



THE NEW CODE OF STANDARDS



The Code of Standards

Office of the Immigration Services Commissioner

The new Code of Standards was published in September 2015, after a 2-year consultation exercise, and a 2 stage consultation process. As we previously stated, this procedure took in over 100 responses and contributions from key influencers across the immigration and regulatory sectors.



This newsletter is the second in a series on the new Code and will give further details about our approach to the Code, highlighting some areas where there has been a change that organisations need to be aware of.

Seminars

The OISC's new Code of Standards comes into force on 1 April 2016. To assist advice organisations to become fully conversant with the changes made to the Code we will be presenting a series of seminars.

These seminars will help participants develop a thorough understanding of the requirements for professional conduct and client care in the context of our new principle-based approach to the regulation of immigration advice, and services. We have planned the following events (dates may be subject to change). The seminars will be held in central London.

| 7 th March 2016 | 13 th May 2016 | 30 th June 2016 |
|----------------------------|---------------------------|----------------------------|
| | AM – Code of Standards | AM – Code of Standards |
| PM – Code of Standards | PM - Code of Standards | PM – Code of Standards |

We will hold further seminars in the coming months in London, Glasgow, Manchester and Sheffield. Invitations will be issued shortly, so please keep your eyes open!

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.



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Why is Principle-based regulation so important? What is the OISC trying to achieve? An interview with Stephen Seymour, the OISC's Director of Operations.

Principle-based regulation: What's The Point?

Principles-based regulation has been around for a long time. Why is the OISC only getting to it now?

Both the Solicitor Regulation Authority and the Bar Standards Board have been moving to more principle based or outcome based regulation over the last few years, supported by the views of the Legal Services Board (LSB). We are very much aware that the OISC regulated sector is considerably less mature compared with that of solicitors and barristers. Hence, we needed to ensure that the move to a more principle-based regulatory approach was made at the right time.

Are you just following a trend?

Irrespective of whether it is trend or not, we have only moved to this type of regulation after careful consideration and after extensive consultation with the sector. Not all the standards have been amended to the principle based approach, for example the Client Care letter is still fairly prescriptive and that is because after consulting the sector and stakeholders, we believe that it is better to lay out exactly what organisations must do in respect of this extremely important document.

Advice organisations come in all shapes and sizes. Is the OISC just trying to shoe-horn advisers into something convenient?

One of the benefits of the principle-based approach is that it caters for the wide variety of organisational models and structures that the OISC regulates. The principle sets the standard across the sector, but different types of organisations will find different ways of meeting the standard.

Most of those that the OISC regulates are micro businesses. The burdens falling on them are substantial so won't this approach increase those burdens?

The move to principle-based regulation aims to reduce the burden on businesses as it is up to the organisation to decide how it is going to meet the standard. Principle-based regulation is fully in line with the Government's Regulator's Code.

Will customers/ clients see any benefit?

Yes, they most certainly should see benefit as organisations become more innovative in how they meet clients' needs. That can only be good for clients and the sector as a whole.

Is the OISC going to assist organisations to understand the requirements of the new Code of Standards?

Early publication of the new Code together with an explanatory document is allowing organisations seven months to prepare themselves before they are required to adhere to the new standards. Additionally, this is the second of three newsletters that provides more details on the Code and OISC caseworkers remain ready to answer questions on the new Code, just send them an e-mail. Advisers are also encouraged to take the on-line Professional Conduct course which has been updated in line with the new Code of Standards for which they can be awarded 3.5 hours of non-core CPD on passing the associated quiz. As explained elsewhere in this newsletter, the OISC is also setting up seminars over the coming months, in various parts of the country, which will also help organisations to learn about the new standards and give them the opportunity to ask questions about the Code.

Highlights of 2016 Code

We have condensed the Code and Rules into one document, we have introduced new requirements. The Codes below are a some that we'd like to draw your attention to.

Code 7 – Advisers are required to clearly identify themselves to their clients

Code 8 – No unauthorised people giving advice

Code 13 – Advisers satisfying themselves that documents are genuine

Codes 18& 19 – Specifically concern online advice

Code 32 – When further instructions are taken, depending on the circumstances, a new client care letter may not be required

Code 38 – Adviser outsourcing work, must obtain the client's consent, and retains responsibility for the case

Code 40 – Temporary inability to work, advisers must make appropriate arrangements for cover

Code 41 – What is expected of advisers when a client terminates their instructions

Code 46 – Ensuring that a client is made fully aware of their position when their matter comes to an end

Code 47 – Ensuring that when a client withdraws their instructions, they are made fully aware of their position

Code 48 – Advisers must transfer files when a client requires it. They must not seek to exercise a lien

Code 54 – Who undertook each piece of work during a case must be readily identifiable

Code 56 – Clients must have copies of any documents that are retained by the adviser and original documents returned to the client as soon as possible

Code 60 – The Commissioner must approve a change of fee scale before it is implemented

Code 62 – If an organisation requires payment, it must submit a written invoice

Code 63 – Notification period for card payments

Code 65 – Any money left in the client account at the end of the matter belong to the client and must be returned to them

Code 66 – The prompt repayment of agreed refunds

Code 78 – The Commissioner must approve a change of organisation name before the change is implemented

Code 80 - Change of Legal Status

Code 84 —A duty to promptly report serious misconduct

CPD Update - OISC Professional Conduct On-Line Course

The Professional Conduct course has been updated in line with the new Code of Standards which comes into force on 1 April 2016. We recommend that all advisers take this course before 1 April 2016 so that they are aware of the new Codes and how they relate to the work of a regulated immigration adviser. On passing the associated quiz advisers will be awarded 3.5 non-core hours.



