



The Code of Standards

Office of the Immigration Services Commissioner

Regulating Immigration Advice

2016



Foreword



The Immigration and Asylum Act 1999 (the Act) made it unlawful for anyone to provide unregulated immigration advice or services.

The Act also provides that immigration organisations and advisers must be “fit and competent” and that I issue a code setting the standards they must meet. The Code of Standards applies to those whom I directly regulate and those who are exempted by Ministerial Order. Immigration advisers who are authorised to practise by one of the designated professional bodies or the qualifying regulators (under the Legal Services Act 2007) are not subject to the Code.

After two public consultations, this fourth edition of the Code of Standards differs from the three previous versions.

For the first time, the Code of Standards incorporates what was previously known as the Commissioner’s Rules. The implementation of Schedule 7 of the Immigration Act 2014 re-classified all OISC regulated organisations and advisers as “registered”. This change aided us in combining the Commissioner’s Rules and the Code of Standards into one document that sets the standards concerning professional practice, conduct and discipline across the whole of the immigration advice sector.

A further major change is that the new Code of Standards has changed the emphasis from prescription to a more principle-based approach. This approach is consistent with other regulators, recognising the increasing professionalism of regulated organisations while also providing protection to vulnerable clients. In support of the Code of Standards we have produced a set of “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.

This edition of the Code of Standards will take effect from 1 April 2016.

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Immigration Services Commissioner
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Introduction

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.

The *Code* applies to any registered organisation¹ or person providing immigration advice or immigration services in the UK in relation to a "relevant matter" as listed in section 82 of the Act except for those listed in Schedule 5, paragraph 3 (3)².

Guidance Notes that accompany a specific Code or Codes assist in their application, but they are not themselves provisions of the *Code*. If a registered organisation or adviser fails to follow a Guidance Note, then the Commissioner may consider that they have acted in breach of the accompanying provision(s) 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.

1. 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).

2. Those excluded are people authorised to practise by virtue of membership of a designated professional body (The Faculty of Advocates; The Law Society of Scotland; The General Council of the Bar of Northern Ireland; The Law Society of Northern Ireland), designated qualifying regulator (The Law Society of England and Wales; The General Council of the Bar; The Chartered Institute of Legal Executives) 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.

General

1. Organisations and advisers 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. Organisations and advisers must only act according to, and within, their authorisation.
4. All organisations and advisers must remain fit and competent within the Level and Categories for which they are authorised.
5. When giving immigration advice or immigration services, organisations and advisers must act competently.
6. Advisers 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. Organisations must ensure that no unauthorised person(s) provide immigration advice or immigration services on their behalf.
9. An organisation is permitted to have persons operating above their authorised Level or in Categories for which they are not authorised, but within the Level and Categories granted to the organisation, if the Commissioner has given written authorisation of the organisation's supervision arrangements.
10. Organisations and advisers must not take advantage of a client's or a prospective client's vulnerability.
11. Organisations and advisers must not mislead their clients or prospective clients.
12. Organisations and advisers must always act in their clients' best interests subject to regulatory and legal requirements.
13. Organisations and advisers must, as far as reasonably practicable, satisfy themselves that documents supplied to them in support of an application are genuine.
14. Organisations and advisers 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 or judicial body;
 - d. not knowingly or negligently 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.
- 15. Organisations and advisers must treat their clients fairly and without prejudice or bias.
- 16. Organisations must have a written equality and diversity policy that meets current statutory requirements.
- 17. 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.
- 18. Organisations which offer immigration advice or immigration services online must ensure that their online information clearly explains what immigration advice or immigration services they are authorised to provide, the generally expected timeframes for delivery of such work and any associated costs.
- 19. Organisations which provide immigration advice or immigration services online must have a clear and prominent statement on their website that they comply with current regulations including any cooling-off period to which clients are entitled.

Conflict of interest

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

Referrals for gain

- 21. An organisation or adviser must not demand or accept from any organisation or person an inducement, be it financial or otherwise, for referring or recommending a client.
- 22. An organisation or adviser must not offer an inducement, be it financial or otherwise, to any other organisation or person for referring or recommending a client.

Client care letter

- 23. An organisation must provide all prospective clients with a client care letter.
- 24. The adviser must take reasonable steps to ensure that the prospective client understands the contents of their client care letter before being asked to agree it. The organisation should not do any further work until the client care letter has been agreed, other than in exceptional circumstances.

25. 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.
26. A client care letter must contain:
 - a. a statement identifying the client for whom the organisation is acting;
 - b. a statement of the client's immigration status, if known;
 - c. full details of the client's instructions, advice given and the work agreed to be done with estimated timeframes;
 - d. confirmation of the costs estimated or agreed;
 - 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 documents to the organisation, the client will, if necessary, be given copies of those documents as soon as reasonably practicable;
 - i. the organisation's complaint-handling procedures;
 - j. all other terms and conditions of the agreement, and, if online selling regulations 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; and
 - l. confirmation that the organisation retains full responsibility for all work done on behalf of the client.

Confidentiality

27. Organisations and advisers must ensure the confidentiality of all of the information they hold relating to each of their clients, subject to legal and regulatory disclosure requirements.
28. Organisations and advisers must ensure that discussions or the giving of information relating to immigration advice or immigration services are conducted in a confidential manner.

Keeping clients informed

29. Organisations and advisers 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.
30. An adviser on receiving notification of the outcome of a client's case must within three working days notify the client in writing accordingly.
31. An adviser must explain to the client the implications of any substantive changes in the client's circumstances or in their case of which the adviser becomes aware and advise them on any suggested course(s) of action, including any associated costs or expenditure. This

must be given within 3 working days. If given orally, the adviser must promptly provide the client with a written statement summarising the above.

