should be decided within 8 weeks.

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## Section 10 Unreasonably persistent customers and unacceptable behaviour

10.1.1 The UK Border Agency is committed to dealing with all complaints made by or on behalf of our customers fully, impartially and quickly and expects customers to work with us to help resolve their complaints.

10.1.2 There are some situations where a customer's behaviour or actions are unacceptable to the Agency; these will fall into two main categories:

- Behaviour that is threatening, abusive or offensive. The Agency does not expect staff to tolerate this behaviour from customers. This principle extends to written as well as verbal communications
- Customers who because of the frequency of their contact with the Agency may hinder effective consideration of their own or other people's complaints. These are termed 'unreasonably persistent customers'

10.1.3 When a customer's behaviour is considered unacceptable they will be told why their behaviour is unacceptable and they will be asked to change it. If the unacceptable behaviour continues action will be taken to restrict the customer's contact with the Agency.

10.1.4 Where behaviour is so extreme that it appears to threaten the immediate safety and welfare of Agency staff, consideration will be given to other options, which may include, for example, reporting the matter to the Police or taking legal action. In such cases prior warning of that action will be given to the customer.

10.1.5 The decision to restrict access is taken by the Nominated Responsible Owner (NRO), in consultation with the Customer Service Unit (CSU) as appropriate. Any restrictions imposed should be appropriate and proportionate to the circumstances. The options to be considered will be:

- Requesting contact in a particular form (e.g. letters, emails)
- Requiring contact to take place with a named officer only
- Restricting telephone calls to specified days and times
- Asking the customer to enter into an agreement about their conduct and/or future contacts with the Agency.

10.1.6 In all cases it will be explained to the customer in writing by the NRO why their behaviour is considered unacceptable, what action will be taken, and the duration of that action. They will also be informed they can write to the CSU challenging the decision should they disagree.

10.1.7 Where a customer continues to behave in a way which is unacceptable, it may be decided to terminate contact with that customer and discontinue any investigation into their complaint.

10.1.8 Where a customer whose case is closed persists in communicating with the Agency a decision may be taken to terminate contact with that customer. In such cases the Agency will read all new correspondence from that customer but unless there is fresh evidence which affects the decision on the complaint the correspondence will simply be acknowledged or will be placed on file with no acknowledgement. New complaints from those who come under this policy will be treated, and decisions made, based on their merits.

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## Section 11 Compensation guidance

### 11.1 Introduction

11.1.1 Customer Service Units (CSUs) are responsible for assessing compensation claims and authorising payment where appropriate. The same considerations apply whether the claim is made by the customer directly, through representatives or by the Parliamentary and Health Service Ombudsman (PHSO).

11.1.2 Compensation should only be considered in cases arising from claims alleging maladministration or where maladministration has been identified by the Agency. It applies to both actual financial ([section 11.4](#)) and non financial loss ([section 11.5](#)). Where it is clear that a customer has suffered financial loss as a result of our maladministration then re-imbursement of their unnecessarily incurred costs should be considered even if the customer does not directly request it.

11.1.3 Claims for compensation can also arise as a result of damage caused by the Agency in carrying out its work. HMRC have separate compensation guidelines on the damage to or destruction of vehicles and loss of items in seized vehicles are in [Annex A](#) to this guidance. Claims for damage to property as a result of forced entry to premises can be found at: <http://horizon/IND/Directorates/OPERATIONS/Resources/Word/DEC/MoEGuideBSU.doc>

11.1.4 All payments of compensation need to be considered in line with [Managing Public Money standards](#) (October 2007) and [Finance Notice 3/1996](#).

11.1.5 The threshold for the Home Office delegated financial authority from Treasury for compensation payments stands at £50,000. This authority has been delegated in full to the UK Border Agency Chief Executive who has sub-delegated this in full to Senior Directors and Regional Directors. This authority may be further sub-delegated to Directors with a threshold of up to £20,000.

11.1.6 Specific written approval from the Treasury must be received for all proposals to make a compensation payment above £50,000.

11.1.7 When we decide compensation should be paid a letter informing the customer of the amount should be sent to them asking them to formally accept the offer. Once the customer accepts the offer the amount offered should be paid within a reasonable time.

### 11.2 Maladministration

11.2.1 There is no definition of maladministration in law but it is generally agreed to be a lack of care, judgement or honesty in the management of something.

11.2.2 With regard to claims of compensation the Agency would consider the following to be maladministration. These are not exhaustive and some situations may need to be taken on their own merits.

#### **Losing documents**

11.2.3 These can include the loss of documents such as passports, driving licences, marriage certificates, birth certificates, college certificates etc that have been submitted to the Agency and have been lost or misplaced whilst in the Agency's care.

11.2.4 The Agency sending out a customer's documents to an incorrect address and Royal Mail losing the package. Whilst Royal Mail has lost the package the Agency incorrectly addressed the package so the initial maladministration was the Agency's fault. Further guidance relating to Royal Mail losses can be found at section [11.4](#).

### **Defacing/invalidating documents**

11.2.5 Examples of actions can include hole punching a national passport thereby invalidating it, or marking/defacing a document that in any way leads to it being invalidated.

### **Delay in taking action**

11.2.6 The Agency do not pay compensation for costs incurred in pure delay, see section 11.2.12 and 11.12.13.

11.2.7 However the Agency will consider costs arising from delays if other aspects of maladministration have occurred; examples can include failure to take action on repeated requests from applicants regarding the return of a passport which then leads to financial loss, or a decision being made on an application and failing to serve that decision which then leads to financial losses such as loss of access to benefits or being unable to take up an offer of employment or employment being terminated.

