



# Guidance on Competence

Office of the Immigration Services Commissioner

Regulating Immigration Advice



2017

## TABLE OF CONTENTS

<b><u>INTRODUCTION</u></b> .....	3
What do we mean by competence? .....	3
Are you providing immigration advice or immigration services?.....	4
OISC Advice Levels .....	5
Working under supervision .....	6
Regulated Advisers and Third Parties .....	6
<b><u>Summary of OISC Levels and Categories</u></b> .....	8
<b><u>OISC Level 1- Advice and Assistance</u></b> .....	10
Work Permitted at Level 1 .....	10
Work Not Permitted at Level 1 .....	12
Competence Requirements.....	12
<b><u>OISC Level 2 - Casework</u></b> .....	14
Work Permitted at Level 2 .....	14
Work Not Permitted at Level 2.....	15
Competence Requirements.....	16
<b><u>OISC Level 3 - Advocacy and Representation</u></b> .....	19
Work Permitted at Level 3 .....	19
Work Not Permitted at Level 3.....	19
Competence requirements .....	20
<b><u>Glossary</u></b> .....	24

# 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 sixth edition of the *Guidance*. The *Guidance* comes into force on 1 July 2017.

This *Guidance* 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, knowledge and aptitudes 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 10.

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

- Application process - We assess competence initially during the application process. Applicants are required to submit a New Adviser Application and Competence Statement. This document requires applicants to provide information that demonstrates 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 resources they have in order to keep updated on changes in law and procedures. Information on the Competence Statement is available on the OISC website:

<https://www.gov.uk/government/publications/how-to-become-a-regulated-immigration-adviser>

In addition, applicants will normally be required to take a formal written competence assessment in order to demonstrate their level of knowledge and how to apply this to a client's particular situation. Applicants may also be subject to a pre-registration audit. At such a premises audit the OISC will consider the suitability of the organisation's policies and processes but may also discuss and review competence issues.

- Post registration premises audit provides an opportunity to consider the fitness and competence of the organisation's work. During, and as part of an organisation's audit, OISC staff will examine client files to assess adviser competence. The OISC can call upon expert immigration consultants if necessary in order to look into an adviser's competence in greater depth. Where an adviser cannot demonstrate their competence through work reviewed at audit, the OISC may require the adviser to take another competence assessment.
- Continuing Professional Development (CPD) - All registered advisers are required to comply with the Commissioner's CPD scheme. Organisations should consider the CPD requirements of each registered adviser against the competence requirements outlined within this document relevant to their Level and Categories of authorisation. Organisations should plan and record their advisers' CPD activities accordingly.
- Complaints - In investigating complaints made about registered organisations, OISC staff will consider whether competent advice was given and appropriate action taken by an adviser

on the client's matter.

## 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.

If your work is restricted only to signposting or the provision of general information, you do not need to apply to the OISC for registration. 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.**

### **McKenzie Friend**

OISC regulated advisers, who by definition provide immigration advice or services in the course of business, must not seek to appear before any tribunal or court in relation to a person's immigration matter, as a McKenzie Friend.

## **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 8 and 9. Details of the types of work permitted at each Level begins on page 10.

### **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 three categories of work, 'Immigration', 'Asylum and Protection' and

'Judicial Review Case Management'. These include 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 EEA Regulations

#### **Asylum and Protection:**

- Applications for Asylum and Humanitarian Protection.

#### **Judicial Review Case Management (JRCM):**

- Use of the Bar Standards Board's (BSB) Licensed Access Scheme to appoint barristers who can undertake both the litigation and advocacy elements of a Judicial Review application on behalf of their clients.

**Only Level 3 advisers are eligible to apply for approval in this category.**

While advisers do not need to be competent in all categories at their particular Level, all Level 2 and 3 advisers must have a sufficient awareness of all remedies that may be available to their client regardless of the areas of their competence at Level 2 or 3. This means, for example, that a Points

Based System (PBS) specialist working at Level 2 or 3 must be aware of remedies that fall within the categories of both Immigration, and Asylum and Protection at Level 1.

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 Immigration Judges they do not have to do this to be an authorised Level 3 adviser.

