

Aim and purpose

Promoting good practice is a statutory duty of the Immigration Services Commissioner. This note and others in the Immigration Services Commissioner's (OISC) series of Guidance and Practice Notes gives guidance on various subjects. This particular note is on signposting and effective referrals by regulated immigration advisers.

Contents

Introduction

- Signposting
- When to signpost
- Referrals
- When to refer
- Following a referral
- Experts
- Referral Relationships and agency
- Referral checklist

Introduction

1. The phrase “immigration advice and services” covers a wide variety of activities (see Commissioner’s introduction to the *Code of Standards* [the *Code*]. Regulated advisers must meet the standards set out in the *Code* (<http://oisc.homeoffice.gov.uk/servefile.aspx?docid=6>). Central to this is the requirement in **Code 9** that advisers act in the client’s best interests.
2. The Commissioner believes that immigration advice should be good regardless of who is giving it, that people should receive timely service from an appropriate source as soon as possible, if necessary by signposting or referral, and that, if an adviser cannot provide the service needed by their client, they should direct them as appropriate.
3. Direction to another adviser, depending on the circumstances, may be either by signposting or referral. **Codes 41 to 47** and **89** of the *Code* focus on these areas.
4. While the Codes are explicit, the Commissioner wishes to use this note to clarify what is expected of advisers when signposting or referring. It must be remembered that, where an adviser’s principles or charter only permits services to be offered to specific client groups, this must be clearly reflected in their signposting and referral procedures (**Code 31**).

Signposting

5. Signposting means directing an enquirer to other more suitable advisers. However, it is not good practice for advisers simply to send someone away saying they cannot help without:
 - assessing what level of service they need; and
 - finding out whether the other adviser can provide the required service.
6. Advisers who cannot provide the service required or lack the capacity to do so must advise enquirers accordingly, and must try to direct them to another provider. This should be done at the earliest possible opportunity, preferably at the first meeting or enquiry.

7. Advisers must implement a signposting and referral policy that ensures that clients and enquirers are helped effectively. This is especially important for advisers that cater to particular groups that may be especially vulnerable.
8. While some advisers are regulated at all categories (e.g. immigration and asylum), many give advice only in specific areas, such as EEA Law. If an adviser cannot advise, they must signpost to a fully competent adviser and their signposting procedures must reflect this.

When to signpost

9. Circumstances where it would be appropriate to signpost to another adviser include:
 - The service required is not, or cannot be, provided by the adviser as it is beyond their OISC authorised level;
 - The service required is specialist legal advice on a specific subject or area of law that the adviser cannot provide;
 - The adviser cannot deal with the case due to their workload or personal circumstances;
 - The case needs urgent action that the adviser cannot provide;
 - The adviser thinks there could be a conflict of interest if they take on the case; or
 - The adviser decides to withdraw from the case.
10. The adviser should first assess the person's needs. If the adviser cannot provide the services needed, they should give the person a list of other advisers who are likely to be able to help. Advisers may wish to use the adviser finder on the OISC's website at www.oisc.homeoffice.gov.uk, or call the OISC on 0845 000 0046 (local rate) or 020 7211 1500, or use the Community Legal Service directory or the Law Society directory to generate a suitable list.

Referrals

11. Referrals are more complex than signposting because the person is already the adviser's client so a fiduciary and financial relationship will exist. **Code 9** states that an adviser must always act in the client's best interest, so the

decision to stop representing or to refer a client must be in the client's best interest. If, after taking on a client, an adviser cannot continue, they must:

- inform the client in writing setting out their reasons; and
- Direct them to other possible service providers (**Code 43**).

