



Guidance on Competence

Office of the Immigration Services Commissioner

Regulating Immigration Advice



2012

Guidance on Competence

Table of Contents

| | |
|--|----|
| Introduction | 4 |
| What do we mean by competence? | 4 |
| Are you providing immigration advice or immigration services? | 5 |
| OISC Advice Levels | 6 |
| OISC Advice Levels | 6 |
| Working under supervision in order to prepare for working at a Higher Advice Level or New Category of Work | 7 |
| Trainee Advisers working at Level 1 under supervision (see Code 52) | 7 |
| Regulated Advisers Working under Supervision to a Higher Level (see Codes 24 to 28) | 8 |
| Regulated Advisers and Third Parties | 9 |
| Summary of OISC Levels | 12 |
| OISC Level 1 | 13 |
| Advice and Assistance | 13 |
| Work Permitted at Level 1 | 13 |
| <i>Work Not Permitted</i> - for both Immigration and Asylum and Protection | 14 |
| Competence Requirements | 14 |
| Skills and Aptitudes | 15 |
| OISC Level 2 | 17 |
| Casework | 17 |
| Work Permitted at Level 2 | 17 |
| <i>Work Not Permitted</i> | 18 |
| Competence Requirements | 18 |
| Skills and Aptitudes | 19 |
| OISC Level 3 | 22 |
| Advocacy and Representation | 22 |
| Work Permitted at Level 3 | 22 |
| Competence requirements | 22 |
| Glossary | 27 |

Introduction

The Immigration Services Commissioner has a duty to ensure that those who provide immigration advice or immigration services are fit and competent to do so. This *Guidance on Competence (Guidance)* sets out the standards advisers must meet to be considered competent. This is the fifth edition of the *Guidance*. The *Guidance* came into force on 1st January 2012.

This *Guidance on Competence* must be read alongside the Commissioner's *Code of Standards (Code)*, which sets out the standards that OISC advisers and their organisations must meet.

This *Guidance* contains lists of the type of advice that can be given at each Advice Level. These lists are not exhaustive.

What do we mean by competence?

Advisers must demonstrate a sufficient Level of skills and knowledge that shows that they are able to provide good quality advice and services. The detailed competence requirements are

contained in the sections starting on page 13.

The OISC measures competence in a variety of ways and at different times.

- Application process - We assess competence initially during the application process. All applicants must pass a Codes and Rules Test. They must score 100% in this assessment, which shows that the applicant understands the requirements of the OISC scheme and what they are “signing up for”. Applicants are also required to submit a Competence Statement demonstrating how they meet the competence requirements. They may do this on the Statement by, for example, indicating the number of years' experience they have, the professional development they have undertaken and what access they have had to information on changes in law and procedures. Information on the Competence Statement is available on the OISC website:

www.oisc.gov.uk/how_to_bec

[ome an immigration adviser/](#)

. In addition, applicants may be required to take a formal competence assessment, which may be oral, written or both, in order to demonstrate their Level of knowledge and how to apply this to a client's particular situation.

- Audit - We consider competence at audit. During, and as part of an organisation's audits, OISC staff will examine client files to assess adviser competence. The OISC can call upon expert immigration consultants if this is considered necessary in order to look into an adviser's competence in greater depth.

Are you providing immigration advice or immigration services?

The definitions of "immigration advice" and "immigration services" are set out in section 82 of the Immigration and Asylum Act 1999 (as amended).

Immigration advice:

- relates to an individual; and
- is given in connection with a relevant immigration matter.

Immigration services means making representations on behalf of a particular individual:

- in civil proceedings before a court, tribunal or immigration judge in the United Kingdom
- in correspondence with a Minister of the Crown or a government department.

Please note that the OISC regulates only those who provide immigration advice and/or immigration services that address **an individual's particular circumstances**.

If your work is restricted only to signposting or the provision of general information, you do not need to apply to the OISC for regulation. Examples of this are:

- directing individuals in need of immigration advice to a regulated adviser; or
- providing general information or leaflets on the immigration and asylum systems.

Please contact us if you have any questions about whether you are required to be regulated by the OISC.

OISC Advice Levels

The OISC has divided immigration advice and services into three Levels depending on the type and complexity of the work involved. The competence requirements increase with the intricacy of the work. A summary of the work permitted at each OISC Level is given on page 12. Details of the types of work permitted at each Level begins on page 13.