Authorised advisers are reminded of Code 3, which states:

‘Organisations and advisers must only act according to, and within, their authorisation’.

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. Similarly, an adviser authorised at Level 3 in ‘Immigration’ who is also authorised to do JRCM work, can only do this work in relation to ‘Immigration’ cases. They cannot do JRCM work in relation to ‘Asylum and Protection’ cases, unless they are also authorised in ‘Asylum and Protection’ at Level 3.

## WORKING UNDER SUPERVISION

Code 9 sets out the only basis on which an adviser may operate beyond his or her granted Level or Category of authorisation. This Code states ‘An organisation is permitted to have persons operating above their authorised Level or in Categories for which they are not authorised, but within the Level and Categories granted to the organisation, if the Commissioner has given written authorisation of the organisation’s supervision arrangements’.

Details of the processes for seeking such authorisation can be found on the OISC’s website at:

<https://www.gov.uk/government/publications/oisc-supervision-guidance-note>

## 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. Where the instructed adviser needs to obtain additional advice, opinions and other professional services, they will need to do so in accordance with Codes 34-39. There are three main areas where an adviser may consider involving third parties. These are in using:

- Experts and Interpreters;
- Barristers or members of the Faculty of Advocates;
- Other OISC registered advisers or a firm of solicitors.

#### Experts and Interpreters

A client's case may require obtaining 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 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 or members of the Faculty of Advocates

Level 1 OISC advisers must not seek to instruct barristers or members of the Faculty of Advocates. Only OISC regulated advisers at Levels 2 and 3 can instruct barristers in England and Wales or members of the Faculty of Advocates in Scotland to pursue their client's interests. What these advisers can specifically instruct a barrister or member of the Faculty of Advocates to do depends on their authorised advice Level. Such instructions must be given through the BSB's Licensed Access Scheme or OISC advisers may instruct Advocates in Scotland under its Direct Access Scheme. There are no similar arrangements

with barristers in Northern Ireland.

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

Level 3 advisers may instruct a barrister or a member of the Faculty of Advocates 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. To do this the Level 3 adviser must hold a licence granted to them by the BSB or instruct advocates through the Direct Access Scheme in Scotland. In all matters including instructing a barrister or member of the Faculty of Advocates to appear before the tribunal, the OISC regulated adviser continues to have control of the matter and responsibility for its conduct.

Only OISC advisers authorised in the category Judicial Review Case Management, may instruct a barrister to represent their client in Judicial Review proceedings. As OISC advisers are not permitted to undertake either litigation or advocacy in Judicial Review matters (due to restricted

rights of audience under the Legal Services Act 2007) they must instruct only barristers who are authorised by the BSB for the conduct of both litigation and advocacy in Judicial Review matters. Members of the Faculty of Advocates in Scotland cannot be instructed on such matters through the Direct Access Scheme.

Other OISC Advisers or a firm of solicitors  
 OISC regulated advisers may outsource aspects of their client’s case to other suitably authorised advisers or a firm of solicitors while retaining responsibility for the matter. In doing so they must however ensure they act in compliance with Codes 38 and 39.

## Summary of OISC Levels and Categories

Category	Level	Work Permitted	Work NOT Permitted
Asylum & Protection	1	Notifying UKVI of a change of address  Straightforward applications to vary the conditions attached to leave already granted by the Secretary of State  Travel document applications for a person already granted Humanitarian Protection/ Discretionary Leave to Remain	Applications for Asylum or Family Reunion  Settlement (protection route) applications  Lodging notices of appeal and substantive appeals work including making representations to or appearing before courts or tribunals  Representations in relation to leave to remain for illegal entrants or overstayers  Applications for release from detention or applications to prevent removal or deportation from the UK  Judicial Review
Immigration	1	Basic applications for entry clearance, leave to enter or remain in the UK, or any EU Member State under EEA regulations  Applications for Administrative Review, apart from applications refused on the basis of credibility or fundamental issues of the genuineness of documents or relationships  Straightforward applications to vary the conditions attached to leave already granted by the Secretary of State	Lodging notices of appeal and substantive appeals work including making representations to or appearing before courts or tribunals  Representations in relation to leave to remain for illegal entrants or overstayers  Applications for release from detention or applications to prevent removal or deportation from the UK  Judicial Review