### **Taking incorrect action**

11.2.8 An example of failing to take correct action could be endorsing a passport with the wrong conditions resulting in a person being unable to take up a work placement.

### **Failure to respond to correspondence**

11.2.9 An example of failing to respond to correspondence can be where a customer has written to the Agency on a number of occasions, or over a period of time regarding action that they needed the Agency to take such as returning a passport, confirmation of right to work which has then led to the customer incurring financial cost.

11.2.10 Failure to respond to correspondence can also be considered under non-financial loss where the Agency hasn't responded to correspondence which could cause the customer anxiety and inconvenience (see section [11.5](#) on non-financial loss for further guidance).

### **Giving incorrect advice**

11.2.11 An example of giving incorrect advice would be the customer making an application too early or submitting an incorrect application based on incorrect advice given by the Agency.

## **What the Agency DOES NOT class as maladministration**

### **Delays**

11.2.12 Targets, other than mandatory ones, are taken as indicators of a satisfactory or unsatisfactory performance rather than a firm commitment that a specific performance will be achieved in every individual case. Delays that have occurred due to operational constraints and limited resources i.e. where a backlog of cases have incurred such as with the Liverpool Charged casework cases, or the CRD Legacy cases are not classed by the Agency as maladministration.

11.2.13 Forms of redress such as apology or remedial action may be called for when the complaint is about delay but financial compensation would only be appropriate in exceptional circumstances

## **Policy changes/cases put on hold**

11.2.14 The Agency do not count delays as maladministration where there has been a change in policy on how to deal with certain applications or cases have been put on hold because of a test case. Examples of this include the Iraqi judgement cases, Certificate of Approval cases etc.

## **11.3 Exceptional circumstances**

11.3.1 There may be circumstances when no maladministration on the part of the Agency has occurred but a situation has occurred which has led to a customer incurring expenses that they would not otherwise have incurred. An example of this is the flooding of a number of Agency buildings in Sheffield during 2007 which resulted in a number of passports and other documents being water damaged.

11.3.2 The Agency did not accept liability for this situation as it was not as a result of maladministration however it was decided to exceptionally offer redress to customers whose documents were affected by this natural disaster.

11.3.3 A further example could be when computer systems have gone down over a number of days and customers who may have attended one of the Public Enquiry Office's incur additional expenses to make/travel to a subsequent appointment.

11.3.4 In cases where the impact has been national rather than regional (i.e. a computer system outage that affects the whole country) CSUs should liaise with CCSPD to ensure there is a unified approach to compensation.

## **11.4 Actual financial loss**

11.4.1 Actual financial loss applies to cases where maladministration has directly caused the customer to incur additional expenditure that would not have been incurred otherwise.

11.4.2 Most cases are likely to fall into three broad categories:

- Where the customer has lost in whole or in part an entitlement to a government grant, subsidy, benefit payment, allowance or other payment;
- Where the customer has been put to additional expense;
- Where payment of a grant or benefit etc has been delayed and compensation has been sought on account of the delay.

11.4.3 The Agency pays compensation for financial loss for reasonable costs that have been necessarily incurred. The aim is to restore the customer to the position he or she would have enjoyed had the maladministration not occurred. Where claims are made for costs occurred in foreign currencies the exchange rate at the time of expenditure should be used to determine the appropriate level of compensation. A history record of currency exchange rates can be found at [www.x-rates.com](http://www.x-rates.com).

11.4.4 Financial remedies should not, however, allow recipients to gain a financial advantage compared to what would have happened with no service failure.

11.4.5 The Agency does not pay interest on compensation claims. Interest is only considered on payments where it has been recommended by the PHSO.

11.4.6 The following are typical examples of financial loss. These are not exhaustive and are used to demonstrate general principles in deciding the appropriate levels of compensation for financial loss.

### **Passports**

11.4.7 The majority of compensation claims received by the Agency concern lost or misplaced passports. The cost of a passport can vary from less than £50 to over £800 depending on the issuing country.

11.4.8 In addition to compensation for a lost passport customers will often seek redress for:

- Travel costs to their Embassy or High Commission in order to obtain a new document (this may include rail, road and sometimes air fares)
- Passport photographs
- Signed affidavits (confirming their identity)
- Loss of earnings (on the grounds that they had to visit their Embassy or High Commission when they could have been at work)

11.4.9 If the Agency accepts that a passport has been lost whilst in our care the CSU should consider all costs associated with replacing it. Customers are required to supply evidence to support their claim in this respect. This includes:

- Receipt for the cost of the passport from the Embassy or High Commission
- Proof of travel costs (train, coach and airline tickets and receipts for petrol costs)
- Receipts from solicitors in respect of affidavits
- Receipts for passport photographs if they are available

11.4.10 If a customer is unable to provide a receipt for the cost of a passport a photocopy of the pages of the new passport showing the identity details and date of issue should be requested.

11.4.11 When the evidence has been received the CSU should check the cost of the passport with the relevant Embassy or High Commission. This can be done via the websites of the various Embassies. High Commissions can be contacted for this information via email, fax, letter or telephone. Contact details for the various Embassies and High Commissions can be found at the [Foreign and Commonwealth](#) website. Staff that have access to the Knowledge Base can find the information there.

