

Commissioner's Rules and Code of Standards covered by this practice note

This note refers to the July 2007 versions of the Commissioner's Rules and Code of Standards. This replaces the practice note on fees and accounts issued in 2005.

The Commissioner's Code of Standards refers to meeting client needs in Codes 14–16, 29–39 and 91–95 and to client care in Codes 10–12. This guidance covers all of these Codes.

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1. Who is the client?

- 1.1 An immigration adviser must identify who their client is. A client may be defined as a person who receives services. Advisers may have more than one client in a case and may owe separate duties of care to each of those clients. In entry-clearance marriage cases, the client may be the foreign spouse overseas and not the sponsor in the UK. In work permit cases there are likely to be two or more clients, these being the employer, who is likely to be paying for the adviser, the employee for whom the work permit is being sought and any dependants that the employee may wish to have join them in the UK. The Commissioner expects advisers to discharge properly their duties to all of their clients.

2. Meeting clients' needs

- 2.1 The Code of Standards details the requirements placed upon advisers in respect of their conduct towards clients. It is designed to ensure that the client's interests come first. It requires advisers to take into account that clients may be vulnerable as a consequence of their financial circumstances, ill health or past experiences. That vulnerability should not prejudice their position or place them at risk.
- 2.2 Advisers must respect their clients' confidentiality and must act fairly, honestly and without prejudice.
- 2.3 An adviser should always act objectively and in the client's best interests, even where they hold different beliefs or personal views from their client. Where there is a conflict of interests, advisers must consider whether they can continue to act for the client.
- 2.4 Advisers must not abuse their position with their client. An example of such abuse may arise when an adviser continues to act while having a financial or personal interest in the outcome of the case (see paragraph 4.1 below)

The code on meeting client needs

3. Confidentiality

Code 14: An adviser must have a procedure in place for ensuring client confidentiality. They must keep the affairs of their clients and all information relating to their clients confidential, except where the adviser is compelled to disclose information by reason of a legal or regulatory obligation.

3.1 Advisers are under a duty to ensure that information relating to their clients is kept confidential. Confidentiality requires that advisers ensure that information is accessible only to those authorised to have access to it. Confidentiality is one of the cornerstones of a relationship of trust between client and adviser. Certain types of communication, such as privileged communication, between the client and their adviser must not be discussed or divulged to third parties. Any breach of the Code on confidentiality may lead to regulatory action. There are, however, exceptions as follows:

- divulging information to relevant authorities in the investigation of a criminal matter;
- responding to a court order as required;
- giving the Commissioner information that is necessary for the discharge of their functions; and
- giving the Immigration Services Tribunal information that is necessary for the discharge of its functions.

3.2 Confidentiality is also a positive duty under the Data Protection Act 1998. Anyone processing personal data (such as name, address and other personal details) should comply with the eight enforceable principles of good practice. These require that data must be:

- fairly and lawfully processed;
- processed for limited purposes;
- adequate, relevant and not excessive;
- accurate;
- not kept longer than necessary;
- processed in accordance with the data subject's rights;
- secure; and
- not transferred to countries without adequate protection.

Further information on the principles can be obtained from the Information Commissioner's Office. See: www.ico.gov.uk/for_organisations/data_protection_guide.aspx

- 3.3 All those holding personal information must be registered with the Information Commissioner. Further guidance on issues relating to the holding of information can also be obtained from www.dataprotection.gov.uk or 01625 545 745.
- 3.4 When considering the issue of confidentiality, advisers should also take into account privacy and the physical environment in which they take instructions. Their office must, for example, have a private space large enough for a client with a child in a pushchair or a person using a wheelchair to be comfortably accommodated with the door closed.
- 3.5 Advisers are also reminded that on 1 October 2004 the final access duties under Part 3 of the Disability Discrimination Act 1995 came into force. Service providers in the private, public and voluntary sectors must take reasonable steps to remove or alter any physical feature of their premises that makes access to a service impossible or unreasonably difficult for disabled people. Similarly, they are under an obligation to provide reasonable means of avoiding any such physical feature. Advisers can find further assistance on this issue from the Disability Rights Commission at www.drc.gov.uk or 08457 622 633.

4. Conflict of interest

Code 15: An adviser must explain fully and clearly to the client any circumstances in which they might have any personal interest or advantage in acting for the client.

Code 16: Unless the adviser's client has consented in writing with full knowledge of the facts, an adviser must not act where there is a real or potential conflict of interest between them and the client or between two or more clients.