Asylum & Protection	2	<p>All aspects of asylum applications and related Human Rights Act (HRA) applications, Case Resolution and Active Review</p> <p>Lodging Notices of Appeal and Statements of Additional grounds</p> <p>Family Reunion and Settlement (protection route) applications</p> <p>Representations to UKVI, on illegal entry, overstayers, removal and deportation cases and applications for Secretary of State bail</p>	<p>Substantive appeals work including making representations to or appearing before courts or tribunals</p> <p>Applications for Immigration bail before the First-tier tribunal</p> <p>Judicial Review</p>
Immigration	2	<p>Discretionary and complex applications. Out-of-time applications, concessionary policies</p> <p>Lodging notices of appeal and Statements of Additional Grounds</p> <p>All applications for Administrative Review</p> <p>Representations to the UKVI, on illegal entry, overstayers, removal and deportation cases and applications for Secretary of State bail</p>	<p>Substantive appeals work including making representations to or appearing before courts or tribunals</p> <p>Applications for Immigration bail before the First-tier Tribunal</p> <p>Judicial Review</p>
Asylum & Protection	3	<p>All aspects of asylum applications and related Human Rights Act (HRA) applications, Case Resolution/ Legacy Cases and Active Review</p> <p>Lodging Notices of Appeals and Statements of Additional grounds</p> <p>Family Reunion and Settlement (protection route) applications</p> <p>Representation to the UKVI, on illegal entry, overstayers, removal and deportation cases and applications for bail to the Secretary of State and First-tier Tribunal</p> <p>Substantive appeals work, including representation at First-tier and Upper Tribunal hearings, and specialist casework</p> <p>Pre-action protocol letters in advance of Judicial Review</p>	Judicial Review
Immigration	3	<p>Discretionary and complex applications. Out-of-time applications, concessionary policies, lodging Notices of Appeal and Statements of Additional Grounds</p> <p>Representation to the UKVI on illegal entry, overstayer, removal and deportation cases and applications for bail to the Secretary of State and First-tier Tribunal</p> <p>All applications for Administrative Review</p> <p>Substantive appeals work, including representation at First-tier and Upper Tribunal hearings and specialist casework</p> <p>Pre-action protocol letters in advance of Judicial Review</p>	Judicial Review
Judicial Review Case Management	3	<p>Instruct appropriate counsel through the Licensed Access Scheme to provide litigation and advocacy services to the client</p> <p>Support instructed counsel in the preparation of the client's case and administration of the matter</p> <p>Instruct appropriate counsel where an urgent application is required</p> <p>Instruct counsel to seek reconsideration of a decision to refuse a full hearing or to seek permission to appeal to the Court of Appeal</p>	<p>Litigation and advocacy elements of Judicial Review applications</p> <p>Formal steps related to Judicial Review proceedings</p> <p>Judicial Review case management of categories of work in which the adviser is not authorised at Level 3</p>

# OISC LEVEL 1

## ADVICE AND ASSISTANCE

### WORK PERMITTED AT LEVEL 1

Level 1 advisers are permitted to make applications that rely on the straightforward presentation of facts to meet a set of qualifying criteria. Such applications will not be discretionary or concessionary in nature and applicants will not have an immigration history which is likely to adversely affect the application in question.

Where a case becomes complicated or an application is refused an adviser must refer the client as soon as possible to an adviser authorised to practise at a higher Level.

Level 1 advisers can work on Leave to Remain applications only where the client has extant leave.

All work at Level 1 will be within the Immigration Rules or Nationality Law and EEA Regulations. However, some applications that fall within the Rules or Nationality Law are not classified as Level 1 work (see page 12). This is because they require the presentation of additional representations or legal argument which are not Level 1 competencies.

### Asylum and Protection

Level 1 advisers authorised in Asylum and Protection can undertake the following

work:

- notifying UKVI of a change of address
- straightforward applications to vary the conditions attached to leave granted, including conditions attached to bail granted by the Secretary of State, for example the right to work or study, restrictions on residence or reporting requirements
- travel document applications for someone granted Humanitarian Protection/Discretionary Leave to Remain.