“This gives greater transparency and accountability It also gives the client greater confidence to know whom they are dealing with and who has conduct of their case.”



Real or Not Real?

Code 7 - Identity of the Adviser

When giving immigration advice or services to clients, advisers must give their full name, business address, the name of the company for which they work and their job title. This gives greater transparency and accountability within an advice organisation. It also gives the client greater confidence to know whom they are dealing with and who has conduct of their case. For the OISC, this gives greater clarity about who was giving advice, when it was given, and whether or not this was done by an outside agent, or under supervision. The client must, at all times be aware of who is dealing with their matter. This is also emphasised in the client care provisions (**Code 54**). If any administrative staff are carrying out work on a client’s case, it must be made clear to both the client and the member of staff, that they are acting in an administrative capacity only.



Codes 8 – Unauthorised People

The Immigration and Asylum Act 1999 explicitly states that only qualified people, as defined by the Act, are allowed to provide immigration advice or services. All too frequently the OISC has become aware of unqualified people within some regulated organisations, regularly giving advice to clients. Code 8 places the responsibility on the organisation to ensure that there are no staff providing advice when they should not be. The Guidance Note that accompanies this new Code makes it clear who is allowed to provide immigration advice or services, and who is not.

Codes 80 to 83 – Notifications to the Commissioner by organisations and advisers

Organisations have in the past sometimes neglected to inform the OISC of “significant changes” in their organisations, though the Code of Standards required them to do so.



The new Code is more explicit and the Guidance Notes give examples of the type of significant changes to both organisations and individual advisers that the OISC should be notified of. Sometimes organisations have not informed the OISC of changes of premises or their contact details. As well as causing difficulties in maintaining good communication with the registered organisation, it has also meant that potential clients have been unable to contact the organisation through the OISC’s website. Another example is when an organisation wishes to change its legal status, say from a partnership to a limited company. The new **Code 80** states:

An organisation which wishes to change its legal status while retaining its registration must submit the appropriate application and receive authorisation from the Commissioner.

Organisations that fail to notify the Commissioner but operate without prior authorisation will not be registered and liable to prosecution.

Tell Us About It!



ANY QUESTIONS

If you have any questions about the new Code of 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.

Adam Harrison the Applications and First Contact Team Manager discusses the need to properly notify the Commissioner about changes.

The previous Code of Standards and guidance on informing the Commissioner of changes were sufficient, was it necessary to change this?

Following consultation the feedback we received was that ‘yes’ the OISC needed to clarify what it means by what is a significant change to an organisation or individual’s personal circumstances.

Advisers don’t want the hassle of informing the regulator of every little change. Does this really concern the OISC?

We would like to think that it’s not every little change! We’re not trying to be overly bureaucratic in our expectations of regulated advisers. We feel that it is important that certain significant changes are brought to our attention by regulated organisations and individuals when these changes occur. Examples of these changes have been made clearer, as discussed later.

What harm would it do? How would you know?

It brings into question the fitness of a regulated organisation or individual if they withhold a change in circumstances that are considered ‘significant’ under the new Codes. We are under a statutory duty to ensure that all regulated organisations are fit and competent to provide immigration advice and services. To do this there is a requirement that organisations and/or advisers inform the OISC of significant changes.

Why does an adviser/organisation need permission prior to some of these changes being put in place?

If an organisation does not inform the OISC prior to implementing changes or they could potentially be giving immigration advice illegally. If, for example, an organisation changed its legal status then they need

to be aware that their authorisation to provide immigration advice is attached to the previously approved organisation and not the new one, and so not informing the OISC of their change prior to its approval could lead to them providing Immigration advice illegally.

What are “significant changes”?

Codes 80 to 83 – Notifications to the Commissioner by Organisations and advisers

A ‘significant change’ in circumstances for a registered organisation may include:

- *A change in the way immigration advice or services is provided (for example, changing from face-to-face contact to online provision of immigration advice or services);
- *The creation of links with other immigration related organisation such as colleges or other advice giving organisations;
- *A change in management and/or business ownership;
- *Changes to OISC registered staff (advisers joining or leaving) or
- *Changes to bank accounts or professional insurance providers.

A ‘significant change’ in personal circumstances for individual may include:

- *If an adviser has become seriously ill and is unable to work;
- *If an adviser has to have an extended period away from the office;
- *If an adviser is subject to bankruptcy proceedings;
- *If an adviser no longer has a right to work in the UK;
- *If an adviser is arrested, charged, cautioned, or convicted; and
- *If an adviser is investigated by the police or Home Office.

The above lists are not exhaustive, but are presented to give an indication of the type of issues that would constitute a significant change.

Personal changes are important because of the potential impact it can have on clients and the legality of an organisation in providing immigration advice and services. If in doubt, please contact your case worker or the OISC and we will tell you.