OISC Advice Levels

The three OISC Levels of immigration advice and services are as follows:

- Level 1 - Advice and Assistance
- Level 2 - Casework
- Level 3 - Advocacy and Representation

Categories of Work within the Levels

There are now two categories of work, “Immigration” and “Asylum and Protection”. These cover the following:

Immigration:

- Applications for, or for the variation of, entry clearance or leave to enter or remain in the UK
- Unlawful entry into the UK
- Nationality and citizenship under UK law
- Admission to, residence in and citizenship of Member States of the EU under Community law

Asylum and Protection covers:

- Claims for asylum including those that engage the Human Rights Act 1998

While advisers do not need to be competent in both categories at their particular Level, all Level 2 and 3 advisers must be competent in both categories at Level 1, regardless of the areas of their competence at Level 2 or 3. This means, for example, that a business immigration specialist working at Level 2 or 3 must be competent in both Immigration and Asylum and Protection at Level 1. However, a Level 1 adviser does not need to be competent in both categories.

Advisers regulated to provide advice and services at a particular Level are not required to do everything that can be done at that Level. For example, while a Level 3 adviser can appear at appeals before the Tribunal Service Immigration and Asylum (TSIA), they do not have to do this to be an authorised Level 3 adviser.

Regulated advisers are reminded of Code 6 which states:

Advisers must not operate beyond the level of competence approved by the Commissioner or in categories that have not been approved.

Thus, for example, an adviser authorised at Level 2 in the category of 'immigration' may carry out bail and detention work for immigration cases. However, they cannot do so for bail and detention work in 'asylum and protection' cases.

Working under supervision in order to prepare for working at a Higher Advice Level or New Category of Work

Code 6 contains a general prohibition on advisers working beyond their regulatory Level.

The Commissioner recognises that the best way for advisers to move from one Level to another, or from one category of work to another, is through training while being effectively supervised. Advisers can work up to the next Level if supervised in accordance with Codes 24-28 and 52 for a period generally not exceeding six months but only after the OISC has authorised the Adviser's Supervision Plan.

Initially the adviser will need close supervision. The arrangements for supervision will vary depending on the training and experience of the supervisee. The supervisor should be physically located at the same

premises as the supervisee. The supervisee should submit all work produced at the higher Level to the supervisor for examination and correction. The supervisor must actively monitor or oversee the work of the supervisee, and not simply serve as a source of advice. There must be a system in place for ensuring that action is taken, where necessary, and the entire process must be properly documented in writing and made available to the OISC for inspection, if required.

There should be a system of staged progression involving a series of assessments of the supervisee's performance to determine whether he or she is ready to move to the next stage. As the supervisee's training progresses, the degree of supervision can be reduced.

Trainee Advisers working at Level 1 under supervision (see Code 52)

- (i) Any adviser that intends to supervise trainee advisers to work at Level 1 must first provide information to the OISC in accordance with the supervision requirements set out in Codes 52(a) (d) and (e).

(ii) The term “trainee adviser” applies to all staff, whether paid employees or unpaid volunteers, who are working under supervision at Level 1, and for whom the OISC does not have a competence statement.

(iii) Although the OISC does not request a competence statement from trainee advisers, we must have information about them including their name and the date they started their training.

(iv) Trainee advisers are expected to apply to be regulated by the OISC at Level 1 in the normal way after a maximum of six months or 80 hours training, whichever is earlier.

OISC must first approve an adviser to have trainees working under their supervision before they start supervising.

(ii) An adviser regulated at Level 1 can only work under supervision at Level 2, and an adviser regulated at Level 2 can only work under supervision at Level 3.

Regulated advisers working to a higher Level under supervision should normally apply to be regulated by the OISC at the higher Level after a maximum of six months or 80 hours of working under supervision, whichever is earlier.

(iii) The degree of supervision each adviser requires will depend on how competent they are when working at the higher Level. This means that an adviser working under supervision who is nearly ready in the opinion of both the supervisor and the adviser being supervised to apply to be regulated at the higher Advice Level, will normally require much less day-to-day

Regulated Advisers Working under Supervision to a Higher Level (see Codes 24 to 28)

(i) Any adviser that intends to supervise regulated staff to work at a higher Level must first provide the OISC with information in accordance with supervision requirements set out in Codes 24 to 28. The

supervision than an adviser working under supervision who has much less experience of working at the higher Level. This will apply to supervision within the office or when representing a client at the TSIA.

