



The Code of Standards

Consultation

3 November 2014- 30 January 2015

Consultation on the *Code of Standards*

Introduction

1. In June 2013 we started the process of a major review of the *Code of Standards* [the *Code*] and the *Commissioner's Rules* [the *Rules*]. Our first consultation asked for responses on the style, structure and content of those two documents. In particular, we sought comments on:
 - whether those documents should essentially remain as written or take a more principle-based or a more prescriptive approach;
 - whether the documents should be consolidated; and
 - some suggested new codes.
2. We explained that a second consultation would be published in 2014. In preparing this consultation we have taken into account the responses we received to the first consultation. Readers can find that consultation, the Office of the Immigration Services Commissioner (OISC) report on that consultation and details of the responses received via these hyperlinks
 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/230205/Code-and-Rules-Initial-Consultation-FINAL.pdf;
 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260454/report_consultation.pdf;
 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260457/responses_consultation.pdf .
3. This consultation is being conducted in accordance with the requirements of Part V of the Immigration and Asylum Act 1999 (the 1999 Act)¹. The consultation is conducted in line with the guidance set out in the Consultation Principles that govern the activities that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation (<https://www.gov.uk/government/publications/consultation-principles-guidance>). This consultation was launched on 3 November 2014 and will remain open for thirteen weeks until 30 January 2015.
4. An initial assessment of the consultation's proposals has indicated that they will have minimal impact. Therefore no impact assessment has been produced. We accept that there may be some impacts on immigration advisers in understanding the changes, but these are expected to be small. The OISC asks that consultation respondents include in their responses any feedback together with evidence, if possible, on the potential range and scale of costs, benefits and risks that they believe may be associated with any of the proposals contained in this consultation.
5. Subject to the responses received to this consultation, the intention is for the new *Code*, which will, as explained at paragraph 18 below include the *Rules*, to be implemented no later than September 2015.

How to respond to this consultation

6. We encourage respondents to comment on all the consultation questions. This is not obligatory, and respondents can provide responses to all, or as many, of the consultation questions as they wish. We would, however, find it helpful if responses are as full as possible

1. Part V Schedule 5 paragraphs 1(2), 3(5) and (6)

including, if possible, evidence and reasons, and, if appropriate, suggest alternative wording if respondents are of the opinion that the suggested drafting does not convey the correct message.

7. By email or post - You can download the attached copy of the response form.
8. Please send your completed response forms by no later than 30 January 2015 to one of the following addresses:

Electronic: consult@oisc.gov.uk

By post: Sharon Harris
Code of Standards Consultation
Office of the Immigration Services Commissioner
5th Floor
21 Bloomsbury Street
London
WC1B 3HF

9. If for any reason you are dissatisfied with the consultation process, please contact:

Clyde James
Head of Policy, Publications and Stakeholders
Office of the Immigration Services Commissioner
5th Floor
21 Bloomsbury Street
London
WC1B 3HF

10. If you have any questions, please write to Sharon Harris at the above address or email her at consult@oisc.gov.uk.

Confidentiality and Freedom of Information

11. The information you send us may need to be passed to colleagues within the OISC, published in a summary of responses received and referred to in the published consultation report.
12. All information contained in your response, including personal information, may be subject to publication or disclosure, if requested, under the Freedom of Information Act 2000 (as amended). By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.
13. The OISC is subject to the Freedom of Information Act 2000 (as amended), and will consider any request for information relating to responses made to this consultation in accordance with that Act.

Background

14. The Immigration Services Commissioner and her Office, the Office of the Immigration Services Commissioner (OISC), was created by the 1999 Act. The Commissioner has regulatory, complaint-handling and law enforcement functions in respect of the giving of immigration advice and services in the UK². Full information about the Commissioner's functions and the types of organisations and advisers which the OISC regulates can be found using this hyperlink <https://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner>.

