

Contents

Introduction1
Transition.....2

Interview:
Operational Impact of Code
Deirdre Gilchrist.....3

Genuine Documents, Online Services.....4

Client Care.....5

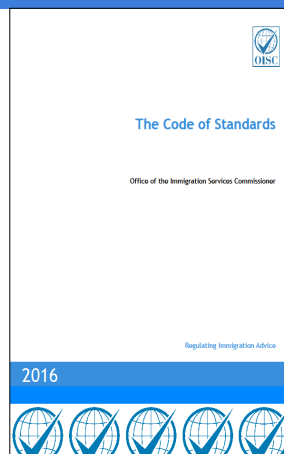
The End6

Points to Note7

**COMPLETE YOUR
CPD FOR
2015/16 BEFORE
31 MARCH!**



Welcome to this the third and final issue of our series of special editions of OISCNews that have been dedicated to the new Code of Standards which comes into force on 1 April 2016.



The 2016 version of the Code of Standards is radically different from previous versions in that it incorporates what was previously known as the Commissioner’s Rules and is very much principle based. The purpose of these special newsletters has been to ensure that registered organisations and advisers are fully aware of the new Code and what they need to do to ensure compliance with its requirements.

Seminars on the new Code of Standards

As stated, the 2016 Code of Standards is a radical departure from all previous OISC Codes, in terms of ethos, approach and standards. To assist advice organisations to become fully conversant with the changes made to the Code the OISC is presenting a series of seminars.

We have planned the four following events which will be held in central London.

13 th May 2016	30 th June 2016
AM – Code of Standards	AM – Code of Standards
PM - Code of Standards	PM – Code of Standards

We held our first seminar on the new Code on 7 March, there were 44 attendees that included advisers from the fee charging and non-fee charging sectors, all advice Levels and regulatory compliance officers. The Participants were provided with documents prior to their attending, and this with the topics discussed gave rise to active debates and a greater understanding of the changes made to the Code and new requirements.

We will hold further seminars in the coming months in London, Glasgow, Manchester and Sheffield.

Places will be limited so only one person from each particular organisation may attend. Please note that the allocation of places is generally on a “first come, first served” basis. The seminars are open to advisers and regulatory compliance officers within registered organisations. There will only be 50 places available at each seminar, so if you are invited, please ensure that you attend.

“How a complaint is to be dealt with will depend on when the events complained of occurred.”



Transitional Arrangements

The 2016 version of the Code of Standards comes into force on 1 April.

All immigration advice or services provided **pre-1 April 2016** will be considered under the **2012 Code of Standards and Commissioner’s Rules**. All immigration advice or services provided **after 1 April 2016** will be considered under the **2016 Code of Standards**.

How a complaint is to be dealt with will depend on when the events complained of occurred. The transitional arrangements in how we will deal with complaints are aside.

In order to assist in compliance prior to 1 April 2016 organisation must:

- Ensure all registered advisers have read and understood the Code
- Identify any new or amended requirements of the Code and consider whether your organisation needs to put in place new systems to meet these requirements
- Ensure your templates (Especially your client care letters) are in line with the **2016 Code of Standards**

(i) If the events complained of happened before 1 April 2016	This will be considered under the 2012 Code
(ii) If the events complained of straddle the 1 April 2016 commencement	Depending on circumstances, both the 2012 and 2016 Codes may be engaged. Events that took place before 1 April will be considered under the 2012 Code, events that happened after the 1 April will be considered under the 2016 Code
(iii) If events complained of took place after 1 April 2016	This will be considered under the 2016 Code

Under (iii) above, some events such as record keeping or competence may be a constant issue throughout a matter and thus may be determined using both the 2012 and 2016 Codes.

“The Code encourages new ways of working and supports business for all parties through improving the information clients receive.”



What will advisers see as different under the new Code?

The OISC has seen real changes in the type of immigration advice and services clients require and the way such services are delivered. This new Code addresses these changes and advances in the sector. The processes by which clients may find advisers have changed, the types of clients advisers deal with and their position has also changed; some schemes for entry into the UK have closed and others have opened; further, an increasingly vulnerable client base is once again beginning to emerge with asylum numbers increasing. The way clients and their advisers communicate has also changed. In response to these changes and the complaints and concerns raised by the sector we believe we have developed this new Code that sets good standards in new areas such as online working and payment. The Code also encourages new ways of working and supports business (such as the ability to now outsource work) and ensures transparency for all parties through improving the information clients receive. There is no intention to add to the burden on businesses and the reduction of the number of Codes and consolidation of many Codes and Rules into one clear principle based Code aims to do this.

The old Code required that advisers produce a number of policies, the new one doesn't. Aren't these policies still important?

Having a policy is a management tool to assist in ensuring consistency and encourage an effective way of working that has been agreed by the organisation's management. However, having a policy is of itself no guarantee of compliance with it, or the Commissioner's Codes. The OISC will be assessing compliance based on what it sees in practice through the client files and the organisations financial and office records.