No substantive asylum work, such as making applications or appeals, is permitted at Level 1.

### Immigration

Level 1 advisers authorised in Immigration can undertake the following work:

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

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

- visitors
- spouses/unmarried partners
- fiancé(e)s

- other dependent relatives
- Points Based System
- diplomats, their family members and domestic staff

Level 1 advisers making the applications listed above should satisfy themselves that their clients do not have relevant human rights grounds that should be raised at this application stage. Where such grounds exist it will be important that the claim is comprehensively argued, explained and documented and as such the case should be referred to a higher level adviser.

Level 1 advisers may deal with FLR (FP) applications based on Family Life as a parent under the five year route and may also deal with ILR applications made under the 10 year lawful residence route.

Level 1 advisers may deal with out-of-time applications made within 14 days of the client's leave having expired, where there is good reason for the delay that was beyond the adviser's or their client's control.

#### Nationality and Citizenship under UK law

Basic applications for:

- registration of a child as a British Citizen
- naturalisation as a British Citizen
- confirmation of British Nationality status.

#### EEA Regulations

Basic applications for the following:

- residence permit for an EU/EEA national
- family permit for a non-EU/EEA family member
- entry clearance and residence documents for non-EU/EEA family member, including an extended family member but only where they clearly meet the definition as such
- Schengen Visas
- Accession State casework.

#### Administrative Review

Lodging and dealing with an application for Administrative Review for any Level 1 type application with the exception of applications refused on the basis of credibility or a fundamental issue of genuineness of documents, or relationships.

#### Varying conditions of leave

Straightforward applications to vary the conditions attached to leave granted. For example, an application to remove the condition related to 'No Recourse to Public Funds'. Level 1 advisers may also apply to vary the conditions already set for clients on bail granted by the Secretary of State, for example the right to work or study, restrictions on residence, or reporting requirements.

## WORK NOT PERMITTED AT LEVEL 1

Level 1 advisers cannot undertake the following work:

- applications related to illegal entrants, overstayers (excluding those applying within 14 days of their leave expiring where there is good reason for the delay), removal or deportation from the UK. Only applications for an amendment to the conditions of bail are permitted
- family reunion applications
- Settlement (Protection Route) applications
- retained rights of residence for non-EEA nationals
- derivative rights of residence applications and other complex EEA applications (e.g. Surinder Singh route)
- detention and applications for bail
- appeals, tribunals and court work, including Judicial Review Case Management.

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

- applications for Leave to Remain on the grounds of 20 years' residence in the UK
- applications for Further Leave to Remain

on the basis of Family or Private Life under the 10 year route

- applications for settlement on the grounds of Domestic Violence (DV). An application under the Victims of Domestic Violence Concession to vary leave in order to gain access to public funds may be conducted by Level 1 advisers who are aware of the requirements for a DV application
- applications for further leave to remain/ settlement in respect of adopted children
- applications that are not within the Immigration Rules
- applications in which human rights grounds should be raised
- applications for Judicial Review or any form of representation related to Judicial Review, including issuing a pre-action protocol letter.

## COMPETENCE REQUIREMENTS

Level 1 advisers must demonstrate competence in the following:

### Knowledge

1. 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, procedures and fees that apply

- the requirements of the Immigration Rules that must be satisfied in respect of a particular application
- relevant time limits
- urgent situations
- published UKVI practice in the consideration of cases including UKVI Operational Guidance
- mandatory and discretionary general grounds for refusal within the Immigration Rules
- the operation of the statutory extension of leave to remain when an application is made
- the operation of extensions, variations and curtailments of leave and the conditions of leave
- processes available to challenge negative decisions related to Level 1 applications.

2. The adviser must 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 referred. 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

- a good awareness of the European Convention on Human Rights, particularly Articles 3 and 8, and the Human Rights Act 1998
- awareness of European Union regulations not covered by the Immigration Rules
- awareness of the general grounds for exclusion or expulsion of EEA Nationals.

## Skills and Aptitudes

1. The ability to draft letters and complete application forms clearly and accurately in English, particularly when corresponding with UKVI and other bodies, 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 any urgent action.
3. The ability to identify vulnerable

clients and to make appropriate provision (including referral) for such clients.