11.4.12 The CSU should always check the expiry date of a passport that has been lost or misplaced. In general, if a passport expires whilst the Agency is holding it in connection with an application, the applicant is responsible for its renewal. Some Embassies and High Commissions charge the same amount to renew a passport as they do to replace one. Therefore, if the Agency loses a passport that expired, and the renewal fee is the same as the replacement fee the CSU should not offer compensation. If the replacement fee is higher than the renewal fee the CSU should pay the difference.

### **Travel costs**

11.4.13 In most cases customers will provide evidence of travel costs such as receipts or the actual travel tickets. If a customer is unable to provide proof of travel costs but there is evidence that they visited their Embassy or High Commission, the CSU should consider offering compensation.

#### **Train costs**

11.4.14 Enquiries about the cost of train fares by contacting National Rail on 08457 484950 or through [National Rail Enquiries](#).

#### **Petrol costs**

11.4.15 Some customers choose to travel by car and submit receipts for their petrol costs however the CSU should only pay for the petrol needed to make the essential journeys in relation to the maladministration i.e. replacing their passport. The CSU should work out how many miles the customer has had to cover. This can be done by using the [AA Route Planner](#).

11.4.16 The following is an example of the assessment that should be carried out when assessing a claim based on a journey of 300 miles with a receipt showing the cost of petrol per litre at £0.859p):

- 30 miles = 1 gallon. 1 gallon = £4
  - 1 gallon = 4.55 litres
  - 300 divided by 30 (miles) = 10
  - 4.55 litres x 10 (gallons) = 45.5 litres
  - 45.5 litres x £0.859p (or price shown on the receipt per litre) = £39.08
- The customer should be offered **£39.08**

#### **Taxi fares**

11.4.17 Some customers may claim the cost of travelling by taxi. In general the Agency will not meet the cost of taxi fares. However, the CSU should consider meeting these costs in exceptional circumstances. For example,

- Where the customer is disabled
- Where the customer is heavily pregnant or ill
- Where there was no public transport alternative at the time the customer needed to travel

*Evidence of this must be provided, including appropriate medical evidence.*

#### **Other valuable documents**

11.4.18 The Agency will consider offering compensation to replace other lost or misplaced documents. This includes:

- Marriage certificates
- Birth certificates
- Police Registration certificates
- Exam certificates i.e. diplomas, degrees etc.

11.4.19 The CSU must request receipts before offering compensation to cover the costs of replacing these documents. If the customer cannot provide receipts the CSU should request copies of the documents and information about where they were obtained from. If necessary, the CSU can then contact the provider to confirm authenticity.

#### **Losses by Royal Mail**

11.4.20 The Agency despatches documents by Recorded Delivery or Secure Mail System (SMS) unless applicants provide a pre-paid self-addressed Special Delivery envelope.

11.4.21 The Agency will only consider offering compensation if correspondence was incorrectly addressed and has been either subsequently lost by Royal Mail or delivered to the incorrect address by Royal Mail and subsequently became lost. If the Agency correctly addressed the package the CSU should not offer compensation.

11.4.22 Royal Mail will usually compensate applicants for a lost package even if the Agency has addressed it incorrectly. However, it will not offer any more than £39. In these cases the CSU should pay the excess.

### **Case Study 1**

The Agency despatches Mr X's status papers and his family's passports by recorded delivery to the address recorded on the Case information Database (CID). Mr X enquires about his application and is informed that the decision letters and documents have been despatched and that he should check with Royal Mail.

Mr X establishes that the package had not arrived. The Agency discovers that the package was incorrectly addressed. Mr X had informed us of a recent change of address but this had not been recorded on CID. Royal Mail subsequently pays Mr X £39 in compensation.

However, the total cost of the passports was £336 plus a further £16 for passport photographs.

The CSU should pay the difference between the total cost and the £39 offered by the Royal Mail (£352 - £39 = £313).

Mr X should be offered £313

### **Case Study 2**

The Agency despatches Miss Y's status papers and passport by recorded delivery to the address recorded on the Case Information Database (CID). Miss Y enquires about her application and is informed that the decision letter and her documents have been despatched and that she should check with Royal Mail.

Miss Y establishes that the package has not arrived. The Agency issues a P58, along with proof of the Royal Mail collecting the package. Miss Y makes a compensation claim to Royal Mail who subsequently offered £39 in compensation.

Unfortunately the £39 offered by Royal Mail does not cover her costs and she puts in a subsequent claim to the Agency claiming that the Agency should be using Special Delivery to despatch valuable documents.

The total cost of replacing her passport comes to £263.00.

As there has been no maladministration on the part of the Agency, in that the Agency correctly addressed the package and sent it by recorded delivery, no Special Delivery pre-paid envelope was provided, the CSU should refuse this claim.

### **Missed travel or holiday**

11.4.23 The Agency advises all applicants that they should not make any non-urgent travel plans whilst their applications are being considered. Applicants who are exercising their rights under the European Economic Area (EEA) Regulations may have their documents returned to them while an application is pending enabling them to travel abroad. Applicants also have the option to withdraw their applications if they need to travel urgently.

11.4.24 The Agency should offer compensation to applicants who have not been able to make an essential journey abroad or missed a travel opportunity because it has lost their documents or failed to return them in time (where reasonable notice has been given to the Agency).