What Does This Mean?

An interview with Deirdre Gilchrist, Head of Operational Regulation

Why is the OISC so keen on the identification of the specific adviser?

The OISC believes that it is in the best interests of the client for there to be as much transparency as possible in any work being undertaken for a client and who has responsibility for it. Within a registered organisation advisers may be authorised to practice at different Levels or Categories. It must be made clear who has provided specific advice and services. We require organisations' records to note the name of the adviser who has given advice or done any work on the client's behalf.

If an adviser's instructions are that some documents or circumstances are genuine, why can't that be sufficient?

Two important Codes sit behind the new **Code 13** which is the requirement for advisers to satisfy themselves that documents supplied to support an application are genuine. The first is **Code 5** which requires an authorised adviser to act competently. There are serious consequences for clients who submit documents in support of an application which are deemed by the Home Office to be false. A competent adviser will give careful consideration to all documents provided by clients in support of their application. Any potential issues of concern that may arise from these documents, or any issues which may call into question their validity are best discussed with the client prior to their submission. In addition the new **Code 14** requires advisers not to mislead, or knowingly or negligently permit themselves to be used in any deception or abuse of the immigration system. Advisers who fail to identify and investigate issues of concern with supporting documents leave themselves open to allegations of collusion in an action to mislead the immigration authorities.

Can advisers outsource work to overseas organisations and vice versa?

The Code and its guidance allows for work to be outsourced to companies/branches abroad. What it makes clear is that if work is outsourced to an affiliate office abroad, then the reason for this must be fully explained to the client and full agreement must be evidenced. Where work is outsourced abroad, clients have a legitimate expectation that they will receive the same standard of service they would have received from the UK based office in accordance with the OISC's Code of Standards and that the UK-based company remains responsible for the work done.

“While advisers are not required to become forgery experts, or go to great expense in determining the validity of a document, they are expected to apply common sense.”



In Line and Online

Code 13—Genuine ?

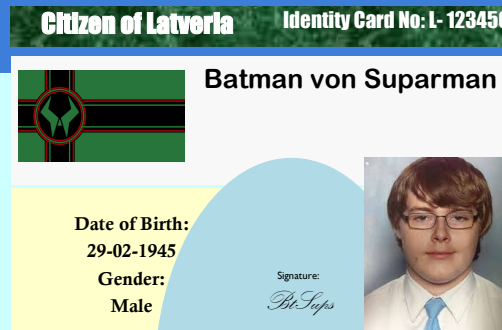
Advisers are required to satisfy themselves, as far as reasonably practicable, that documents supplied to them in support of an application are genuine.

While advisers are not required to become forgery experts, or go to great expense in determining the validity of a document, they are expected to apply common sense. If a document is manifestly suspect, then they must ask further questions. To do otherwise is not in the client’s best interests and could be seen as trying to mislead or negligently being allowed to mislead (**Code 14**).

If a document looks false to an adviser, it will probably appear false to the Home Office. This will lead to closer scrutiny, may harm the client’s case and possibly damage the adviser’s credibility. Advisers should not only be concerned with documents like passports and identity cards, but any document that a client may use to support an application. If, for example, a client lives in Aberdeen but claims that he is employed on a full-time basis in Bristol, the Commissioner would expect that advisers would question this. A competent adviser would be expected to clarify any anomalies prior to submitting any application. The adviser must keep notes of these queries and the client’s response (**Codes 53 and 54**).

The guidance that the Home Office issues to its staff on examining identity documents is available on line and is a good place to start when considering whether a document is genuine or not.

[guide to HO staff including impostors and TDs.pdf](#)



Codes 18 and 19 – Immigration advice or services given online

The use of electronic means to provide services to the public has grown rapidly over the last decade. This trend has been reflected in the immigration advice sector, where a number of organisations primarily give advice via the web. We have always had Codes that were expressly aimed at adviser standards when dealing with customers, but we have now developed Codes that specifically deal with online advice or services. These Codes, like the General **Codes 7-9**, require transparency in all adviser dealings with their clients.

Just because there is no face-to-face meeting, does not entitle the adviser to hide or become anonymous. There is, rather, a greater need for simplicity and openness throughout. The advisers’ websites must give all relevant information about the organisation and they must comply with all rules and regulations that apply to online sales.

Advisers are also asked to be aware of the Online Dispute Resolution Regulations which came into force in February 2016.

Guidance Notes

The “Guidance Notes” do not form part of the Code of Standards but amplify and explain certain codes and provide indicative behaviours that the regulated sector and the OISC will use to ensure compliance with the Code.



“Responsibility for a client’s case remains with the organisation in the UK that outsources its work cannot outsource work beyond their ... Level of competence”

Client Care—What We Need To See

Codes 23 to 26 - Client Care Letter

While the new Code of Standards is more a more principle- based document, the Codes concerning the client care letter remain more prescriptive. Consumer protection and transparency are vital. We believe that in this crucial area, advisers, clients, the Tribunal and the OISC must be clear about the standards that are expected. The client care letter is the fundamental contract between adviser and client, each party must be fully aware of the contract’s terms, and it should be agreed after the client has the chance to understand what is required of them too. Other than in exceptional circumstances no work should be undertaken for the client until the client care letter is agreed and the Commissioner will expect in all cases to be able to see evidence of the clients’ agreement to this letter.