- (iv) Organisations must submit their supervision plan to the OISC for prior authorisation (Code 24), and, provided it is specific and appropriate to the circumstances, approval will normally be granted.
- (v) If an adviser is working under supervision at Level 3, the supervisor should inform the OISC at the point when the supervised adviser is likely to start attending the TSIA unaccompanied.

Regulated Advisers and Third Parties

The OISC recognises that advisers may need to use the services of third parties to represent their clients and their interests properly. There are three scenarios where an adviser can consider involving third parties. These are in using:

- an expert / medical practitioner/interpreter;
- a barrister;

- a firm of solicitors.

There may also be occasions where an OISC regulated adviser may be asked by a solicitor's firm to act on behalf of their client. This can only happen in limited circumstances, as explained below.

Experts and Interpreters

A client's case may require the obtaining of academic, medical or other expert opinion or advice or the skills of an interpreter. If asked to act, these third parties do so on behalf of the regulated adviser as their agent. The adviser must instruct the expert or interpreter directly, and will continue to have responsibility for the conduct of the matter throughout.

Barristers

Level 1 OISC advisers must not seek to instruct barristers. Only OISC regulated advisers at Levels 2 and 3 can instruct barristers in England and Wales to pursue their clients' interests. What these advisers can specifically instruct a barrister to do depends on their authorised advice Level. Such instructions may be given through either the Bar Standards Board's Licensed or Public Access Schemes. There are no similar arrangements with advocates in

Scotland or barristers in Northern Ireland.

Level 2 advisers may seek advice or an opinion from a barrister on the merits of their client's case and how best to pursue the matter. They cannot, however, appoint a barrister to act as their client's advocate before a tribunal.

Level 3 advisers may instruct a barrister in the same way that a Level 2 adviser can, and, in addition, may also instruct them to appear as their client's advocate before Immigration Judges at the TSIA. To do this the Level 3 adviser must hold a licence granted to them by the Bar Council. In all matters including instructing a barrister to appear before the tribunal, the OISC regulated adviser continues to have control of the matter and responsibility for its conduct.

No OISC adviser can pursue actions in the Administrative Court.

Solicitors

There are very few instances where an OISC adviser can act as an agent for a firm of solicitors. Such referrals are only allowed where there is a genuine emergency, the solicitor's firm cannot for some acceptable

reason attend the hearing AND the hearing cannot be adjourned. The solicitor's firm will still need to obtain their client's informed consent before instructing the OISC adviser to act as their agent. They will need to be satisfied, and able to demonstrate, that the arrangement was in their client's best interests. The solicitor's firm has responsibility for ensuring that full and timely instructions are delivered to the OISC regulated organisation.

There must not be any form of routine sub-contracting between solicitors and OISC organisations. To do this is against Law Society of England and Wales' Rules, and an OISC adviser in such circumstances is in danger of being found not to be acting in the client's best interests and in breach of Code 9.

Using Other OISC Advisers

OISC regulated advisers must not conduct matter on behalf of other regulated advisers or apportion responsibility for different parts of their client's matter to other OISC regulated advisers unless such advisers are authorised to give advice for the same regulated organisation. This is important because clients must know at all times who has responsibility for their matter.

In this context, advisers should note the requirements of Code 33(d) to include specific details of the person

dealing with the client's matter in the client care letter.