15. Currently the Commissioner's regulatory scheme is based on four separate documents (which can be found via these hyperlinks)
 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322737/code_of_standards.pdf ;
 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322740/the_complaints_scheme_2012.pdf;
 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/327534/guidance_on_competence_2012.pdf .These set out what she expects of regulated immigration advisers in terms of skills, experience and aptitudes and of regulated organisations in the way they conduct their business and the quality of the service they provide. These documents are:
 - The *Code*;
 - The *Rules*;
 - The Complaints Scheme (presently the subject of a separate consultation); and
 - Guidance on Competence.

16. For the Commissioner to remain an effective regulator these documents, as we explained in our initial consultation, need to be fit for purpose - current, effective and useable - for the regulated, the regulator and for the wider sector.

How the new *Code* differs from previous versions

17. As a result of the responses we received to the first consultation and internal discussions, the version of the *Code* on which we are consulting is substantially different from the current document in terms of style, structure and content. New codes have been added while some codes have been deleted and others changed.

18. Further, considering the virtually unanimous "yes" response to the question asked about the *Rules* in the previous consultation, the *Rules* are no longer presented as a separate document. Instead their content has been replicated in the *Code*, and immigration organisation and advisers will be required to follow them as they would any other *Code* provision.

2. Unless regulated by another body or exempted by Ministerial Order, it is illegal to offer immigration advice and/or services without being regulated by the Immigration Services Commissioner. The Commissioner also has oversight regulatory responsibility for persons regulated by a Designated Professional Body in Scotland or Northern Ireland who provide immigration advice or services.

19. The new *Code*, while retaining some prescriptive codes such as code 22, the client care letter, has generally taken a more principle-based approach which will be complemented by Guidance Notes, as explained at paragraphs 20 to 22 below. We have also rearranged the sections of the *Code* to make it more user-friendly.

The relationship between the new Code and Guidance Notes

20. We appreciate that guidance is a very useful accompaniment to a more principle-based *Code*, and we have indicated in the consultation where we expect that a Guidance Note will accompany a particular code or codes. It would be helpful if respondents would comment on where they think guidance would be useful and, if possible, specifically on what aspect or aspects.
21. Guidance Notes provide some “flesh on the bones” in the sense that they set out, but not exhaustively, the ways in which organisations and advisers can satisfy a provision of the *Code*. Guidance Notes offer helpful explanation and direction, and are instructions to the regulated as to what the Commissioner expects to be done or not to be done in fulfilment of a *Code* obligation.
22. Guidance Notes assist in the application and interpretation of a code or codes, but they are not themselves provisions of the *Code*. If a regulated organisation or adviser fails to follow a Guidance Note, then the Commissioner may consider that they have acted in breach of the accompanying provision of the *Code*, although whether a failure to follow the guidance would amount to a breach of a code provision would depend on the circumstances.

Regulated organisations includes individual advisers

23. The Commissioner regulates organisations with which individual advisers are authorised to work. Because of this, as explained in the Introduction to the *Code*, most of the codes refer to organisations. It is important to understand and appreciate that where a code refers to organisations, individual advisers at that organisation are automatically included under that term.

The new Code

24. Pages 1 to 11 of this consultation contain the new Code. At the end of the Code we have asked you to respond to the following question:

Please provide any comments with respect to each of the sections of the Code. These are listed below in the order in which they appear in the document. You can give general comments and/or specific comments on the codes or parts of a code that appear in that section and also advise if you think anything requires amendment, deletion, addition or would benefit from an accompanying Guidance Note. Please also include any comments on any range and scale of costs, benefits and risks associated with any specific section or generally. If the latter, please include these in the separate box located at the end of the response form

We would find it very helpful if respondents would give the reasons for their comments and suggestions for improvement and/or clarification. If you think a code requires amendment or a new code is required, it would be helpful if you would include in your response suggested drafting or alternative wording.

A separate box is provided at the end of the response form which may be used for any other comments you may wish to make.

We would like to thank you for considering the contents of this consultation and we very much look forward to receiving your comments.