Advisers are encouraged to amend their template client care letters **now** in light of the new Code which comes into force on the 1st April.



Codes 38 and 39 – Outsourcing Work

Outsourcing work is an entirely reasonable course of action but must be carried so that there is transparency in adviser/client dealings. Please note that outsourcing, is quite different to “referring for gain” (Codes 21 and 22) which is not allowed. When outsourcing work the client must be made fully aware if work is to be done on their behalf by an agent organisation, and to have demonstrably given their consent to this. It is important to note that responsibility for a client’s case always remains with the organisation in the UK, even if the outsourcing agent is outside the UK. A registered adviser cannot outsource work beyond their permitted Level of competence. Higher level work must be referred on to another suitably authorised organisation.



Codes 62 and 63 – Payments

The new Code 63 has been established to address a specific issue. In the past some advisers have had access to a client’s credit or debit card details and accessed funds from these accounts with little or no notice being given to the client. The new Code 62 requires that a written invoice be sent to the client when fees are required, Code 63 provides that where these fees are to be taken from an account that the organisation already has access to, the client must be given 7 days notice of any proposed transaction.



“Your duty to report serious misconduct is intended to help ensure that OISC has the information that it needs in order to be able to assess risks and regulate effectively.”



Codes 41 to 47 - Termination of Instructions and Ending a Client's Case

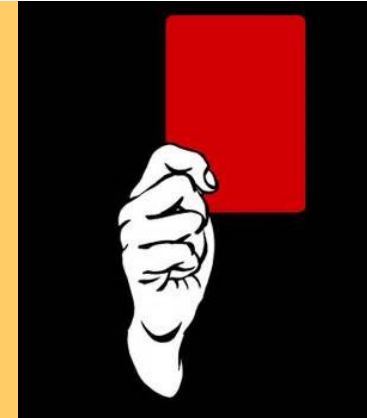
This is a new area for regulation. Previous versions of the Code included some information on the transfer of client files and withdrawal from a case but this version aims to provide more detail as to closure procedures which should be helpful to both the client and the organisation. Over the years, however, there have been disputes about the return of documents, financial reckoning and the client knowing what their position was. It was felt appropriate to create Codes that deal specifically with the end of instructions, including a new requirement to issue the client with a written statement on the closing of their case file.



The End?

Code 84 - Serious Misconduct

You are obliged to report to the OISC any instances of serious misconduct by other advisers within your organisation or your organisation as a whole that you become aware of. Whether or not misconduct is *serious* misconduct is a matter of judgement, which will depend on the particular circumstances. It will ultimately be for the OISC to decide whether enforcement action is necessary. If, having considered all of the factors you remain unsure whether or not the behaviour in question amounts to serious misconduct, you should err on the side of caution and contact the OISC.



Advisers must notify the Commissioner, within a timely period, of issues that could adversely affect their organisation including matters relating to an adviser's fitness and/or competence. Examples of such serious misconduct would include but are not limited to the following:

- persons providing immigration advice or services above their authorised registered levels and/or categories; or
- persons involved in misleading the authorities, abusing the immigration system or advising others to do so.

If you are aware for any reason that the relevant person has failed to report the matter to the OISC, you should be prepared to report the matter yourself.

ANY QUESTIONS

If you have any questions about the new Code or OISC processes then please e-mail your caseworker directly or e-mail to info@OISC.gov.uk putting "Code of Standards" in the subject box. We will answer them, individually (if the question is specific to an individual adviser or organisation) or if it is a more general issue that other advisers may find useful, in our newsletter.

IMPORTANT -Other Points to Note:



Code 32:

While a new client care letter is not required on further instruction there should be evidence of the clients new instruction and notification of further costs before work proceeds.

Code 48:

Advisers must transfer files when a client requires it. They must not seek to exercise a lien. This was previously permitted if the client was informed about this at the outset but is now prohibited.

Code 54:

Whoever undertakes any piece of work during a case must be readily identifiable. This ties in with **Code 7**, clients should know who they are dealing with at all times and this must also be apparent through the file notes.

And Finally...

Code 56:

Clients must be given copies of any documents that are retained by the adviser and the original documents returned to the client as soon as possible. This new Code aims to reduce the serious difficulties experienced by clients where documents go missing.

Code 60:

The Commissioner must approve any change of fee scale prior to its implementation. The new fees must not be charged until the Commissioner has agreed to it.

The new Code and Guidance document (including new guidance on Supervision and Fees and accounts) will appear on the OISC website in the next week. Updated 2016 practice notes will also begin to appear on the website shortly and these will replace all previous OISC practice notes.