Summary of OISC Levels

| Area of work | Level | Work Permitted | Work NOT permitted |
|---------------------|-------|--|---|
| Asylum & Protection | 1 | <p>No work on applications permitted. (Limited assistance within the Immigration Rules only)</p> <p>The only assistance permitted is:</p> <ul style="list-style-type: none"> • notifying the UKBA of a change of address • extension of Temporary Admission • applications for permission to work • travel document applications for someone granted Humanitarian Protection/Exceptional Leave to Remain • settlement (protection route) applications | <p><i>Enforcement (Bail/ Detention/ Removal/Banning Orders)</i></p> <p><i>Illegal entrants, overstayers, removal or deportation from the UK</i></p> <p><i>Family reunion</i></p> <p><i>Lodging notices of appeal and substantive appeals work including making representations to or appearing before courts or tribunals</i></p> <p><i>Judicial Review</i></p> |
| Immigration | 1 | <p>Basic applications that are within the Immigration Rules, including immigration employment documents and under the Points Based System</p> | <p><i>Enforcement (Bail/ Detention/ Removal/Banning Orders)</i></p> <p><i>Lodging notices of appeal and substantive appeals work including making representations to or appearing before courts or tribunals</i></p> <p><i>Illegal entrants, overstayers, removal or deportation from the UK</i></p> <p><i>Judicial Review</i></p> |
| Asylum & Protection | 2 | <p>All aspects of asylum applications and related Human Rights Act (HRA) applications, Case Resolution/Legacy Cases and Active Review. Lodging Notices of Appeal and Statements of Additional grounds</p> <p>Family reunion</p> <p>Representations to the UKBA, on illegal entry, overstayers, removal and deportation cases, applications for temporary admission, applications for Chief Immigration Officer (CIO) bail</p> | <p><i>Substantive appeals work including making representations to or appearing before courts or tribunals</i></p> <p><i>Applications for Immigration Judge bail</i></p> <p><i>Judicial Review</i></p> |
| Immigration | 2 | <p>Discretionary and complex applications. Out-of-time applications, concessionary policies, lodging Notices of Appeal and Statements of Additional Grounds.</p> <p>Representations to the UKBA, applications for temporary admission, applications for CIO bail</p> | <p><i>Substantive appeals work including making representations to or appearing before courts or tribunals</i></p> <p><i>Applications for Immigration Judge bail</i></p> <p><i>Judicial Review</i></p> |
| Asylum & Protection | 3 | <p>All aspects of asylum applications and related HRA applications, Case Resolution/Legacy Cases and Active Review. Lodging Notices of Appeal</p> <p>Family reunion</p> <p>Representations to the UKBA on illegal entry, overstayer, removal and deportation cases. Representations to the UKBA, applications for temporary admission, applications for CIO bail, applications for bail before and Immigration Judge</p> <p>Substantive appeals work, including representation at First-tier and Upper Tribunal (Immigration and Asylum Chamber) hearings, specialist casework</p> | <p><i>Judicial Review</i></p> |
| Immigration | 3 | <p>Discretionary and complex applications. Out-of-time applications, concessionary policies, lodging Notices of Appeal and Statements of Additional Grounds.</p> <p>Representations to the UKBA on illegal entry, overstayer, removal and deportation cases. Representations to the UKBA, applications for temporary admission, applications for CIO bail, applications for bail before an Immigration Judge</p> <p>Substantive appeals work, including representation at First-tier and Upper Tribunal (Immigration and Asylum Chamber) hearings, specialist casework</p> | <p><i>Judicial Review</i></p> |

OISC Level 1

Advice and Assistance

Work Permitted at Level 1

Level 1 advisers are permitted to make applications within the Immigration Rules, as listed below. Where a case becomes complicated or an application is refused, such an adviser must refer the client as soon as possible to an adviser authorised to practice at a higher Level. A case may become complicated, for example, where a client has entered or remained in the UK at any time in breach of their conditions of entry or leave to remain. Level 1 advisers can work on Leave to Remain applications only where the client has extant leave.

Asylum and Protection

No substantive asylum work, such as making applications or appeals, is permitted at Level 1. The only limited assistance permitted in this category of work at this Level includes:

- notifying the UKBA of a change of address
- extension of Temporary Admission

- applications for permission to work
- travel document applications for someone granted Humanitarian Protection/Exceptional Leave to Remain
- settlement (protection route) applications

Immigration

Level 1 advisers can do the following work in this category:

- Applications for entry clearance, Leave to Enter or Leave to Remain

Basic applications that are within the Immigration Rules in the following categories:

- visitors
- students
- spouses/unmarried partners
- other family members
- immigration employment documents
- all applications under PBS, visitors, diplomats, their family members and domestic staff and non-asylum Case Resolution/ Legacy Cases

- other applications such as au pair, postgraduate medical/dental training and private medical treatment.

➤ Nationality and citizenship under UK law

Basic applications for:

- naturalisation as a British citizen
- registration as a British citizen.

➤ EU and EEA immigration law

Basic applications for the following:

- residence permit for an EU/EEA national
- family permit for a non-EU/EEA family member
- entry clearance for non-EU/EEA family member
- Workers Registration Scheme
- A2 Accession Scheme.

Work Not Permitted - for both Immigration and Asylum and Protection

Level 1 advisers are not permitted to do the following work:

- Illegal entrants, overstayers, removal or deportation from the UK
- Family reunion

- Detention, applications for temporary admission, CIO bail and Immigration Judge bail
- Appeals, Tribunals and Court Work

A Level 1 adviser's client must as soon as possible be referred on to an adviser who is regulated at a higher Level in cases involving detailed representations and follow-up correspondence such as:

- applications for Indefinite Leave to Remain on the grounds of long residence in the UK (14 years' continuous residence)
- applications for settlement on the grounds of domestic violence
- applications for further leave to remain/ settlement in respect of adopted children
- applications that are not within the Immigration Rules.