4. The ability to identify the range of evidence needed to support an application.
5. The ability to identify appropriate resources (e.g. textbooks, internet) and to use them effectively.
6. Awareness of, and a commitment to follow, established good practice.
7. The ability to act with an appropriate sense of urgency.
8. The ability to maintain clear, comprehensive, accurate and structured records, in line with the requirements of the Code.

## OISC LEVEL 2

### CASEWORK

#### WORK PERMITTED AT LEVEL 2

At this Level the adviser is authorised to handle more complex applications within the Immigration Rules as well as applications outside the Rules and applications under UKVI's concessionary or discretionary policies. Advisers may make detailed written representations to UKVI which require legal argument and request UKVI to exercise discretion in their decision making. They may advise clients who have entered or remained in the UK illegally or in breach of their conditions of entry or leave to remain.

A Level 2 adviser can submit a section 120 Notice and lodge appeals on initial grounds, but must then refer the case to a Level 3 adviser or other authorised person. They cannot conduct cases requiring specialist casework e.g. challenging existing case law and third country asylum appeals.

Level 2 advisers can undertake all of the work that can be done by a Level 1 adviser

operating in the same category, and, in addition, do the following if authorised in the categories of Asylum and Protection and/or Immigration:

## **Asylum and Protection**

- applications to UKVI, including asylum and human rights applications and concessionary or discretionary applications
- fresh claims on human rights grounds
- Case Resolution/Legacy Cases and Active Review
- applications for Humanitarian Protection
- representing clients in correspondence with UKVI and at UKVI interviews
- representations to UKVI in support of cases
- drafting client witness statements, including asylum statements
- submitting section 120 Notices
- lodging notices of appeal and statements of additional grounds
- applications to the Secretary of State for bail
- Family reunion applications
- Settlement (protection route) applications
- instructing a barrister or member of the Faculty of Advocates for advice and to advise on drafting appropriate grounds of appeal (where permitted through the BSB Licensed Access Scheme or the Faculty of Advocates Direct Access Scheme).

## **Immigration**

- applications to UKVI, including human

rights applications and concessionary or discretionary applications

- applications for Humanitarian Protection
- representing clients in correspondence with UKVI and at UKVI interviews
- representations to UKVI in support of cases, including cases where the qualifying criteria may be open to interpretation, for example non-EEA extended family members
- retained rights of residence applications for non-EEA nationals
- derivative rights of residence applications and other complex EEA applications (e.g. Surinder Singh route)
- drafting client witness statements
- submitting section 120 Notices
- lodging notices of appeal and statements of additional grounds
- applications to the Secretary of State for bail
- instructing a barrister or a member of the Faculty of Advocates for advice and to advise on drafting appropriate grounds of appeal (where permitted through the BSB Licensed Access Scheme or the Faculty of Advocates Direct Access Scheme).

## **WORK NOT PERMITTED AT LEVEL 2**

Level 2 advisers authorised in either

category cannot undertake the following work:

- substantive appeals work including paper appeals work and making representations to, or appearing before, courts or tribunals
- applications before the First-tier Tribunal for bail
- applications for Judicial Review or any form of representation related to Judicial Review, including issuing a pre-action protocol letter.

## COMPETENCE REQUIREMENTS

Advisers at this Level, in addition to the competences required at Level 1 (see pages 12- 14), must demonstrate the following:

### Knowledge

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

1. Detailed knowledge of immigration and nationality law, including:
  - grounds for applications and Fresh Claims
  - UKVI concessionary policies
  - grounds for lodging appeals including human rights grounds
  - procedures for human rights applications, e.g. section 120 Notices

- the immigration rules on general refusal and automatic deportation
  - administrative removal, removal directions and deportation orders
  - major offences under immigration legislation
  - the basis for exclusion of a person from the Refugee convention or Humanitarian Protection
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 the Immigration Rules, how to obtain such evidence and the relative weight to be attached to different types of evidence.
  5. An awareness of further remedies such as Judicial Review.
  6. A detailed knowledge of the European Convention on Human Rights, the Human Rights Act 1998 and other relevant law



such as Section 55 of the Borders, Citizenship and Immigration Act 2009.

