

# Guidance for organisations providing Level 1 Immigration Advice related to the EU Settlement Scheme

Advisers providing immigration advice and/or services limited to the EU Settlement Scheme (EUSS), which are registered with the OISC, are required to abide by the Commissioner's Code of Standards and operate in line with the limitations imposed on all advisers operating at Level 1 as set out by the Guidance on Competence.

This document aims to expand on the Guidance on Competence to assist advisers to understand the limits of work that they are authorised to provide. It incorporates advice issued by Refugee Action as part of their training programme and matters raised by Rights of Women.

It also seeks to draw attention to codes that might be of particular concern to Level 1 EUSS advisers.

## Compliance with the Guidance on Competence

The OISC's guidance on Competence states in relation to 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.”*

For Level 1 advisers authorised in EUSS work only, this means that they can make or advise clients regarding applications for settled or pre-settled status under the EUSS scheme, where the client appears to meet the qualifying criteria and there are no complex issues either in the collation of supporting evidence, or the client's immigration history or criminal history, that are likely to result in detailed representations needing to be submitted alongside the application for it to succeed.

## The Guidance on Competence further notes that:

*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.*

It should be noted that where clients have already secured retained rights of residence and hold a permanent residence card, then reliance on these rights does not prevent Level 1 EUSS advisers from

making settlement or pre-settlement applications on their behalf. However where applicants hold only a derivative residence card, such applications should be referred to a higher level provider as a new assessment of their current derivative rights will need to be made.

EUSS advisers should ensure that they confirm with applicants, particularly non-EEA applicants that are dependent on an EEA national, that the EEA national has been exercising treaty rights. If they are unsure that this was the case, the applicant should be referred to a higher-level adviser.

Using the OISC's Guidance on Competence Refugee Action have complied the following Green Flag/ Red Flag system which we think is a helpful guide for those concerned about where the boundaries of Level 1 work in this area might lie.

## Green Flags

In the overwhelming majority of circumstances, you should be able to complete applications under the EU Settlement Scheme:

- For EEA nationals
- For anyone who already has a permanent residence document or evidence of indefinite leave to remain
- For family members of EEA nationals applying with their EU Citizen family member (excluding durable partners and other 'dependent relatives')
- For durable partners and other 'dependent relatives' of EEA nationals - provided they have a 'relevant document' and there has been no material change in their circumstances
- For family members who have retained the right of residence - where they have already been issued with a permanent residence document.

HOWEVER, regardless of whether the case is listed above or not, should you come up against any of the Red Flags (below) you should stop working and refer the matter on.

## Red Flags

You should refer cases on:

- Where a person is relying on a derivative right to reside
- Where a person is a family member of a 'qualifying British citizen' (i.e. 'Surinder Singh cases')
- Where durable partners and other 'dependent relatives' do not have the necessary documentation, or their circumstances have materially changed since that documentation was issued
- Where people with retained residence rights do not have a permanent residence card.
- Where you are unable to prove a requirement is met with the required documentation - for example where the applicant does not have their own valid identity and nationality document; where the applicant is missing some evidence to prove their own residence in the UK; where a non-EEA applicant does not have evidence relating to their EEA family member.

- Where you need to prove something that is open to interpretation.
- Where any of the suitability criteria in EU15 and EU16 might apply (relating to deportation, exclusion, deception and misuse of rights)\*
- In the event of a 'no deal brexit' - where someone's conduct committed after the UK leaves the EU might engage the general grounds for refusal (e.g. criminal offences)

### Note:

*The term other 'dependent relatives' refers to relatives who are not direct family members under EU law. Direct family members include:*

- *spouses of an EEA national*
- *children and grandchildren of an EEA national or their spouse, etc.*
- *parents or grandparents of an EEA national or their spouse, etc.*

\*Advisers should check if the application includes people with any criminal histories including past convictions, current arrests pending decision and charges pending trial. They should be aware that where an applicant does not have a prior deportation, removal or exclusion decision, the application to the EUSS could trigger one of these decisions. This may result in the application being put on hold pending a referral to immigration enforcement.

### Compliance with the Commissioner's Code of Standards

In relation to the Code of Standards, advisers authorised only in EUSS work may be concerned as to how they comply with the Commissioners codes around Client Care and Records and Case Management.