Competence Requirements

Level 1 advisers must demonstrate competence in the following:

Knowledge

Sufficient knowledge of immigration and asylum law to identify:

- that a client is subject to immigration control
- possible immigration categories that might apply
- relevant forms and procedures that apply
- the requirements of the Immigration Rules that must be satisfied in respect of a particular application
- relevant time limits
- urgent situations.

The adviser needs to have a clear understanding of the limits of their knowledge and competence, and an understanding and sensitivity as to when a client's case has to be transferred to another regulated adviser. This means that a Level 1 adviser will need to have:

- General knowledge of immigration and asylum work and procedures, particularly in relation to illegal entrants and overstayers, to ensure that a client is referred appropriately.
- Knowledge of the types of evidence needed to support

cases and how to obtain such evidence.

- Awareness of the European Convention on Human Rights , particularly Articles 3 and 8, and the Human Rights Act 1998 in order to identify cases that should be referred on.
- Awareness of European Union regulations not covered by the Immigration Rules.

Skills and Aptitudes

1. The ability to draft letters and complete application forms clearly and accurately in English, particularly with the UKBA and other agencies, using the correct terminology and enclosing the appropriate evidence or a clear explanation as to why it has not been provided.

2. Sufficient verbal communication and interpersonal skills to:

- identify to whom an enquiry relates, establish their wishes and intentions and the relevant facts of the case
- communicate advice clearly to a client, giving reasons and explaining all options

- inform the client of what steps they and the adviser need to take, including urgent action

3. The ability to identify appropriate resources (e.g. textbooks, internet) and use them effectively.

4. Awareness of, and a commitment to follow, established good practice.

5. The ability to act with an appropriate sense of urgency.

6. The ability to maintain clear, comprehensive, accurate and structured records.

OISC Level 2

Casework

Work Permitted at Level 2

At this Level the adviser is authorised to handle more complex applications as well as applications outside the Immigration Rules and applications under the UKBA's concessionary or discretionary policies. A Level 2 adviser can submit One-Stop Notices and lodge appeals on initial grounds, but must then refer the case to a regulated Level 3 adviser.

Level 2 advisers can undertake all of the work that can be done by a Level 1 adviser, and, in addition, do the following:

➤ **Asylum and Protection**

- applications to the UKBA, including asylum and human rights applications and concessionary or discretionary applications
- Case Resolution/Legacy Cases and Active Review
- applications for Humanitarian Protection

- representing clients in correspondence with the UKBA and at UKBA interviews
- representations to the UKBA in support of cases
- drafting client statements, including asylum statements
- submitting One-Stop Notices
- lodging notices of appeal and statements of additional grounds
- applications for temporary admission and Chief Immigration Officer's bail
- family reunion applications
- representations regarding ongoing or asylum casework to MPs
- instructing a barrister or advocate for advice and to advise on drafting appropriate grounds of appeal (where permitted by the Bar Council).

➤ **Immigration**

- applications to the UKBA, including human rights applications and concessionary or discretionary applications

- applications for Humanitarian Protection
- representing clients in correspondence with the UKBA and at UKBA interviews
- representations to the UKBA in support of cases
- drafting client statements, including asylum statements
- submitting One-Stop Notices
- lodging notices of appeal and statements of additional grounds
- applications for temporary admission and Chief Immigration Officer's bail
- representations regarding ongoing immigration casework to MPs
- instructing a barrister or advocate for advice and to advise on drafting appropriate grounds of appeal (where permitted by the Bar Council).

Work Not Permitted - for both Immigration and Asylum and Protection

Level 2 advisers are not permitted to do the following:

- Substantive appeals work including making representations to, or appearing before, courts or tribunals

- Applications for Immigration Judge bail
- Applications for Judicial Review or any form of representation

Competence Requirements

Advisers at this Level, in addition to the competences required at Level 1 (see pages 13-16), must demonstrate the following:

➤ Knowledge

Advisers at Level 2 must be competent in all areas of work permitted at Level 1. In addition, they must have:

1. Detailed knowledge of immigration and nationality law, including:
 - grounds for applications
 - The UKBA practice in the consideration of cases
 - The UKBA concessionary policies
 - grounds for lodging appeals including human rights grounds
 - procedures for human rights applications, e.g. One-Stop Notices.
2. A detailed knowledge of relevant rights of appeal, time limits and procedures up to, and including, the

lodging of an appeal, and an awareness of relevant rights of appeal, time limits and procedures at the later stages of the appeal process.