11.4.25 The following information is of use in assessing a claim for missed travel or holiday:

- Unused flight tickets
- Confirmation of cost of holiday or flight from travel agents or airline
- Confirmation that no refund was given by the travel agent or airline
- Confirmation that the holiday or flight was non-transferable or non-refundable. The airline or travel agent can provide this information.

### **Loss of Earnings**

11.4.26 Some applicants may claim for loss of earnings where they have had to take a day (or a number of days) off work to visit their Embassy or High Commission or to travel to one of the Public Enquiry Offices (PEOs) due to maladministration by the Agency.

11.4.27 Customers must supply evidence of loss of earnings. This includes:

- Original wage slips, or certified copies, covering the period of loss
- Letter from employer confirming time off and loss of earnings (net)
- Copy of contract providing details of wages

11.4.28 If a claimant has only provided evidence of gross pay the following calculation can be used to assess the net loss:

### **Basic tax rate payer**

- Annual gross pay (up to) £30,000 minus £6,475 (personal tax allowance) multiplied by 0.75 (to account for tax and National Insurance), add back £6,475 = Annual Net Pay.
- Divide by 52 for weekly net salary and then again by the amount of days normally worked each week for the daily net salary (customer may work less than five days a week).

### **Higher rate tax payer**

- The CSU should use the Basic Rate calculation for the first £30,000 and the following for the remaining amounts over £30,000;
- Annual gross pay (over) £30,000 minus £6,475 (personal allowance) multiplied by 0.55 (to account for tax and National Insurance), add back £6,475 = Annual Net Pay over £30,000 only.
- Add the Higher Rate Annual Net Pay (HRANP) amount to the Basic Rate Annual Net Pay (BRANP) amount for the total Annual Net Pay.
- Divide by 52 for weekly net salary and then again by the amount of days normally worked each week for the daily net salary (remember that the customer may work less than five days a week).



- The personal tax allowance stated above (£6,475) applies to the 2009 – 2010 tax year. This allowance will increase each year. Information about the personal tax allowance can be found at [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

### **Loss of benefits**

11.4.29 In some circumstances an applicant will have been unable to claim benefits such as Income Support, Job Seekers Allowance, Child Benefit and Tax Credits due to maladministration by the Agency.

11.4.30 The Department for Work and Pensions (DWP) will not generally pay benefits unless a person can show that they have indefinite leave to remain (ILR). In some cases applicants may have been unable to claim benefits because the Agency has made errors which have delayed a decision on the application. Pursuant to regulation 212A of the Social Security (Claims and Payments) Regulations 1987 an applicant who has claimed asylum and subsequently been granted ILR as a refugee was previously able to apply for a backdated payment of the benefit they would have received during the time their asylum claim was being determined (minus any asylum support they received from either NASS or their local Authority). This ceased on 14 June 2007 following the introduction of the Integration Loan Scheme. The Agency may therefore encounter cases which may merit financial redress on the grounds that maladministration occurred prior to 14 June 2007 and resulted in the applicant being unable to claim backdated benefits with the DWP before the change in policy.

11.4.31 People who have been granted ILR as a refugee may claim backdated Tax Credits and Child Benefit if they make a claim through HM Revenue and Customs (HMRC) within three months of the grant of leave.

11.4.32 In some cases the Agency may have sent decision letters to the wrong address or failed to serve them at all. This could have prevented applicants from claiming backdated benefits from the DWP or HMRC within the requisite timescale. The CSU should consider offering compensation for loss of benefits in these circumstances.

11.4.33 The CSU needs to obtain the following information in order to assess claims for loss of benefits:

- Date applicant would have been entitled to payments (this is the date they claimed asylum)
- Date ILR was granted
- Whether the applicant received support from UK Border Agency, Local Authority or a charity (this will determine whether they are in fact entitled to any other benefit)
- Date support ended from UK Border Agency, Local Authority or charity (if support was received)
- How much benefit the applicant would have been entitled to

11.4.34 Information regarding entitlement to Income Support or Job Seekers Allowance can be obtained from the [Department of Work and Pensions](http://www.dwp.gov.uk).

11.4.35 Information regarding any support the applicant received can be obtained from the case owner, the applicant's Local Authority or the charity in question.

11.4.36 If the applicant has been receiving support from UK Border Agency, the Local Authority or a charity, the CSU should establish how much they received during the period in question. The CSU should then establish how much benefit the DWP would have paid during

the same period. If the applicant would have received more money from the DWP the CSU should pay the difference.

### **Case study**

Mr X is seeking redress for loss of benefits dating back to 26 June 1998. Mr X entered the UK on 25 June 1998 and claimed asylum on 26 June 1998. He was granted ILR on 9 July 2002. However, the decision was not served and Mr X was not made aware of his status until February 2003.

Had Mr X received his status papers in July 2002 he would have been entitled to claim backdated Income Support. However, Agency maladministration prevented him from meeting the DWP's twenty eight day time limit.