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Introduction

- i) This introduction forms part of the *Code of Standards* (the *Code*). This *Code* is made in accordance with Schedule 3, paragraph 3 and paragraph 1(1) of Schedule 5 of the Immigration and Asylum Act 1999 (the Act), as amended. The term 'Commissioner' for the purpose of the *Code* includes the Immigration Services Commissioner, the Deputy Commissioner, their staff and any agent acting for them, or on, their behalf.
- ii) The *Code* applies to any organisation or person providing immigration advice /or services in the UK in relation to a “relevant matter” as listed in section 82 of the 1999 Act except for those listed in Schedule 5, paragraph 3 (3)¹.
- iii) Guidance Notes assist in the application and interpretation of a code or codes, but they are not themselves provisions of the *Code*. If a regulated organisation or adviser fails to follow a Guidance Note, then the Commissioner may consider that they have acted in breach of the accompanying provision of the *Code*, although whether a failure to follow the guidance would amount to a breach of a code provision would depend on the circumstances.
- iv) In this *Code* references to:
 - the Commissioner refers to the Immigration Services Commissioner;
 - organisations encompass both registered organisations² and advisers even if the word adviser is not used. Some codes refer to advisers and this is to make clear where there are personal responsibilities; and
 - written notifications and communications where referred to in the *Code* can be given by hard copy letter, email or fax.

1. Those excluded are people authorised to practise by virtue of membership of a designated professional body, designated qualifying regulator or those working under their supervision, people holding office under the Crown, people exercising functions on behalf of the Crown, employees of, or those acting for, the purpose of the Crown and those acting under the control of a Government department.

2. The Immigration Act 2014 created a unified category of OISC regulated organisations known as registered organisations. Before the 2014 Act regulated organisations were classified under two categories registered (for-profit) and exempt (not-for-profit).

General Codes

1. Organisations must always act in accordance with UK law.
2. Under the OISC regulatory scheme an adviser is only authorised by the Commissioner to work for a specific organisation or organisations.
3. No organisation must operate beyond their Level or in categories for which they have not been authorised.
4. All organisations must remain fit and competent for the Level and categories for which they are authorised.
5. When giving immigration advice or immigration services, organisations must act competently.
6. An adviser must be able to demonstrate that they are compliant with the Commissioner's Continuing Professional Development requirements.
7. Advisers must clearly identify themselves when giving immigration advice or immigration services.
8. An organisation must ensure that no unauthorised person(s) provide immigration advice or immigration services.

Guidance will accompany Code 8

9. Organisations must always act in their clients' best interests subject to regulatory and legal requirements.
10. Organisations must not abuse their position in respect of a client or prospective client or take advantage of a client's or a prospective client's vulnerability.
11. Organisations must not mislead their clients.
12. Organisations must, as far as reasonably practicable, satisfy themselves that documents supplied to them in support of an application are genuine.

13. Organisations must
 - a. show due respect, politeness and courtesy to all;
 - b. be prepared to provide to a member of the Tribunal Service staff, immigration judge or government immigration and nationality staff, including those at posts abroad, identification and confirmation of their authorisation by the Commissioner to provide immigration advice or immigration services;
 - c. not mislead the Commissioner, government departments or any other statutory body;
 - d. not knowingly permit themselves to be used in any deception; and
 - e. not seek to abuse any procedure, operating in the UK in connection with immigration or asylum, including any appellate or other judicial procedure or advise any person to do something which would amount to such abuse.
14. Organisations must treat their clients fairly and without prejudice or bias and have a written equality and diversity policy that meets current statutory requirements.
15. Where an organisation has a policy of offering immigration advice or immigration services only to specific client groups, the organisation must make this publicly clear.

Provision of immigration advice and services online

16. An organisation which offers immigration advice or immigration services online must ensure that their online information clearly explains what immigration advice and services they can provide, the generally expected timeframes for delivery of such work and associated costs.
17. An organisation which provides immigration advice or immigration services online must have a clear and prominent statement on their website that the organisation complies with current regulations including any cooling-off period to which clients are entitled.

Conflict of interest

18. An adviser must explain fully and clearly in writing to a client or a potential client any circumstances in which they or their organisation have, or could gain, any interest or advantage in agreeing to act for the client or of a real or potential conflict they may have in acting or continuing to act. The client having received this information must be given sufficient time to consider it, and must give their consent in writing before the organisation or a particular adviser in that organisation can begin to act or continue to act.