### The Code of Standards states in relation to Client Care letters:

*"23. An organisation must provide all prospective clients with a client care letter."*

The Guidance that accompanies the Code states:

*"A prospective client is someone, for example:*

- *with whom an adviser has had an initial consultation; and*
- *there is an expectation of a continuing professional relationship.*

*This person can be distinguished from someone who asks one-off questions and who has no expectation or gives no indication of intending to instruct the registered organisation or adviser further; for example, where an individual attends a drop-in advice centre. "*

It is expected that the majority of the clients applying under the EUSS who approach advisers registered to provide Level 1 Immigration work limited to the EUSS scheme, will not require the adviser to become their ongoing legal representative, but instead need advice that is of a 'one off' nature. This situation is not affected should a client return with further questions on the same matter. EUSS applicants are likely to submit the application themselves and there is unlikely to be any ongoing correspondence between the Home Office and the adviser. As such, the OISC expects that most EUSS authorised advisers will not need to issue a client care letter. The OISC Guidance to the Code also notes that the requirement to issue a closure letter (Codes 46 and 47) only applies to clients who have been issued with a client care letter. It is therefore also unlikely that such closure letters will be required in EUSS cases.

### **The Code of Standards states in relation to Records and Case Management:**

*“53. In respect of each client or prospective client, advisers must maintain an adequate record of all interactions.*

*54. Records of actions undertaken on behalf of a client must clearly indicate the name of the adviser who has given the advice or done work on the client's behalf.*

*55. An organisation must have and operate an effective file management system which enables it to keep clear, orderly and accurate records of all contacts and dealings with clients and others relevant to its clients' cases. These records must be held securely, and records relating to a particular client or former client must be accessible to the client and to the Commissioner.*

*56. When an organisation retains a client's original documents it must ensure that the client has a copy of those documents. The original documents must be returned to the client as soon as possible.*

*57. An organisation must ensure that all client records are kept for at least six years, and thereafter for the client file and associated electronic data to be securely deleted or destroyed.”*

### **The Guidance that accompanies the Code states:**

*“An “adequate record” of interactions would include everything relevant to the client's case. It must include details of instructions taken, advice given (including the merits of any proposed action), action taken and by whom, and any other relevant matters. Interactions include communications by telephone and e-mail.*

*The attendance note of any meeting or conversation between the adviser, the client and any relevant third party (for e.g. the Home Office) must include a full record of their discussion. The note of the first substantive meeting/conversation between the client and their adviser must include full details of their discussion of the client's immigration history, the instructions taken, any advice given and action agreed.*

*Case records should include copies of any relevant correspondence with the client or third parties, including copies of applications and supporting evidence. Correspondence includes e-mail correspondence.*

*Client records must be maintained in an orderly manner with the progress of each case being clearly recorded. Client records must be capable of being easily understood by colleagues and others.*

*When writing to the client and other interested parties such as the Home Office, correspondence from advisers must include the adviser's full name, address, name of the registered organisation for which they work and their job title.*

*Registered organisations must maintain a full list of all their clients. This must include, where relevant, each client's name, date of birth, Home Office reference number, the type of application made and the date that the case was opened and closed, including the outcome of the matter."*

These instructions are relevant to all registered organisations, but should be applied proportionately. In relation to the types of EUSS applications made by advisers at Level 1 limited to this area of work, these applications are unlikely to require the adviser to write to the Home Office or any third party regarding the application for Settled or Pre-Settled status. Organisations may assume a different role in this respect, for example writing to a third party such as school, bank or hospital in order to assist the client in collecting documents which might support such an application. Their involvement in assisting the clients with gaining such documents is not a relevant matter subject to regulation by the OISC and such correspondence does not need to be retained for compliance with the OISC Code.

Advisers would however be expected to keep notes of who they advise, what advice they give and any action they do take. They may for example want to note if they are assisting the client in getting documents from third parties but they do not need to keep copies of this correspondence. Notes should be 'adequate' and should ensure that should the OISC receive a complaint against the advice and/or services provided they will be able to demonstrate what work was done or advice given.

If the adviser reviews client documents and advises on those that are to be submitted with the application, then they should take a copy and keep these on the client file.

Where no documents are to accompany the application and the application comprises only the online application, then it will not be necessary for the adviser to retain any type of copy of the application being made. The notes including the client's details and any note of advice or assistance given will be sufficient to meet the codes relating to record keeping. Records should be easily retrievable and readable.

Advisers registered at Level 1 Immigration limited to EUSS may also find the following Guidance notes helpful in understanding the requirements placed upon them and what work might be done that falls outside OISC jurisdiction.

[The Commissioner's code of standards: OISC guidance note](#)

[Signposting and referrals: OISC practice note](#)

[Meeting the needs of vulnerable clients: OISC practice note](#)

[Find an immigration adviser](#)