Mr X's representatives have supplied us with a breakdown of the loss of benefit:

#### **Income Support:**

1998/1999 (40 weeks) @ £50.35 x 90% = £1812.60  
1999/2000 (52 weeks) @ £51.40 x 90% = £2405.52  
2000/2001 (52 weeks) @ £52.20 x 90% = £2442.96  
2001/2002 (52 weeks) @ £53.05 x 90% = £2482.74  
2002/2003 (14 weeks) @ £53.95 x 90% = £679.77

Total = **£9823.59**

#### **Job seekers Allowance:**

July 2003 – November 2003 @ £53.95 = £1079.00

Total = **£1079.00**

The Local Authority informed us that it paid Mr X £24 per week

#### **Income Support:**

£9823.59 – (£24 x 210 weeks = £5040.00) = £4783.59

#### **Job seekers Allowance:**

£1079.00 – (£24 x 20 weeks = £480) = £599.00

Therefore, the CSU should offer Mr X **£5,382.59** (£4783.59 + £599.00).

### **Legal fees**

11.4.37 The Agency will only consider compensating customers for legal fees if the costs have been incurred as a direct result of its maladministration.

11.4.38 The CSU should obtain the following information in order to assess a claim for compensation for legal fees:

- A detailed breakdown of the legal fees from the solicitors including what the fees were for (letters, telephone calls, meetings, preparation of documents).
- Confirmation that the bill has been settled by the customer (the Agency cannot pay the representatives directly as the contract is between the representatives and their client).

### **Refunds of application fees**

11.4.39 [Chapter 1A of the Immigration Directorates' Instructions](#) (IDI's) details the policy with regard to refunds & fee exemptions for Immigration applications and claims

11.4.40 There is no current power in law to refund the fee paid for any application for which a fee is specified in the Fees Regulations. However, in certain circumstances, it is appropriate to refund the fee.

11.4.41 The Agency will not refund a fee if someone applies for something even though they do not meet the requirements of the immigration rules or other relevant legislation.

11.4.42 Where an error amounting to maladministration is made by the Agency, there is a legal obligation to take suitable remedial action. Where a fee is involved, the CSU should take such action as may be necessary to ensure that the applicant is not disadvantaged financially by the maladministration. Some examples of maladministration are:

#### **Handling Errors:**

11.4.43 A customer's passport has been lost within the UK Border Agency and as a result an endorsement has been made on a status document. The applicant has subsequently obtained a new passport and submitted a paid application for a No Time Limit (NTL) stamp or Transfer of Conditions (TOC) endorsement.

#### **Misleading Advice:**

11.4.44 A customer has been given misleading advice by the UK Border Agency. In any cases of this sort, there will need to be supporting evidence. If it is alleged that the incorrect advice was given by a UK Border Agency source confirmation of maladministration should be obtained from that source to determine if a refund is appropriate. Other factors should also be taken into account, such as any relevant information on the UK Border Agency website or in the application form (or accompanying guidance notes).

11.4.45 An applicant has been given misleading advice by an entry clearance officer. An example of this was the misleading information given by entry clearance officers in Islamabad and Bombay to people issued with spouse visas between 2002 and 2005. This particular example, which resulted in premature applications for ILR by visa holders who had travelled late, is one where there was an alternative to refunding the fee - the premature application was held until the qualifying period had been completed.

#### **Other circumstances justifying a refund of fees**

11.4.46 In addition to cases involving maladministration there are other circumstances in which, as a matter of policy, a refund will be appropriate. The customer would not necessarily be entitled to a refund of other expenses but each case would need to be decided in its own right.

- NTL or TOC applications where the passport is not one recognised by UK authorities
- Applications by members of the home forces or diplomatic staff who are still exempt from immigration control
- Unnecessary applications for ILR by people with indefinite leave to enter or remain in the UK who have misread the residence permit in their passport and do not realise that they already have indefinite leave
- Applicant applies for TOC/NTL but doesn't have a passport to transfer the endorsement into
- TOC applications where the applicant asks for a multiple entry visa to be endorsed in a new passport. This is not a service which the UK Border Agency can perform
- Applications for leave to remain from within the Common Travel Area but outside the United Kingdom

- Applications for leave to remain submitted from outside the Common Travel Area
- An application for leave to remain or NTL by someone who is a British citizen or had the right of abode in the UK at the time of application
- Applications for a certificate of approval for marriage or civil partnership by any of the following:
  - an EEA national
  - a family member of an EEA national exercising treaty rights
  - a person who is exempt from immigration control
  - a British citizen or other person with the right of abode in the UK
  - a person who has indefinite leave to enter or remain
  - a person who entered the UK with an entry clearance to marry the same proposed spouse or civil partner
- Where a postal or online application has been withdrawn within a short time of being made, that is before it has been entered onto the caseworking system (e.g., CID), or within 7 calendar days of the date of application, whichever is the earlier date
- Where an applicant dies before the decision on their application is despatched

11.4.47 Whilst the above scenarios are not a comprehensive list of situations where a refund would be considered, circumstances beyond these should only be based on compelling business reasons.

#### **Circumstances where a refund will not be considered:**

- Application or claim is withdrawn
- Application or claim is refused
- Applications made too early
- An application for a Certificate of Approval for Marriage where the applicant has failed to tell us that the ceremony is taking place in an Anglican Church
- Where an application is made for limited leave to remain, but it appears that the applicant already has the appropriate period of leave
- Where an applicant applies for NTL and they have been naturalised before the date of decision, but after the date of application
- Where someone granted leave as a refugee is applying for that leave to be transferred into their national passport
- Where an EEA national or their family member makes a charged application for leave to remain in the United Kingdom

## **11.5 Claims for non-financial loss**

11.5.1 The normal approach to complaints where no financial payment is called for is to offer an apology and an explanation. This may be sufficient and appropriate, people complaining may also want reassurance that mistakes will not be repeated.