Client care letter

19. An organisation must provide all potential clients with a client care letter.
20. The adviser must ensure that the potential client understands the contents of their client care letter before being asked to agree it. The organisation should not do any work for a potential client until they have agreed their client care letter, other than in exceptional circumstances.
21. An organisation must keep a record of the client's agreement to their client care letter either by way of a signed and dated copy of the letter or evidence of their agreement electronically.

22. A client care letter must contain:

- a. a statement identifying the client(s) for whom the organisation is acting;
- b. a statement of the client's position and the options proposed by the adviser;
- c. full details of the client's instructions, the work agreed to be done with estimated timeframes;
- d. confirmation of the costs estimated or agreed (including whether it is a fixed fee, includes VAT and expenses) and how and when payment(s) will be made;
- e. confirmation that if client money is held by the organisation on behalf of the client, such money remains the client's until the client is invoiced and payment is due;
- f. information explaining what, if any, additional costs may be incurred for which the client may become liable;
- g. contact details of the adviser dealing with the matter including their name, address, telephone number and email address;
- h. confirmation that if the client is required to hand over any original personal documents to the organisation, the client will promptly be given copies of those documents;
- i. details of the organisation's complaint-handling procedures;
- j. other terms and conditions of the agreement, and, if regulations related to online selling are relevant, the client's protections under relevant legislation;
- k. confirmation that the organisation is regulated in the UK by the Commissioner and that the Commissioner has the power to examine the client's file;
- l. confirmation that the instructed organisation retains full responsibility for all work done on behalf of the client.

Guidance will accompany Codes 19- 22

Confidentiality

23. An organisation must ensure the confidentiality of all of the information it holds relating to each of its clients.

24. An organisation must ensure that discussions or the giving of information relating to immigration advice or immigration services are conducted in a confidential manner.

Guidance will accompany Codes 23 -24

Keeping clients informed

25. An organisation must notify its clients in writing of any changes to the organisation's contact details.

26. An adviser must ensure that each of their clients is kept regularly informed in writing of the progress of their case, and, at a minimum, receives an update every three months.

27. An adviser on receiving notification of the outcome of a client's case or of any other significant related event must within three working days notify the client in writing.

28. An adviser must explain to their client any substantive changes in the client's circumstances or in their case of which the adviser becomes aware, the implications of these for the client and advise them on any suggested course of action. The adviser must promptly provide the client with a written statement summarising this information.
29. If the client, having been informed of the outcome of their case or other significant related event, gives additional instructions to the adviser, these must be recorded by the adviser in writing together with any associated costs or expenditure agreed before any additional work is undertaken.

Interpreters and translators

30. An organisation must ensure a suitable interpreter or translator is used, if required.

Obtaining additional advice, opinions and other professional services

31. An adviser, having obtained their client's consent, may obtain additional advice, opinions or other professional services from suitably qualified organisations or persons on behalf of the client.
32. Any fees and costs which are likely to be incurred as a result of obtaining additional advice, opinions or professional services must be made known to the client in writing and agreed by the client before any request is made. A file note documenting the client's consent must be placed on the client's file and a copy given to the client.
33. Responsibility for the payment of any fees and costs incurred as a result of obtaining additional advice, opinions or professional services remains with the organisation.

Outsourcing work

34. An organisation may, with the client's written consent, outsource a particular aspect of the client's case. The instructing organisation retains responsibility and overall control of the client's case including for the quality of the outsourced work done.
35. Outsourced work cannot be above the instructing organisation's Level and categories.

Guidance will accompany Code 34 - 35

Temporary inability to work

36. An organisation must have arrangements in place to ensure that, should the client's adviser be unable to work for a temporary period, the client's case can continue to be progressed either by the organisation or by a suitable alternative regulated organisation.

Guidance will accompany Code 36

Termination of instructions by the client

37. If a client terminates their instructions, the organisation must arrange for all documents relating to the client's case to be returned to the client or to such third party as the client may direct as soon as practicable. Where the client is in detention or their removal is imminent, their file must be delivered as the client directs and no later than three working days from the receipt of notification of termination of the instructions.