7. Where an adviser is working on asylum cases, a detailed knowledge of asylum law and procedures, including the 1951 Refugee Convention, its 1967 Protocol and the UNHCR *Handbook for determining refugee status*.
8. Where an adviser is working on asylum cases, a detailed knowledge of 'safe third country' procedures in assessing asylum applications.
9. Where an adviser is working on asylum cases an awareness of permission to work, the availability of welfare support and specific provisions for the processing of asylum claims made by vulnerable people including accompanied and unaccompanied children, mentally incapacitated individuals and victims of trafficking.
10. Where an adviser is working on bail and detention cases, detailed knowledge of the powers of the immigration authorities to grant bail, the procedures for obtaining bail and UKVI'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.

11. 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 referred.

## **Skills and Aptitudes**

### **1. Interviewing and advising**

Sufficient verbal, interpersonal 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 and be aware of cultural, gender, sexuality and disability issues that may arise in some cases
- 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 UKVI and other agencies on a client's behalf.

### **2. 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 comprehensive and readily comprehensible.

### **3. Analytical and advocacy skills**

The ability to:

- identify the primary and secondary issues presented in 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 including 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 UKVI 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.

### **4. Record-keeping and file management**

The ability to:

- maintain clear, accurate records of UKVI 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 includes any work done following 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 understanding of relevant case law, human rights legislation and asylum law, where applicable.

Only advisers at Level 3 are allowed to represent clients at bail and appeal hearings before an Immigration Judge. Those authorised in the category of Judicial Review Case Management (JRCM) are permitted to instruct counsel to represent their clients in Judicial Review matters.

Work permitted at Level 3 includes:

- conduct of specialist casework
- preparation of cases at the First-tier and Upper Tribunal (Immigration and Asylum Chamber), including drafting full grounds of appeal
- representing clients before the First-tier

and Upper Tribunal (Immigration and Asylum Chamber)

- instructing a barrister or member of the Faculty of Advocates to appear at the First-tier and Upper Tier (Immigration and Asylum Chamber) where permitted through the Licensed Access or Direct Access Scheme
- where authorised in the category of JRCM, instructing a barrister (with permission to litigate and advocate) through the BSB's Licensed Access Scheme to represent clients in Judicial Review matters.

### WORK NOT PERMITTED AT LEVEL 3

Only advisers specifically authorised by the OISC in the category JRCM may pursue Judicial Review as a remedy for their clients. They must instruct a barrister who is licensed by the BSB to litigate and the instructed barrister will be responsible for taking all formal steps in relation to the application. Advisers authorised in JRCM may only manage cases for clients who seek Judicial Review that relate to either 'Immigration' or 'Asylum and

Protection' if they are also authorised in this category of work at Level 3. Page 9 summarises the work advisers authorised in this category may do. Further details of work advisers can and cannot do, can be found in the Commissioner's Practice Note on JRCM.

## COMPETENCE REQUIREMENTS

Advisers at this Level, in addition to the competences required at Levels 1 (see pages 12 -14) and 2 (see pages 16-18) in the categories for which they are authorised, must 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
  - UKVI and the First-tier and Upper Tribunal (Immigration and Asylum Chamber) practice in the consideration of appeals and complex cases and the relevant time limits for appeals
  - The UKVI concessionary/ discretionary policies in complex cases
  - Grounds of appeal to the First-tier and Upper Tribunal (Immigration and Asylum Chamber), including human rights grounds.
2. Detailed knowledge of relevant rights of appeal, time limits and procedures at the First-tier and Upper Tribunal (Immigration and Asylum Chamber) up to, and including, full hearings before the First-tier and Upper Tribunal (Immigration and Asylum Chamber), and sufficient awareness of rights and procedures in relation to Judicial Review to make appropriate referrals to a solicitor or OISC adviser permitted to carry out Judicial Review Case Management (JRCM).
3. Where an adviser is authorised to carry out JRCM work, knowledge of processes related to Judicial Review including the Upper Tribunal Rules and Practice Directions/Statements. Knowledge of the substantive law principles that form the basis of Judicial Review challenges is also required as is knowledge of the professional obligations and rights of counsel and the professional rules on the instruction of counsel. Advisers operating in this area will be expected to be familiar with, and acting in accordance with, the Commissioner's Practice Note on JRCM.
4. A sufficiently thorough knowledge of
  - The consequences of a successful appeal including the possibility of further challenges by UKVI.

relevant case law to be able to identify and make good use of appropriate case law precedents to support a client's case, anticipate and respond effectively to the citing of precedents by the Home Office 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.