11.5.2 Non-financial loss applies to cases where maladministration has directly caused the customer exceptional distress, embarrassment, inconvenience, damage to health etc.

11.5.3 Compensation for non-financial loss will only be paid in exceptional circumstances and only where there is sufficiently compelling circumstances to justify such a payment.

11.5.4 Account will be taken of the level of distress. However, the payments are consolation payments only and are not intended to be based on a comprehensive assessment of the distress actually suffered. A consolatory payment should be offered:

- When serious or persistent errors have been made
- When the CSU is reasonably satisfied that the Agency's maladministration led to the distress as claimed

11.5.5 Care should be taken to differentiate between compensation for actual financial loss and a consolatory payment. It is not appropriate to offer a consolatory payment instead of compensation for actual financial loss where it has not been possible to obtain sufficient evidence to support the claim.

11.5.6 Each case must be considered on its own merits both in respect of whether a payment should be made and how much compensation should be offered. This is necessarily subjective but should reflect the degree of distress experienced by the customer. Not everyone will react to the same circumstances in the same way; a harrowing situation for someone could be a minor inconvenience to somebody else.

11.5.7 When deciding claims for non-financial loss a CSU would need to look at:

- How serious was the error caused by maladministration;
- How long the error has persisted;
- What is the impact of the error;
- What is the duration of the impact on the customer.

11.5.8 Where there is an allegation that the maladministration has affected the customers health objective evidence of the impact on their physical/mental health will need to be provided. This may take the form of a report from their GP or evidence from an employer that they have been unable to work as a direct result of the ill-health.

11.5.9 In some cases objective evidence won't be necessary where it is self-evident that severe distress would have been caused. An example would be a parent incorrectly being informed of their child's death.

-----**RESTRICTED NOT FOR DISCLOSURE**-----

11.5.10 The following list is illustrative only and is not intended to be either prescriptive or exhausted but reflects general circumstances in which consolatory payments might be made.

#### **Payment between £50 and £150**

- Failure to answer correspondence (will also be dependent on the number of letters and the length of time involved);
- Interview/appointments cancelled without notice (will also be dependent on the degree of inconvenience caused).
- Where complaint/compensation claims have been badly mishandled/delayed.

#### **Payment between £50 and £300**

- Delay in dealing with application caused by error, e.g. files lost, incorrectly laid by, passed between Directorates without action being taken.

#### **Payments between £100 and £200**

- Documents/files lost or other maladministration resulting in a missed holiday.

### **Payment between £100 and £300**

- Enforcement Officers visit an address where illegal entrants are wrongly thought to be staying and cause unnecessary worry for the occupier.

### **Payment between £200 and £400**

- Breach of confidentiality by passing on information to a third party, including sending passports or other personal documents to an incorrect recipient;
- Missed family wedding or other family celebration (will depend on how close the family member is).

### **Payment between £200 and £500**

- Delays/errors resulting in uncertainty about possible removal from the UK.

### **Payments up to £1000**

- Inability to attend a dying relative or family funeral (will also be dependent on how close the family member is).
- Incorrectly removing a person from the UK (will be dependent on individual circumstances);
- Unlawfully detaining a person (depending on individual circumstances).

-----**END OF RESTRICTED SECTION**-----

## **11.6 Death of a customer**

11.6.1 In the event of the death of a customer who has submitted a claim for compensation because of maladministration and it is decided that compensation is appropriate then payment should be issued to the deceased person's estate.

11.6.2 If the next of kin submits a claim for compensation because he or she has suffered actual financial loss and that loss was incurred because he or she helped support the deceased person then redress should be offered in respect of the actual financial loss to the next of kin.

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## ANNEX A HMRC guidance on compensation for damage to vehicles

### Statement of Principle

The general policy is that compensation should only be paid where we have either acted unlawfully, or have unreasonably delayed making a decision. It should not be paid as a matter of course if we restore something following the successful condemnation of the vehicle at either the Magistrates Court or the Crown Court. It should also not be paid if we lose a case where we have 'delivered up' the vehicle: the amount paid for delivery up is effectively a deposit that is refunded if the claimant is successful.

Note that the provisions of s144 CEMA mean that even if we lose at a condemnation hearing, we should not pay compensation beyond the value of the vehicle (if destroyed or disposed of) and the value of any personal effects left in it (subject to para 3 below) if the Court has certified that there were reasonable grounds for seizure.

#### **1. Replacement of tobacco and alcohol where Magistrates have rejected our case at condemnation or seizure is overturned internally**

Pay the purchase price abroad plus cost of one person return travel there within two months (which will typically be a return ferry ticket)  
OR the UK purchase price if cheaper than the above.

#### **2. Vehicles: damage to vehicles in our care/custody**

In this situation the damage may be covered by the department's haulage and storage contractors' insurance <REDACTED>. In the event that the damage is not covered by insurance, pay the reasonable costs of repairing the vehicle to the condition it was in prior to the damage occurring (or the retail value if less than the cost of repair). The vehicle condition report normally completed as soon as possible after seizure will normally be the basis from which damage is assessed.

#### **3. Vehicles: loss of items left in seized vehicle**

Consider the merits on a case by case basis. Do not pay if the claim is unsubstantiated and you are not satisfied that loss was incurred.