Withdrawing from a case

38. An organisation must not withdraw or threaten to withdraw from a case except for good reason.

39. An organisation that seeks to withdraw from a case should give the client at least three working days' notice of this, together with written reasons for its decision. Where practicable, the organisation should inform the client of other suitably qualified organisations which may be able and willing to act for the client.

40. If an organisation withdraws from a case, it must inform all those involved in the case of its withdrawal and which organisation is now acting, if known, for the client. A written note of the new organisation's name and contact details should be placed on the client's file.

Guidance will accompany Codes 38-40

Transferring the client's file

41. Where a client requires that their case be transferred to another organisation, irrespective of whether payment is outstanding, all documents relating to the client's case must be transferred as soon as possible, and, in any event, no later than three working days.

Ending of a client's case

42. On the completion of a client's case an organisation must provide the client with a written statement containing the following information:

- a. confirmation that the case has been completed;
- b. a list of the original documents returned to the client; and
- c. a final financial statement.

43. Where the client's case has not been completed, but the client has withdrawn their instructions or the organisation has decided to withdraw from the case, an organisation must, if possible, provide the client with a written statement containing the following information:

- a. confirmation that the client has withdrawn their instructions before the case was completed or that the organisation has withdrawn before the case was completed;
- b. a list of the original documents returned to the client; and
- c. a final financial statement.

Referral fees

44. An organisation or adviser must not demand or accept from any organisation or person a fee, commission or any other compensation for referring or recommending a client.
45. An organisation or adviser must not offer or accept an inducement for taking on a client or offer an inducement for referring a client to another organisation or person.

Running the organisation

46. An organisation must have and effectively apply appropriate management structures, governance arrangements, processes and policies to support and maintain a viable and sustainable business. These must be available for inspection by the Commissioner.
47. An organisation must inform the Commissioner of the individual who has specific overall responsibility for those who give immigration advice or immigration services within their organisation.
48. An organisation must have a business plan for its current business year together with cash flow/funding projections.
49. An organisation must have current and adequate professional indemnity insurance.

Supervision of a person operating above their Level or category

50. An organisation is permitted to have person(s) operating above their authorised Level or in categories for which they are not authorised if the Commissioner has given written approval of the organisation's supervision arrangements.

Guidance will accompany Code 50

Records and case management

51. An organisation must have 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 their clients' cases. These records must be held securely, and records relating to a particular client or former client must be accessible to them and to the Commissioner.
52. Records of actions done 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.
53. When an organisation receives a client's original documents it must promptly provide the client with a photocopy of that document. The original documents must be returned to the client as soon as possible.
54. An organisation must ensure that all client records are kept for at least six years.

Guidance will accompany Codes 51- 54

Fees and accounts

55. An organisation which has not paid the Commissioner the required application fee must not charge clients a fee for the provision of immigration advice.
56. An organisation that charges for its immigration advice or immigration services must have a fee scale which is agreed by the Commissioner. A copy of this fee scale must be available to the Commissioner upon request.
57. The Commissioner must be informed in writing if an organisation proposes to change their fee scale at least ten working days before such changes are put into effect.
58. An organisation that charges for its immigration advice or immigration services must only charge a reasonable fee that directly relates to the work done.
59. An organisation which requires payment must first submit a written invoice to the client.
60. Where the client has given prior authorisation for payments to be made from a credit or debit card, fees invoiced may only be taken by the organisation seven days after the invoice has been provided to the client.
61. Where an organisation holds money for a client, such money must be held in a distinct client account and this account must be kept completely separate from the organisation's business account.
62. An organisation must promptly return to the client any money in the client's account at the end of the client's case or when the client has decided to terminate their instructions or the organisation has withdrawn from the case.
63. An organisation which has agreed to refund money to a client or is holding money in the client account for immigration advice or immigration services not delivered must promptly return such monies to the client.
64. An organisation which takes monies and/or fees must keep accurate accounts including a specific written record of every transaction undertaken for each of its clients.
65. An organisation must maintain accurate financial records. The Commissioner must be given access to all such financial records.
66. An organisation must have audited, certified or otherwise verified business accounts. The Commissioner must be given access to all such accounts.