4.1 Conflicts of interest may arise in a number of ways, for example:

- an adviser has competing commercial or financial interests that make it difficult to fulfil their duties to the client;
- an adviser has cultural, community or political affiliations that could potentially undermine the relationship of trust with their client; or
- an adviser has two or more clients – spouses, for example, whose claims contradict each other.

- 4.2 Advisers are under a duty to make areas where they may have a personal interest and/or advantage clear to their clients. They must take care not to disclose confidential information and must allow their clients sufficient time to make an informed decision about whether or not to proceed. The adviser must ensure that all aspects of the issue are fully understood by the client, taking into account their personal circumstances, including educational background and vulnerability. The adviser must also determine whether it is correct for them to continue to act in the circumstances.
- 4.3 The Office of the Immigration Services Commissioner (OISC) stresses that, where there is a conflict of interest, be it real or potential, the adviser must only continue to act where the client has consented to this in writing. It is imperative that the client does so with full knowledge and understanding of the facts. If an adviser continues to act where a conflict of interest has been identified, whether real or potential, the Commissioner would expect to see file evidence showing that the situation was fully explained to the client (using an interpreter, where necessary) and then confirmed in writing. The adviser must also obtain (signed and dated) written consent from the client allowing the adviser to continue to act on their behalf, in which the client must declare that they are in full possession of the facts regarding the conflict.
- 4.4 Conflicts may arise in circumstances where it would be unprofessional and not in the client's best interest for the adviser to continue to act for them. For instance, there may be conflict between the adviser and the client or between two of the adviser's clients (for example, a husband and wife with individual asylum claims that do not support each other). The OISC takes a serious view where knowledge exists of such a conflict of interest, but the matter is not referred on. This could potentially lead to regulatory action. Advisers are reminded that not acting in the best interest of any of their clients at any time is a breach of the Commissioner's Code of Standards.

5. Interpreters

Code 91: An adviser must have a written procedure for selecting experts such as interpreters or doctors. The procedure must use relevant objective criteria such as membership of a recognised accreditation body.

Code 92: An adviser must use an interpreter if there are language difficulties. An adviser must explain to an interpreter their precise role and responsibilities and, in particular, that they should act impartially, respect client confidentiality and not distort information stated by the client.

Code 93: An adviser must have regard to the fact that clients may not be best served by choosing a family member to act as an interpreter, as there may be instances where the client is required to disclose matters of a sensitive or personal nature or may require objectivity.

Code 94: An adviser must be mindful of the fact that, while clients and interpreters or country experts may share a common language, they may have significantly different cultural, political or religious beliefs.

Code 95: Advisers must be vigilant in observing any unease on the part of their client regarding the interpreter employed.

- 5.1 The appropriate choice and use of interpreters is essential especially in the taking of initial instructions. The adviser must determine the role that the interpreter is to play and ensure their effectiveness. It is not enough to choose someone at random or because of family connections. In fact, family connection may be a reason not to choose someone to act as an interpreter. Advisers must have a written procedure stating how interpreters (and other experts) will be selected. This procedure must be based on objective criteria such as relevant qualifications/experience or membership of a relevant professional body.
- 5.2 Advisers must be able to diagnose possible language difficulties at an early stage and take appropriate action. The decision to use an interpreter depends on a number of factors, including:
- the adviser's familiarity with the language required;
 - the proposed interpreter's qualifications or experience;
 - the client's confidence and/or vulnerability;
 - the issues raised;
 - the cost; and
 - time constraints.
- 5.3 Where clients are not able to speak English proficiently, a professional interpreter should be used to take instructions, subject to the availability of funds. The OISC has not been overly prescriptive in the requirements for interpreters, and understands that the choice of interpreter will be dictated by a number of factors that vary on a case-by-case basis. Where a decision is made to use interpreters/experts, the Commissioner will, however, expect to see file evidence that the choice of interpreter was made in accordance with the adviser's written procedure.