3. A working knowledge of relevant case law and precedents, and how to access and use them effectively when making representations on a client's behalf.

4. A detailed knowledge of the types of evidence needed to support appeals and applications outside of the Immigration Rules, how to obtain such evidence and the relative weight to be attached to different types of evidence.

5. A detailed knowledge of the European Convention on Human Rights, the Human Rights Act 1998 and other relevant law.

6. Where an adviser is working on asylum cases, a detailed knowledge of asylum legislation and procedures, including the 1951 Refugee Convention, its 1967 Protocol and the UNHCR *Handbook for determining refugee status*.

7. Where an adviser is working on bail and detention cases, detailed knowledge of the powers of the

immigration authorities to grant bail or temporary admission, the procedures for obtaining bail and the UKBA's practice in the consideration of cases, including an awareness of the factors that must be taken into account when detaining an individual for immigration reasons.

8. A clear understanding of the limits of their knowledge and competence, and an understanding and sensitivity as to when a client's case has to be transferred to another regulated adviser. This means that a Level 2 adviser will need to have a general knowledge of immigration, asylum and nationality law and procedure to ensure that a client can be referred on for advice in areas in which the adviser is not qualified at Level 2.

Skills and Aptitudes

➤ Interviewing and advising

Sufficient verbal and written communication skills to be able to:

- ask relevant questions, employing different techniques to access necessary information
- obtain clear, detailed instructions, statements and case histories

- deal sensitively with vulnerable and/or traumatised clients
- give clear, detailed advice based on relevant laws and policies
- explain complex legislation and policies in simple, clear language
- make clear, pertinent and effective oral and written representations to the UKBA and other agencies on a client's behalf.

➤ Drafting

The ability to:

- make clear, pertinent and effective written representations in English on behalf of clients, including drafting grounds of appeal
- draft clear, detailed, structured and effective statements in English on behalf of clients
- produce any other necessary documents in English, which are readily comprehensible and comprehensive.

➤ Analytical and advocacy skills

The ability to:

- identify the primary and secondary issues presented by a client's case and the applicable laws or policies
- adequately assess the merits of cases presented
- make clear, cogent oral and written representations in support of cases
- identify and use the most appropriate sources of up-to-date information on case law and other specialised subjects in support of cases
- identify the salient points in an argument and respond to them effectively
- identify the evidence required to support a case and to evaluate the relative weight of the evidence
- represent a client effectively at UKBA interviews
- identify where referral to other professionals may be appropriate and to instruct relevant experts
- where applicable, obtain and effectively challenge reasons for detention, using human rights legislation, where appropriate, and do so in the course of a bail hearing, where necessary.

➤ Record-keeping and file management

The ability to:

- maintain clear, accurate records of UKBA interviews and legal proceedings
- maintain clear, comprehensive and well organised case files and an

organised and accessible file management system

- maintain clear, accurate and comprehensive records of contacts with the client or third parties and of other relevant matters.

OISC Level 3

Advocacy and Representation

Work Permitted at Level 3

Level 3 work is any work done pursuant to the lodging of the notice of appeal against refusal as well as the conduct of specialist casework, e.g. challenging existing case law and third country asylum cases. It requires a high Level of knowledge of immigration law and practice, including a thorough conversance with relevant case law, human rights legislation and asylum law, where applicable.

Only advisers regulated at Level 3 are allowed to represent clients at bail and appeal hearings before an Immigration Judge at the TSIA. Level 3 advisers should be aware of rights and procedures connected with judicial/statutory review, although they are not permitted either to represent clients in proceedings in the higher courts or to instruct counsel to do so.

Work permitted at Level 3 includes:

- conduct of specialist casework

- preparation of cases at the TSIA, including drafting full grounds of appeal
- representing clients before the TSIA
- instructing a barrister or advocate to appear at the Immigration and Asylum Chamber (where permitted by the Bar Council).

Competence requirements

Advisers at this Level, in addition to the competences required at Levels 1 (see pages 13-16) and 2 (see pages 17-21), need to demonstrate the following:

➤ Knowledge

1. Detailed knowledge of immigration, asylum and nationality law, including:
 - grounds for complex applications in the areas of work in which advice/services are provided
 - The UKBA and the TSIA practice in the consideration of appeals and complex cases

- The UKBA concessionary/discretionary policies in complex cases
- grounds of appeal to the TSIA, including human rights and race relations grounds.