32. 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.
33. An organisation must notify its clients promptly in writing of any changes to the organisation's contact details.

Obtaining additional advice, opinions and other professional services

34. Organisations or advisers, 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.
35. Organisations and advisers must ensure a suitable interpreter or translator is used if required.
36. 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.
37. 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

38. An organisation may, with the client's written consent, outsource a particular aspect of the client's case. The instructing organisation continues to retain responsibility and overall control of the client's case including the quality of the outsourced work done.
39. Outsourced work must be within the instructing organisation's Level and Categories.

Temporary inability to work

40. An organisation must have arrangements in place to ensure that, should the client's adviser be temporarily unable to work, the client's case can continue to be progressed.

Termination of instructions by the client

41. If a client terminates their instructions, the organisation must arrange for all documents relating to the client's case and the client's file to be returned to the client or to such third party as the client may direct as soon as practicable. The organisation must keep a copy of the client's file for its own records in accordance with Code 57.
42. Where the client is in detention or their removal is imminent, their documents and client 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 by the organisation

43. An organisation must not withdraw or threaten to withdraw from a case without good reason.
44. 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.
45. If an organisation withdraws from a case, it must inform all those involved in the case of its withdrawal. A written note of the contact details of the client's new representatives should, where known, be placed on the copy of the client's file kept by the organisation.

Ending of a client's case

46. On the completion of a client's case an organisation should provide the client with a written statement including the following information:
 - a. confirmation that the case has been completed including a statement of the case's outcome and implications. This should include any dates or restrictions on the client's leave, if known;
 - b. a list of the original documents returned to the client; and
 - c. a final financial statement, if appropriate.
47. 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 make every effort to provide the client with a written statement including the following information:
 - a. confirmation that the client withdrew their instructions before the case was completed or that the organisation withdrew before the case was completed;
 - b. a list of the original documents returned to the client; and
 - c. a final financial statement, if appropriate.

Transferring the client's file

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

Running the organisation

49. 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.
50. 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.
51. An organisation must have a business plan for its current business year together with cash flow/funding projections.
52. An organisation must have current and adequate professional indemnity insurance.

Records and case management

53. In respect of each client or prospective client, advisers must maintain an adequate record of all interactions.
54. Records of actions undertaken 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.
55. An organisation must have and operate 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 its clients' cases. These records must be held securely, and records relating to a particular client or former client must be accessible to the client and to the Commissioner.
56. When an organisation retains a client's original documents it must ensure that the client has a copy of those documents. The original documents must be returned to the client as soon as possible.
57. An organisation must ensure that all client records are kept for at least six years, and thereafter for the client file and associated electronic data to be securely deleted or destroyed.

Fees and accounts

58. An organisation which is not required to pay the Commissioner an application fee must not charge clients directly or indirectly a fee for the provision of immigration advice.
59. 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 made available to the Commissioner upon request.
60. The Commissioner must be informed in writing if an organisation proposes to change its fee scale and await authorisation from the Commissioner before doing so.
61. An organisation that charges for its immigration advice or immigration services must only charge a reasonable fee that directly relates to the work done. It must not charge a fee for work that is unnecessary or unauthorised by the client.
62. An organisation must submit a written invoice to the client when it requires payment.
63. 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.
64. Where an organisation takes money in advance or holds money for a client, such money must be held in a distinct client account and this account must be kept separate from the organisation's business account.
65. An organisation must promptly return to the client any remaining money in the client 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.
66. An organisation which has agreed to refund money to a client must do so promptly.
67. An organisation which takes monies and/or fees must provide written receipts for the money taken and keep accurate accounts, including a written record of every transaction undertaken for each of its clients.
68. An organisation must maintain complete, clear and accurate financial records. The Commissioner must be given access to all financial records.
69. An organisation must have annual audited, certified or otherwise verified business accounts. The Commissioner must be given access to all such accounts.

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

70. An organisation's OISC registration number must be displayed on the organisation's letterhead, website and e-mail.
71. The OISC logo must only be used in accordance with the instructions contained in the organisation's approval letter.
72. 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

73. 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 authorised Levels and Categories of those who provide them, must be accurate and not misleading. The organisation retains overall and absolute responsibility for this information.
74. An organisation and those working for it or associated with it must not tout for the business of providing immigration advice or immigration services.
75. 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.
76. An organisation and those working for it or associated with it must not make orally or in writing promotional statements about their organisation's or individual's success rates.
77. The name of an organisation must not have the potential to confuse or mislead clients. The Commissioner has the power to require an organisation to change its name.
78. An organisation must obtain the Commissioner's authorisation before making any change to the organisation's name.

Procedure for handling complaints

79. 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 at any time.

Notifications to the Commissioner by organisations and advisers

80. An organisation which wishes to change its legal status while retaining its registration must submit the appropriate application and receive authorisation from the Commissioner.
81. An organisation must notify the Commissioner in writing within 10 working days of any significant change to its business.
82. An organisation must notify the Commissioner of all its business addresses and any changes to those addresses within 10 working days.
83. Advisers and any persons who own and/or are involved in the running of an organisation must notify the Commissioner within 10 working days of any significant changes to their own or others personal circumstances.

Serious misconduct

84. Advisers and any persons who own and/or are involved in the running of an organisation must promptly report to the Commissioner any indication of serious misconduct of which they become aware within their organisation.

Request for exemption from the Code's provisions

85. Organisations and advisers must apply in writing with reasons if 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.

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