Guidance will accompany Codes 55- 66

Display and use of the OISC registration number, OISC logo and OISC certificate of registration

67. An organisation's OISC registration number must be displayed on all of its printed and electronic publications including websites, advertisements, publicity material, letterheads and business cards.
68. The OISC logo must only be used in accordance with the instructions contained in the organisation's approval letter.
69. An organisation's current OISC certificate of registration must be prominently displayed at its main business premises. If the organisation also carries on business at branch offices, information must be prominently displayed at those offices as to where the organisation's OISC certificate can be viewed.

Business promotion

70. An organisation which advertises immigration advice or immigration services must ensure that its material clearly explains the advice or services offered and these descriptions, along with the qualifications and competence Levels of those who provide them, must be accurate and not misleading. The organisation retains overall and absolute responsibility for this information.
71. An organisation and those working for it or those associated with it must not tout for the business of providing immigration advice or immigration services.
72. An organisation and those working for it or associated with it must not orally or in writing include in any promotional material criticism of other organisations or advisers.
73. An organisation and those working for it or associated with it must not make promotional statements about their organisation's or individual success rates.
74. The name of an organisation must not have the potential to confuse or mislead clients.
75. An organisation must obtain the Commissioner's authorisation before making any change to the organisation's name.
76. The Commissioner can refuse an organisation's proposed change of name or require an organisation to change its name.

Guidance will accompany Codes 71 -76

Complaints

77. An organisation must have, and effectively apply, a written procedure for the handling of complaints approved by the Commissioner which includes a statement informing clients that they have the right to complain to the Commissioner.

Notifications to the Commissioner by organisations and advisers

78. An organisation which wishes to change its legal status must submit the appropriate application form to the Commissioner for authorisation to make this change. The organisation must not change its legal status until such authorisation has been given.
79. An organisation must notify the Commissioner in writing within 10 working days of any significant change to their business.
80. Advisers and any persons who own and/or are involved in the running of the organisation, must notify the Commissioner within 10 working days of any significant changes to their personal circumstances.
81. An organisation must notify the Commissioner of all its business addresses and any changes to those addresses within 10 working days.

Guidance will accompany Codes 79 - 81

82. Organisations and advisers must promptly report to the Commissioner any serious misconduct of which they become aware by any registered person or any person who owns and/or is involved in the running of a regulated organisation.

Guidance will accompany Code 82

Request for exemption from the Code's provisions

83. Organisations and advisers must apply in writing with reasons if it or they wish to be exempted from any code or part of a code. No organisation or adviser is exempt from any code unless the Commissioner gives written agreement to that request. If, and until, the Commissioner agrees to that request, the organisation or adviser must abide by the Code in its entirety.

Definition of terms

Section 82 of The Immigration and Asylum Act 1999 (as amended) defines:

Immigration advice as:

- a. relating to a particular individual;*
- b. is given in connection with one or more relevant matters;*
- c. is given by a person who knows that they are giving it in relation to a particular individual and in connection with one or more “relevant matters” (see below); and*
- d. is not given in connection with representing an individual before a court in criminal proceedings or matters ancillary to criminal proceedings.*

Immigration services as:

- a. in civil proceedings before a court, tribunal or adjudicator in the United Kingdom;*
- b. in correspondence with a Minister of the Crown or government department; or*
- c. in connection with one or more relevant matters.*

Relevant matters as:

- a. a claim for asylum;*
- b. an application for, or for the variation of, entry clearance or leave to enter or remain in the United Kingdom;*
- c. an immigration employment document;*
- d. unlawful entry into the United Kingdom;*
- e. nationality and citizenship under the law of the United Kingdom;*
- f. citizenship of the European Union;*
- g. admission to Member States under Community law;*
- h. residence in a Member State in accordance with rights conferred by, or under, Community law;*
- i. removal or deportation from the United Kingdom;*
- j. an application for bail under the Immigration Acts or under the Special Immigration Appeals Commission Act 1997; or*
- k. an appeal against, or an application for, judicial review in relation to any decision taken in connection with a matter referred to in paragraphs (a) to (j) above.*