

Aim and purpose

The law¹ says that the Immigration Services Commissioner must promote good practice. This note sets out her views on good practice in relation to:

- signposting – pointing an enquirer towards another adviser; and
- referrals – directing a client to another adviser.

The Commissioner believes that:

- immigration advice should be good regardless of who is giving it;
- people should receive timely service from an appropriate source as soon as possible, if necessary by signposting or referral; and
- if an adviser cannot provide the service needed by the client, they should direct the client to another adviser where appropriate.

Codes 12 and 13 of the Commissioner's Code of Standards focus on referrals and signposting. Referral fees are covered in Rules 22 and 23.

The Codes and Rules are explicit, but the Commissioner wishes to clarify what is expected of advisers. This Guidance Note indicates the standards she expects to find in regulated advice services. If your organisation believes that these standards are inappropriate to its circumstances, it must be able to show that its own standards are equal to them or better. Please remember, however, that the Commissioner expects regulated advisers to:

- keep as closely as possible to the standards outlined here; and
- ensure that they best serve their clients' interests.

¹ Section 83(3) of the Immigration and Asylum Act 1999

Commissioner's Rules and Code of Standards covered by this Guidance Note

Code 12

Referrals

An adviser who, having taken on a client, finds that he or she cannot provide the service needed by the client must inform the client in writing, giving reasons, and where possible direct him or her to an alternative provider. This does not prohibit an adviser, with the client's consent, seeking additional advice or opinion on an individual case whilst retaining responsibility for that case. Any fees likely to be incurred for additional advice or opinion must be notified to the client in advance. Details of the action taken and the written explanation should be recorded in the client's file.

Code 13

Active signposting

An adviser who is not qualified to provide the service required or does not have the capacity to provide it should advise the person accordingly and endeavour to direct that person to an alternative provider.

Rule 22

Fees for taking on clients

A registered person must not demand or accept from any person a fee, commission or any other compensation for referring or recommending a client.

Rule 23

A registered person must not offer or accept an inducement for taking on a client or offer such for referring a client to another person.

1. Signposting

- 1.1 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.
- 1.2 Signposting means pointing the enquirer in the direction of another more suitable adviser. 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.
- 1.3 Code 16(h) states that 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 such as abused women or Asian youths.
- 1.4 Some advisers are regulated at all categories (asylum, detention, EEA, entry clearance, etc), but many may give advice only in some categories. If an adviser cannot advise effectively, they must signpost to a fully competent adviser.
- 1.5 Signposting procedures must reflect this. They should include the provision of a list of other service providers.
- 1.6 **When to signpost**
 - The service required is not or cannot be provided by the adviser as it is beyond their authorised level of competence;
 - the service required is specialist legal advice that the adviser cannot provide;
 - another adviser would deal with the case more effectively;
 - the adviser cannot deal with the case due to their workload;
 - 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 a case.

- 1.7 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.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.

2. Referrals

- 2.1 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 service providers (refer to Code 15).
- 2.2 They must inform the client of possible extra costs that may result from the referral. Referrals are more complex than signposting because the person is already the adviser's client, so a fiduciary and financial relationship will already exist. Code 49 states that an adviser must always act in the client's best interest, so a decision to stop representing or to refer a client must be in the client's best interest. Reasons for referral are dealt with later in this note (see paragraph 2.5).
- 2.3 The Commissioner considers that a referral has taken place when the adviser passes the whole of the handling of a client's case to another person or organisation which then takes over responsibility for it. This does not prevent an adviser seeking advice on a particular aspect or point in a case while keeping ownership of it (Code 52).
- 2.4 While an adviser may sometimes feel obliged to refer or withdraw from a case, they must not leave the client without representation at critical stages of their case at short notice without appropriate referral.
- 2.5 **When to refer**

Advisers should seek a referral when:

- there is a real or potential conflict of interest between two clients or between adviser and client;
- the case is within the adviser's area of expertise but is too complex to handle or involves a type of representation that the adviser cannot provide;
- the case involves some aspect outside the adviser's expertise;
- representation is needed in courts/tribunals in which the adviser does not have right of audience;
- 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);

- the adviser does not have time to handle the case properly; or
- there is a lack of public funding for the case.

- 2.6 As stated above, an adviser must always act in a client's best interest. The adviser must ensure that the client receives a seamless service and is not placed at a disadvantage during or because of a referral. Transfers of clients' files or documents must be done in a timely manner.
- 2.7 An adviser must contact the client to explain why the case is being referred. This could be done in person or over the phone, but must be confirmed in writing. The adviser must give the client a list of other providers who can take on the case, having checked that they have the capacity and are willing to do so.
- 2.8 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 files, with the client's consent.
- 2.9 The choice of who represents a client should remain solely the client's. An adviser may recommend a suitable adviser but the decision whether to go there must remain the client's. An adviser must not force a client to choose a particular adviser.
- 2.10 On receiving the referral, the new adviser must take complete ownership of the case. There must be a full handover from the former adviser. The Commissioner does not believe it is in the client's best interest to have more than one adviser.
- 2.11 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. Such relationships must not involve any payment of money. An OISC-regulated adviser must not offer or receive a fee for taking on a client (Rules 22 and 23).
- 2.12 **The process for handling a client referral**
- 1 Decision is made to refer.
 - 2 Client is notified.
 - 3 Other service providers are contacted to find out if they have capacity.
 - 4 Client is informed of other providers.
 - 5 Client is notified in writing.

- 6 Adviser contacts other providers to set up an appointment for the client (with the client's consent).
- 7 Adviser transfers files to the new adviser (with the client's consent).
- 8 Former adviser notifies the Home Office that the adviser is no longer acting for the client.
- 9 Former adviser closes the client file.

2.13 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.
- 4 Confirmation of the client's instructions is given to the client by letter. This includes fees and payments that clients will be liable for. The letter should also inform the client that they could get the same service for free elsewhere.
- 5 Get a signed copy of the instructions from the client.
- 6 Request the client file and all relevant papers from the previous adviser.
- 7 Notify the Home Office that you are now acting for the client and all correspondence should come to you.

3. Experts

- 3.1 With the client's permission, an adviser could seek advice on an aspect of a case while keeping ownership of it, but this may only be done if it would not be in the client's best interest to refer the case. If advisers wish to refer a question to a barrister for an opinion or representation, they may wish to get more advice from the Guidance Note on the Licensed Access Scheme. Conflicts of interest and the use of interpreters are covered in the Guidance Note on meeting client needs and client care.

4. Agency

- 4.1 Advisers must not 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. The adviser must refer the case to a competent professional adviser.