12. They must inform the client of possible extra costs that may result from the referral.
13. The Commissioner considers that a referral has taken place when the adviser passes the whole of the handling of the client's case to another person or organisation which then takes over responsibility for it. For the purpose of this note, a referral does not occur if the adviser is only seeking advice on a particular aspect or point in case while keeping ownership of it. (**Code 37 and paragraph 20 below on experts**).
14. While an adviser may sometimes feel obliged to refer or withdraw from a case, they must not leave the client without representation at short notice at critical stages of their case without appropriate referral. The adviser should ensure that the client receives a seamless service and is not placed at a disadvantage during, or because of, a referral. The transfer of the client's files or documents should be done in a timely manner.
15. The choice as to who represents a client should remain solely that of the client's. An adviser may recommend a suitable adviser but, the decision whether to choose that adviser must remain with the client's. An adviser must not force a client to choose a particular adviser.
16. Depending on the circumstances of the referral, the Commissioner considers it good practice for advisers to:
 - contact the new adviser and make an appointment for the client; and
 - arrange for the transfer of the client's file with the client's consent.

When to refer

17. Advisers should seek a referral when:

- There is a real or potential conflict of interest between two of the adviser's clients or between the adviser and the client;
- The case is within the adviser's area of expertise but is too complex for them to handle or involves a type of representation that the adviser cannot provide;
- The case involves some aspect outside the adviser's expertise;
- It is necessary or desirable to instruct a barrister, but the adviser cannot do this without first instructing a solicitor (not having the option of using Licensed Access or the Public Access Scheme);
- The adviser does not have time to handle the case properly; or
- The client has lost public funding, the adviser having applied previously for legal aid.

18. The advisers must ensure that there is a full handover.

Following a referral

19. On receiving the referral, the new adviser must take complete ownership of the case.

Experts

20. If advisers wish to refer a question to a barrister for an opinion or representation, they may wish to refer to the OISC's Guidance Notes on the Licensed Access Scheme <http://oisc.homeoffice.gov.uk/servefile.aspx?docid=234> or the Public Access Scheme <http://oisc.homeoffice.gov.uk/servefile.aspx?docid=225>. Conflicts of interest and the use of interpreters are covered in the Guidance Note on meeting client needs and client care <http://oisc.homeoffice.gov.uk/servefile.aspx?docid=49>

Referral Relationships and Agency

21. Advisers may have referral relationships with other advisers or solicitors. For example, a Level 2 adviser may have a particular Level 3 adviser to whom they refer, or a Level 1 adviser may have a Level 2/3 to whom they refer

more complex cases. This must not place any obligation on a client to use these advisers, and such relationships must not involve any payment of money. An OISC regulated adviser must not offer or receive a referral fee for taking on a client (**Codes 45 to 47**).

22. Advisers must not, in the general course of business, act as agents on behalf of solicitors or other legal representatives. Advisers must not enter into an agency relationship with solicitors or other legal representatives for the provision of immigration advice or immigration services to the adviser's existing client. There are very few instances where an OISC adviser can act as an agent for a firm of solicitors. This is only allowed where there is a genuine emergency, such as where last minute representation is necessary.

Archived

OISC

REFERRAL CHECKLISTS:

The process for handling a client referral

1. Decision is made to refer.
2. Client is notified.
3. Other suitable service providers are contacted by the adviser to find out if they have sufficient capacity.
4. Client is informed of other providers.
5. Adviser contacts other providers to set up an appointment for the client (with the client's consent).
6. Adviser transfers the client's files to the new adviser (with the client's consent), while keeping a copy.
7. Former adviser notifies the UKBA, if appropriate, that the adviser is no longer acting for the client.
8. Former adviser closes the client's file.

The process for handling an incoming referral

1. Initial contact from former adviser.
2. Decision to accept referral in principle.
3. Initial meeting with the client to determine what they need and what will be done for them and if they wish the adviser to act.
4. Confirmation of the client's instructions by issuing a client care letter including the information on fees and payments.
5. A signed copy of the instructions is obtained from the client.
6. Request the client file and all relevant papers from the previous adviser.
7. Notify the UKBA, if appropriate, that they are now acting for the client and all correspondence should be sent to the new adviser.