2. Detailed knowledge of relevant rights of appeal, time limits and procedures at the TSIA up to, and including, full hearings before the TSIA, and sufficient awareness of rights and procedures in relation to judicial/statutory review to make appropriate referrals to a solicitor.

3. A sufficiently thorough knowledge of relevant case law and precedents to be able to identify and make good use of appropriate case law to support a client's case, anticipate and respond effectively to the citing of precedents by the immigration authorities and to do so during a hearing, where necessary. Advisers should also have sufficient knowledge and skill to be able to challenge existing case law, where appropriate.

4. A sufficiently thorough knowledge of the types of evidence needed to support complex cases and appeals up to TSIA Level and how to obtain such evidence.

5. A sufficiently thorough knowledge of the European Convention on Human Rights, the Human Rights Act 1998, the Race Relations (Amendment) Act 2000 and other relevant international law relating to immigration and asylum cases in order to be able to make effective and appropriate representations using this legislation in complex cases and appeals up to the TSIA Level.

6. A clear understanding of the limits of their knowledge and competence, and an understanding and sensitivity as to when a client's case has to be transferred to another OISC adviser or a solicitor. This means that a Level 3 adviser will need to have a general knowledge of immigration, asylum and nationality law and procedure to ensure that a client can be referred on for advice in areas in which the adviser is not qualified at Level 3.

Skills and aptitudes

➤ Interviewing and advising

The ability to explain clearly to a client in plain language the progress of their case, including any appeal, the outcome of a hearing, the implications for the client and the options open to them. Also to be able to advise on the merits of further

appeals and take clear instructions from the client as to how they wish to proceed.

➤ Drafting

The ability to draft in clear, written English, making use of case law and human rights legislation, where appropriate:

- complex applications
- complex letters, statements and representations
- full grounds of appeal to the TSIA
- witness statements
- skeleton arguments and other relevant documents for TSIA cases
- instructions to a barrister or advocate
- statements and other relevant documentation for higher court work.

➤ Advocacy skills

Where the adviser wishes to represent clients at hearings before the TSIA, sufficient verbal and written advocacy skills to do so effectively, including the ability to:

- make clear, cogent oral and written representations in the course of legal proceedings
- identify when it is appropriate to apply for an adjournment of a hearing

- identify the salient points in an argument and respond to them effectively in the course of a legal hearing, where necessary
- re-evaluate evidence in the light of representations from the UKBA
- anticipate and respond effectively to the citing of precedents by the immigration authorities in the course of a hearing, where necessary
- challenge existing case law, if appropriate
- make effective and appropriate representations in appeal proceedings using the European Convention on Human Rights, the Human Rights Act 1998, the Race Relations (Amendment) Act 2000 and other relevant international law relating to immigration and asylum cases
- accurately assess the merits of referring a case to a solicitor for judicial/statutory review proceedings.

While Level 3 advisers may have the ability to draft statements and other relevant documentation for higher court hearings, they must not represent or seek to represent clients in the higher courts. The Legal

Services Act 2007 governs the rights of audience in those courts. This Act denies a right of audience to those who are not legal professionals except in certain circumstances, such as where a judge has allowed a right of audience as a McKenzie Friend. OISC regulated advisers, who by definition provide immigration advice and/or services in the course of business, must not seek to appear as a McKenzie Friend.

OISC regulated representatives must not seek to appear in the higher courts unless they have rights of audience under the primary legislation noted above.

➤ Record-keeping and case management

Excellent record-keeping and case management skills, including the ability to:

- collate a well-organised and well-presented hearing bundle
- manage a busy schedule, including a diary of required attendances at legal hearings, and deal effectively with conflicting priorities while protecting the client's best interests
- maintain a clear record of case conferences with counsel and the client, including any discussion of the options open to the client, the merits of any appeal, the implications for the client and any further instructions taken.

Glossary

AIT (see First-tier Tribunal (Immigration and Asylum Chamber) and Tribunal Service Immigration and Asylum (TSIA))
Asylum and Immigration Tribunal, the unified single-tier tribunal that replaced the two tiers of the Immigration Appellate Authority (IAA) and Immigration Appeal Tribunal (IAT). With effect from February 2010, the tribunals of the Immigration and Asylum Chamber of the Tribunal Service (see below) replaced the AIT.