#### **4. Vehicles: destruction or sale at auction of standard and unique/specially adapted vehicles**

Compensation is payable where

- (a) Magistrates reject our case at condemnation, whether or not a 144 certificate is issued; or
- (b) a seizure has been overturned on internal review prior to condemnation; or
- (c) where the vehicle was disposed of prior to a successful request for restoration or appeal against a non-restoration decision.

However, the relevant vehicle restoration policy should be considered in all cases in para c above so that, if necessary, an appropriate sum can be deducted from the final amount of compensation.

Where compensation for the vehicle is payable, the basis is a *fair market value for that particular vehicle at the time of seizure* ie taking into account age and condition. Retail price will normally be appropriate. Use Glass' Guide.  
For standard vehicles, consult the forecourt (retail) price, except where satisfied that trade price is appropriate (eg if claimant has access to a trade source).  
For unique or specially adapted vehicles, an expert's view will be necessary from eg a dealer in that marque. Be prepared to consider any documentation from the applicant.

Note that where

(i) a seizure has been overturned as unlawful by the Court *or* where on examination of the evidence for seizure the decision is taken to overturn the seizure; *and*  
(ii) we have the vehicle – ie it has not been disposed of  
*then* it will normally be necessary, in addition to returning it, to pay a sum equivalent to our estimate of the depreciation of the vehicle's value between the time of seizure and the time of return. This is because compensation is payable on the basis of the vehicle's value at the time of seizure. However, compensation is not payable where restoration is offered under the restoration policies.

**5. Vehicles: claims for compensation for anything other than (1) market value of a vehicle on its destruction or sale at auction or (2) damage to the vehicle when in our care, when a s144 certificate has been issued**

No further compensation should be offered because of the terms of s144(2) CEMA 1979. See the Statement of Principle at the start of these Guidelines.

**6. Vehicles: either destruction or sale at auction of profit-earning vehicles, or an unreasonable delay in returning such a vehicle, where there is a claim of loss of business/profit/earnings etc**

Consider compensation under three heads.

(a) the vehicle itself: compensate for retail price in the normal way

(b) hire charges for replacement vehicle: compensate for these if satisfied they are reasonable *and there is proof they have been incurred*

(c) loss of profits etc: *first* consider - was the loss reasonably foreseeable by Customs when the vehicle was seized? It must have been for compensation for loss of profits to be due. With a lorry, the answer would normally be yes; with a private car used by a travelling salesman, it may well be no.

*Then* consider whether the claimant mitigated (reduced) his losses, as he is required to do. For example: if a vehicle is seized preventing the claimant from continuing his trade, and he was able to but did not hire another vehicle which would have allowed him to continue his trade, then normally no compensation would be due for loss of profits

*If* satisfied that the loss of profits resulting from seizure was reasonably foreseeable at the time of seizure and satisfied that the claimant took reasonable steps to mitigate his loss, then compensation is due for loss of profits. To calculate lost profits, accounting information will be needed. Internal financial advice may be needed to ensure the correct figure has been correctly calculated. No



compensation will be payable for speculative losses – eg loss of the chance to enter a particularly valuable new contract.

*Note* – make sure that you do not double compensate for hire charges and alleged loss of profits. If hiring a replacement vehicle allows the claimant to continue with his trade in the normal way, then he will be due compensation for the hire charges incurred but not for any alleged loss of profits incurred while he had the hired vehicle on the basis that hiring that vehicle allowed him not to lose profits.

Consider on a case by case basis and consult Solicitors Office in case of any doubt.

## 7. Vehicles: purchase funded by finance company

[Note – this section does not cover purchases funded by a loan contract or a credit sale agreement where title lies with the user throughout and never with the finance provider. It does cover situations where ownership passes from the finance provider to the user after a period of time when a defined level of payment has been made, such as when purchases are made through hire purchase agreements or conditional sale agreements.]

In this situation the vehicle is likely to have been restored to the finance company. A claim can be made by either the individual ('the claimant') or the finance company.

To consider claims you will need a copy of the finance agreement and a record of how many instalments have been paid and what deposit, if any, was set down at the start of the contract.

Note: this area is legally complex. Officers are encouraged to use this guidance to calculate compensation due, but it can only be of general application and in all cases involving finance companies officers should ask Solicitor's Office to confirm the proposed course of action.

(a) if the claimant stopped paying instalments at the time of seizure, or has continued to pay instalments but has not paid the full sum due under the contract

(i) claim by the claimant

In this case title to the car will rest with the finance company.

Compensation due is: Value of car at the time of seizure **less** (Total due to be paid under the contract as a whole **less** Total paid by the claimant). This is because he has lost the value of the car at the time of seizure but against that must be set the payments he would have had to pay but now does not.

For example: car is worth £10,000 at time of seizure. Claimant agreed to pay a total of £13,000 under the contract. Claimant has paid £2,000 deposit and £6,000 in instalments, stopping his instalments at time of seizure. Therefore, compensation due is £10,000 – (£13,000 - £8,000) = £10,000 - £5,000 = £5,000.

If the result of the above calculation is a negative figure, that simply means that no compensation is payable.