5. A sufficiently thorough knowledge of the types of evidence needed to support complex cases and appeals up to the First-tier and Upper Tribunal (Immigration and Asylum Chamber) and beyond if permitted and how to obtain such evidence.
6. A sufficiently thorough knowledge of the European Convention on Human Rights, the Human Rights Act 1998, the Equalities Act 2010 and other relevant law relating to immigration and asylum cases in order to be able to make appropriate and effective representations using this legislation in complex cases and appeals.
7. 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 approved at Level 3.

## **Skills and aptitudes**

### **1. 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 or Judicial Review (including the risks related to costs and time) and take clear instructions from the client as to how they wish to proceed.

### **2. Drafting**

The ability to draft in clear, pertinent and effective English (making use of case law and human rights legislation, where appropriate), the following:

- complex applications
- complex letters, statements and representations
- full grounds of appeal to the First-tier and Upper Tribunal (Immigration and Asylum Chamber)
- witness statements
- skeleton arguments and other relevant documents for First-tier and Upper Tribunal (Immigration and Asylum Chamber) cases
- instructions to a barrister or member of

the Faculty of Advocates

- statements and other relevant documentation to support Judicial Review applications.

### **3. Advocacy skills**

Where the adviser wishes to represent clients at hearings before the First-tier and Upper Tribunal (Immigration and Asylum Chamber), 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 and argue effectively for it
- identify the salient points in an argument and respond to them effectively in the course of a hearing, where necessary
- re-evaluate evidence in the light of responses or other information from UKVI or a change in country conditions or new case law
- anticipate and respond effectively to the citing of precedents by UKVI 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 Equalities Act 2010 and other relevant international law relating to immigration and asylum cases

- accurately assess the merits of taking forward an application for Judicial Review or referring a case to a solicitor or authorised OISC adviser for judicial review proceedings.

While Level 3 advisers approved in the category of JRCM are permitted to manage the client's case through the Judicial Review process, they must instruct appropriate counsel to undertake both the litigation and advocacy elements of the application. They are not permitted to undertake any of the formal steps required by the Judicial Review Process. The Legal Services Act 2007 governs the rights of audience in Judicial Review matters. 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 advisers, who by definition provide immigration advice and/or services in the course of business, must not seek to appear as a McKenzie Friend.

### **4. 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 hearings, and deal effectively with conflicting priorities while protecting the client's best interests
- maintain a clear, detailed and accurate record of case conferences with counsel and the client.

# GLOSSARY

## **Case law (see Precedent)**

Principles of law arising from court decisions.

## **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 UKVI. Such leave has been replaced by the terms Discretionary Leave and Humanitarian Protection.

## **First-tier Tribunal (Immigration and Asylum Chamber)**

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 immigration 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.

## **Humanitarian Protection**

Leave granted to anyone who is unable to demonstrate a claim for asylum, but who would if returned to their country of origin 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 Upper Tribunal or Administrative 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.

## **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.

## **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 advice provider 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.

## **Secretary of State Bail**

Powers granted under Section 10 of the Immigration Act 2016 means a person liable to



detention may be granted immigration bail by the Secretary of State or, if detained, by the Secretary of State or the First-tier Tribunal.

**Section 120 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.

**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**

The response to a section 120 Notice (see above).

**Tribunal Service Immigration and Asylum (see 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.

**UK Visas and Immigration (UKVI)**

UKVI is part of the Home Office. 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 First-tier Tribunal (Immigration and Asylum Chamber))**

The Upper Tribunal (Immigration and Asylum Chamber) or UTIAC is a superior court of record dealing with appeals against decisions made by the First-tier Tribunal (Immigration and Asylum) Chamber. Since 1 November 2013 the UT was given jurisdiction to deal with most immigration and asylum judicial review applications.