- 5.4 There have been instances where interpreters have been known to overstep the line and venture into advice giving. While this may be done with the best of intentions, it is a dangerous, unregulated and therefore illegal activity. It must be remembered that the adviser remains liable for all work undertaken by the interpreter under their supervision with reference to any specific case. Advisers must therefore observe any unease on the part of the client and ensure that they are completely satisfied with the interpreter being used. Advisers must also be aware of any potential conflicts of interest that the interpreter may have.
- 5.5 The OISC would strongly recommend that, where possible, advisers engage interpreters who are registered with a recognised accreditation body or hold a recognised qualification such as:
- NRPSI (National Register of Public Service Interpreters);
 - Diploma in Public Service Interpreting;
 - Metropolitan Police Test;
 - Certificate in Community Interpreting, Institute of Linguists;
 - MA in Translating and Interpreting;
 - Postgraduate Diploma in Interpreting and Translation, University of Bradford;
 - Diploma in Legal Interpreting and Translation, Higher Institute of Interpreters and Translators, Belgium;
 - Diploma in Legal Interpreting, Orlando Legal Studies, USA;
 - Postgraduate Diploma in Conference Interpreting, University of Westminster/Polytechnic of Central London;
 - a degree from a recognised university partly studied in English (or whatever is their second language) with an interpreting and translation component;
 - Asylum and Immigration Tribunal (AIT) Assessment;
 - Immigration and Nationality Directorate (IND) Assessment;
 - DPSI (Diploma in Public Service Interpreting, oral only); or
 - NVQ/SVQ Level 3 or higher.

- 5.6 It is not sufficient for advisers to allow interpreters simply to undertake their work. The adviser must ensure that the client is content with the interpreter and the service they are providing. Advisers are referred to Code 95 of the Commissioner's Code of Standards in this regard.

6. Equality

Code 29: An adviser must have a written policy that precludes discrimination on the basis of race, gender, age, nationality, faith, sexual orientation, physical ability and any other irrelevant consideration, and must be committed to providing equality of service to all clients.

Code 30: An adviser must not discriminate against their clients and must treat all clients fairly and without prejudice or bias. This must be done regardless of any personal views.

Code 31: Where an adviser's principles or charter only permit services to be offered to specific client groups, this must be clearly reflected in their signposting and referral procedures.

- 6.1 Advisers must not discriminate against clients on the basis of their physical ability, gender, sexual orientation, religion, political belief, social group, race, age, ethnicity or national origins. Advisers and their staff have to treat everyone with the same attention, courtesy and consideration regardless of external factors. The Race Relations Act 1976, the Sex Discrimination Act 1975 (both of which have been amended by subsequent legislation), the Disability Discrimination Act 1995 and the Disability Rights Commission Act 1999 are the relevant acts. Advisers must not refuse to act for a particular client on the basis of any of the discriminatory factors outlined above. All clients must be treated fairly regardless of the adviser's personal views. Discrimination would mean the denial of a professional service, because an adviser refuses to represent an individual or provides a less courteous or efficient service. Advisers are reminded that this is a breach of the Commissioner's Code of Standards and regulatory action may follow.
- 6.2 There may be cases, for example, where a charity has been established to relieve the condition of nationals of a certain country living in the UK. The OISC is not stating that advisers working for such organisations must take on clients from other nationalities. But, if prospective clients from other nationalities seek assistance, they must be treated with courtesy and respect and be effectively referred to another advice provider. The OISC views discrimination and the lack of effective signposting and referral procedures seriously (see Code 43).

7. Client care

- 7.1 The Commissioner views the adviser's behaviour towards, and treatment of, their clients and other interested parties as vital in the delivery of a professional service. Advisers owe a duty of trust to their clients and this lasts beyond the immediate client/adviser relationship.
- 7.2 This section of the note informs advisers about the OISC's regulatory requirements in relation to client care, which are found in Codes 10–12.

Code 10: An adviser must recognise that some clients, as a consequence of illness or traumatic experience, may be unable to provide a full account of events pertaining to their case. An adviser must aid such clients in seeking appropriate assistance including obtaining at an early stage reports which may be required as part of the proper handling of the client's case.

Code 11: An adviser must ensure that the client receives a full explanation, using an interpreter to explain, if necessary, the implications of their position and any proposed course of action. This advice and any instructions must be confirmed in writing.

Code 12: An adviser must not abuse their position in respect of a client or take any advantage of the client's vulnerability.

8. Sensitivity to client needs

- 8.1 The Commissioner insists that advisers should always act objectively and in their client's best interest (see Code 9). Failure to do so may result in the adviser being subject to regulatory procedures. More importantly, however, it may result in their client's cases being prejudiced.
- 8.2 Clients should be interviewed in order to obtain as full an account of the events of their case as possible. It is recognised, however, that this is not always possible. If it proves impossible to interview a client, such as in asylum cases, the Statement of Evidence Form self-completion questionnaire (SEF/SCQ) should be returned to the Home Office with a medical certificate and covering letter from the adviser explaining the situation. It is stressed that this is only to be used in cases where clients are suffering from a genuine incapacity.