Case law (see Precedent)
Principles of law arising from court decisions.

CIO bail
Chief Immigration Officer bail. This is one way a detained person or someone acting on their behalf can apply for release.

Concessionary policies
Policies that the Home Office has developed in immigration and asylum cases that are not law, but which the Home Office should follow.

Discretionary policies
Policies that the Home Office has developed in immigration and asylum cases that are not law, but which the Home Office should follow.

Discretionary Leave
Leave granted outside the immigration rules at the discretion of the Home Office to those considered not to be in need of international protection or who have been excluded from such protection.

EEA
European Economic Area.

EU
European Union.

Exceptional Leave (see Discretionary Leave and Humanitarian Protection)
Exceptional Leave to Enter or Remain granted outside the immigration rules at the discretion of the Home Office. Such leave has been replaced by the terms Discretionary Leave and Humanitarian Protection.

First-tier Tribunal (Immigration and Asylum Chamber) (see AIT)
This replaced the AIT (see above). The First-tier (Immigration and Asylum Chamber) or FTT (IAC) is an independent Tribunal dealing with appeals against decisions made by the Home Secretary and Government officials in immigration, asylum and nationality matters

General information
Information about immigration and asylum procedures that does not refer to an individual's circumstances, for example, leaflets that explain various immigration procedures.

Higher Courts
These include for the purposes of this *Guidance* the High Court in England and Wales, the Court of Session (Outer House) in Scotland and the High Court in Northern Ireland.

Humanitarian Protection
Leave granted to anyone who is unable to demonstrate a claim for asylum, but who would face a serious risk to life or person arising from the death penalty, unlawful killing, torture, inhuman or degrading treatment or punishment.

Immigration judge
The title given to a member of the First-tier and Upper Tribunals of the Immigration and Asylum Chambers.

Judicial review

The procedure by which the High Court determines the legality of decisions made by public bodies. Judicial review is confined to the review of questions of law, and does not extend to a review of the merits of the administrative decision or the facts of the case.

McKenzie Friend

A term used to describe someone who assists an unrepresented party in court (taking notes, acting as a witness to proceedings, organising papers and/or quietly giving advice). They have no right of audience, and can address the court only if invited by the presiding judge. The OISC does not permit such activity by OISC regulated advisers.

One-Stop Notice (see Statement of Additional Grounds)

The Notice requires applicants to state in full any human rights grounds they wish to rely on in order to remain in the UK.

Points Based System (PBS)

The points-based immigration system is the means by which the UK Government regulates immigration into the United Kingdom from outside the EEA. It is composed of five "tiers", which replaced all previous work permits and entry schemes.

Precedent

A judgment or decision that should be followed in cases where there are similar facts (see case law above).

Referral

Where an adviser concludes that a client needs advice from another adviser such as where the advice needed is beyond the first adviser's Level of competence, and consequently contacts an alternative adviser to arrange the client's transfer to them.

Signposting

Where an adviser provides information to a client about alternative sources of

advice such as where the advice needed is beyond the first adviser's Level of competence.

Skeleton argument

A written argument submitted to a court outlining the case for the appellant/applicant.

Statement of Additional Grounds (see One-Stop Notice)

The response to a One-Stop Notice (see above).

Statutory review

An application to the High Court under section 101(2) of the Nationality, Immigration and Asylum Act 2002 for a review of a decision of the First-tier Tribunal. It is determined by a single judge without a hearing and by reference only to written submissions and documents filed.

Tribunal Service Immigration and Asylum (TSIA) (see AIT and First-tier Tribunal (Immigration and Asylum Chamber))

On 15 February 2010, the Immigration and Asylum Chambers were established in both tiers, First-tier and Upper Tribunals, of the Unified Tribunals framework created by the Tribunals, Courts and Enforcement Act 2007. The new chambers replace the Asylum and Immigration Tribunal (see AIT above).

The United Kingdom Border Agency (UKBA)

The UKBA is a Home Office agency. It manages UK border controls and enforces immigration and customs regulations. It also considers applications for permission to enter or stay in the UK and for citizenship and asylum.

Upper Tribunal (see AIT and First-tier Tribunal (Immigration and Asylum Chamber))

This replaced the AIT (see above). The Upper Tribunal (Immigration and Asylum Chamber) or UT (IAC) is a superior court of record dealing with appeals against decisions made by the First-tier Tribunal (Immigration and Asylum) Chamber

January 2012