(ii) claim by the finance company

*The compensation due to the finance company is the instalments which it has missed out on receiving – in the above example, £5,000.*

Note: *if the vehicle has been returned to the finance company, then they should be asked to sell the vehicle to settle the compensation debt due to them by us. The company will be due compensation only if selling the car does not clear the debt we owe to it, and then of course only to the extent of the debt still outstanding. If the sale realises more than the debt due to the company, then the terms of the contract may require the company to pay the excess to the claimant. If that is the case, then the sum paid by the finance company to the claimant will reduce the compensation owed by the department to the claimant in that amount. If the finance company refuses to sell the vehicle in these circumstances, then the compensation paid to it should be reduced by the value which we consider would be realised by the sale of the vehicle now.*

(b) if the claimant has continued to pay instalments and has now paid the full sum due under the contract...

...and the vehicle has been returned to the finance company (in error) with no conditions attached

In this case the claimant will have title to the vehicle but the finance company will have the vehicle, or will have sold the vehicle and have the profits of the sale. In the first instance, then, if a claim for compensation is received, the finance company should be asked to deal with the claimant's request, either by returning the vehicle to him or by passing him the sale proceeds. (The letter to the finance company should be copied to the claimant to keep him informed.) In the unlikely event that the finance company accepts that it has the vehicle, or that it did have it and has now sold it, but refuses to compensate the claimant, then he should be compensated for the value of the vehicle in the normal way and Solicitor's Office will advise on legal action against the finance company.

...and the vehicle has been returned to the finance company (in error) on condition that it is not returned to the claimant

Treat as above, as if no condition had been attached to the return to the finance company.

(The condition must fall away: the claimant has title to the vehicle and so Customs had no right to return the vehicle to the finance company. In those circumstances, any condition imposed by Customs on the finance company regarding its return to the claimant will be meaningless and without force.)

...and the vehicle has been sold or destroyed by Customs

As the claimant will have title to the vehicle, he should be compensated simply for its value in the normal way.

The finance company will have suffered no loss and will be entitled to no compensation.

## **8. Vehicles: claim for loss of use and car hire**

### **8.1 Where the seizure has been overturned at Court and a s144 certificate was not issued**

Consider on a case by case basis and in the context of the duty on the claimant to mitigate his loss. Legal authority suggests a rate of c.£90 per week for loss of use for a medium sized car which is several years old. Alternatively, if there is a claim for car hire costs it must (a) be for an equivalent or smaller vehicle (b) be reasonable and (c) never exceed the cost of buying an equivalent replacement vehicle.

### **8.2 Where the seizure has not been overturned at Court but a decision has been taken to restore following an internal review**

Compensate as per para 8.1 above for any period of unreasonable delay in making the restoration decision.

In calculating whether a delay is unreasonable, the start point is the date on which we were in possession of all the information that led to the decision to restore ('the crucial information') – that is, the date of our receipt of the information, not the date on the letter or the date the letter was posted. Where we have sought additional information and none is produced, the start point will be the day on which it becomes apparent that no further information will be provided.

An unreasonable delay in issuing a restoration decision will normally be a delay of more than 10 working days (ie every day apart from weekends and bank holidays) after that date.

For example:

- Car is seized on Tuesday 1<sup>st</sup> April 2003
- Request for restoration is received on Thursday 10<sup>th</sup> April 2003
- Further letter containing the crucial information is received on Friday 25<sup>th</sup> April 2003
- Restoration letter issued on Wednesday 4<sup>th</sup> June 2003
- > Compensation for loss of use etc to be considered for 23 days

In cases of doubt, contact the Solicitor's Office.

## **9. Vehicles: claim for cost of purchase of replacement vehicle**

Because we compensate for seized vehicles by paying the market value at the time of seizure rather than at the time of return – see para 4 – it will not normally be appropriate to pay compensation for the cost of purchase of a replacement vehicle. See the attached worked example. In case of doubt, contact the Solicitor's Office.

## **10. Miscellaneous claims (return journey home; overnight accommodation; telephone calls; stress; etc.)**

Again, case by case consideration is necessary. It will normally be appropriate to pay standard class train fares to home address on the day of seizure for each member of the party, and to pay for overnight accommodation if claimed (to be verified where possible) if the applicant left the point of seizure after 9pm. It may be appropriate to pay taxi fares or for overnight accommodation - when otherwise it would not have been - when the applicant is elderly, disabled or was accompanied by small children. Realistic claims for the telephone, postage etc where the applicant was unrepresented should be considered and are payable in principle: common sense is required. Normally, claims for 'stress' and similar should be treated as inadmissible and not paid if not supported by medical evidence. If medical evidence is forthcoming, consider on a case by case basis.

## **11. Legal costs**

Consult the general guidance at G9-2 and consider on a case by case basis. The overriding test is whether it was reasonable to have sought the legal advice, and whether the fees are reasonable. In the event of a significant dispute, contact the Solicitor's Office.

## **12. Interest**

Consider on a case by case basis, in relation only to reasonable and necessary expenditure incurred by the claimant – for example, the cost of a train ticket home, or the cost of hiring a replacement vehicle. Interest is not payable on the value of the seized vehicle itself. It will normally be appropriate to pay interest from the date of the expenditure unless you consider that the applicant's behaviour has been unreasonable and has materially delayed agreeing compensation. Interest should be paid at the rate of the Bank of England base rate plus 1%, which the department considers realistically reflects what the applicant could hope to have earned in interest if he had been able to invest the compensation sum in a building society.

## **13. Ex-gratia payments**

Also known as consolatory payments. Consider where there has been significant delay or genuine distress or other special circumstances. Also consult G9-2. Most such payments will be less than £200. Any ex-gratia payment must be expressed to be without prejudice to any further contact the applicant may have with the department.

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