- 8.3 In some cases, a client who is suffering from severe mental illness may not be able to assist in completion of the SEF/SCQ or attend a Home Office asylum interview. However, their case will still need to be prepared (see further guidance under Code 10) by someone who has experience of dealing with clients who are vulnerable or have mental health issues.
- 8.4 There may be non-asylum cases where mental incapacity is also an issue, for example, in cases of dependent family members. Such difficulties must be recognised and dealt with appropriately.
- 8.5 In cases where a client is suffering from mental health problems and/or may have experienced torture, an adviser must refer them to an appropriately skilled medical practitioner to obtain a medical report on the matter. This should be done as soon as possible.
- 8.6 Advisers should refer cases to country experts in order to obtain expert reports in relation to a client's fear of persecution based on the client's Convention reason. Advisers should note that there are other methods of obtaining such reports, such as web-based research. It may not be possible to obtain such a report before the Home Office makes a decision on an asylum claim. In the event that the Home Office refuses the application, the adviser may need to commission the country expert to write a report to support an appeal before the AIT.

9. Duty to explain

- 9.1 Clients must be informed about the steps that are to be taken in relation to their case and the implications of each step. The different options open to the client should be explained to them with the attendant risks, and the adviser should explain which option they consider to be the best. This advice should form part of the client care letter. Please also refer to Codes 32–36 and 81–90.
- 9.2 The client should be informed of the name of the person who is responsible for the conduct of their case and how to contact that person in the event of an emergency or otherwise.
- 9.3 Details should also be given about any supervisory arrangements, where appropriate (Codes 27 and 28).

- 9.4 The client should be informed of the likely time that the case will take. This may change and, if it does, the client should be notified. Clients should be informed of any serious delays. Client requests for information should be responded to in a timely manner. Clients should also receive copies of all letters received by the adviser in relation to their case.
- 9.5 Clients should be notified in writing of the risks in relation to their application. The assessment of risk in relation to a client's case should be reviewed at regular intervals, and clients should be notified of any changes in risk level.
- 9.6 It may not be possible to provide the client with an explanation of the steps that are to be taken in relation to their case and the implications of each step for them. For example, due to distress or other incapacity, it may be insensitive or impractical to provide an explanation. If that is so, then the relevant information should be supplied as soon as possible thereafter.
- 9.7 It is strongly recommended that advisers in their client care letters explain that they have professional indemnity insurance cover (see Codes 67–69) giving the name of their insurer and their insurance policy number.
- 9.8 All such information should be in a language that the client can understand.

10. Position of trust

- 10.1 An adviser must not take advantage of a client's age, inexperience, ill health, want of education, emotional state or any other vulnerability. The Commissioner would view it as a serious breach if an adviser did so. An adviser is in a position of trust. They should not seek to take advantage of that position and should prevent others from doing so. For example, an adviser must not accept instructions that they suspect have been given by a client under duress or undue influence. In such a case, a client should be seen alone to avoid pressure being placed upon them by third parties. Such a course of action may be appropriate where a client is party to a suspected proposed or actual forced marriage. Advisers can obtain further information on forced marriage from the Foreign and Commonwealth Office at www.fco.gov.uk

10.2 An adviser should avoid entering into a sexual or other inappropriate relationship with their client that could be viewed as compromising their independence or the impartiality of the client/adviser relationship and/or could constitute an abuse of power. In such circumstances, the adviser will need seriously to consider whether they are capable of acting in the client's best interests or if a conflict of interest has arisen. If a conflict of interest situation arises in this way, then the client's matter should be referred onto another adviser.

Interpreters and translations

- If the client does not speak English and the adviser does not speak their language, the adviser must arrange for an interpreter to be present when they meet the client.
- The adviser must arrange for documents that specifically support the client's case to be translated into English.

Deadlines

- The case may involve short deadlines in which certain things, such as sending applications and appeals, must be done.
- The adviser must make sure that they do not miss deadlines.
- Advisers must encourage their client to give them all the information about their case and allow more time where the client is clearly traumatised.
- Advisers must encourage clients to tell them about any changes as soon as possible.

Preparing a statement

- If relevant, the adviser should help their client prepare a written statement setting out their story.
- The adviser should give the client the opportunity to read the statement, confirm whether it is accurate and sign it before it is sent to the Home Office or to a court.
- A copy of the statement should be given to the client in a language that they understand.

Written representations and evidence

- An adviser should write to the Home Office setting out and arguing the client's case. The client should be given a copy of that letter.
- The adviser may need to get reports and other evidence to support the client's case.

Home Office interviews

An adviser should:

- explain to the client the purpose of Home Office interviews and what to expect;
- go with them to interviews (where funding allows) that relate to the details of their case or send an assistant; and
- where required, bring an interpreter with them (again where funding allows) if the interview is to be carried out in a language other than English.

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