



## Welcome to this **Special edition** of the OISCNews

In our most recent newsletter we stated that we have been working on some important new projects. We promised a special edition of the newsletter to explore the projects and to update you on where we were and what the outcomes mean for registered advisers.

These projects were:

- The revised Guidance on Competence
- Thematic Review
- Electronic Applications

The changes we have introduced are in line with adopting a more principle-based approach to regulation. We aim to assist advisers in developing their businesses and better serving their clients. It is up to regulated advisers and organisations to decide how to most appropriately achieve the standards required.

The revised **Guidance on Competence** gives greater clarity and transparency to advisers on the work that they can undertake at any given Level or category and just as importantly, the work they must not undertake. In developing the revised *Guidance* we directly engaged with key stakeholders. We used the Commissioner's Advisory Panel and others to ensure that the new *Guidance* will work in practice for advisers and their clients.

Last year we told you about our first **thematic review**. This review was of registered organisations' websites. The aim of the exercise was to benchmark website activity. We would then publish guidance on best practice so as to raise standards and awareness within the sector

as well as include any findings which suggests there are areas requiring further improvement.

Organisations were selected at random and their website content was reviewed to assess their continued compliance with the OISC's Codes of Standards. This exercise was about identifying good practice and feeding back to the sector as a whole what might be done to better serve their clients. We are keen to ensure that registered organisations operate in an open and transparent manner with their clients.

We focussed on ensuring organisations:

- ✓ **advertised at the correct OISC authorised Levels and categories**
- ✓ **displayed their unique registration number and OISC logo**
- ✓ **displayed the organisation's and adviser contact details**
- ✓ **did not make misleading statements or make claims of success rates**

Our findings are summarised in this newsletter.

We also actively engaged with advisers and others in developing our **Electronic Application Forms**. We first tried to develop these forms back in 2014. After a number of false dawns we have created forms that provide greater speed and efficiency in completion. There is no need to download, print, complete and post these forms. This reduces the administrative burden on you in completing your applications. It also reduced the likelihood of documents being lost or misdirected in transit and ensures that your applications are received securely. We have also issued guidance and advice to help you in completing the forms.

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# Guidance on Competence 2017

## Office of the Immigration Services Commissioner News

April 2017

*At Level 1 in Asylum & Protection, advisers may make applications to vary the conditions of leave already granted.*

We published our new [Guidance on Competence](#) on 30 March 2017. The last edition was published in 2011 (and came into force in 2012). Since then immigration law and practice have changed markedly. We have re-assessed the required standards that registered advisers must meet to be considered competent and the areas where additional work may be undertaken by advisers.

The new Guidance provides:

- Updated terminology related to immigration processes and procedures
- Revised definitions of the work that advisers are able to undertake at each advice Level and Category
- Alignment with the 2016 Commissioner's Code of Standards
- Details regarding a new category of work Judicial Review Case Management (JCRM)

The new *Guidance* will be enforced from **1 July 2017**.

### What's Changed?

How we assess competence has changed since 2012. We have reflected this in the *Guidance*. We now normally require advisers seeking regulation in a new Level or category to undertake a written assessment and note in the new *Guidance* that we may ask you to retake tests if we cannot see evidence of sufficient competence at audit.

We now only require advisers at higher Levels to have sufficient awareness of processes at Level 1 in categories which they are not applying to work in. This means that from the 1 July advisers who apply at Level 2 or 3 in Asylum & Protection only, will not need to take a

written assessment at Level 1 in Immigration before being able to do a Level 2 or 3 assessment in Asylum & Protection. Applicants will instead be expected to provide details of relevant training and experience at Level 1 in Immigration on their Competence Statement. Advisers applying at Level 2 or 3 in the Immigration category will still however need to undertake a Level 1 assessment in Immigration before progressing to the Level 2 or 3 Immigration assessment. This change was brought about as a direct result of consulting with the voluntary and community sector.

The *Guidance* updates references to the Code of Standards to reflect the 2016 version. It notes that advisers may now outsource aspects of their client's case. References to the various Licensed Accesses schemes have also been updated.

The new *Guidance* provides an updated definition of the work allowed at the various advice Levels. It also makes a number of changes and clarifications on the work permitted and not at each Level.

### Changes at Level 1

In relation to Asylum & Protection work at Level 1 references to Temporary Admission and permission to work applications, along with change of address notifications have disappeared and this has been replaced by new wording allowing Level 1 advisers to make an application to the Home Office for a change to the conditions granted for those seeking Asylum or Protection.

It is important to note that Settlement (protection route) applications have moved from Level 1 to Level 2

Administrative Review has been added to work that can generally be



## Guidance on Competence 2017

**Office of the  
Immigration  
Services  
Commissioner  
News**

April 2017

*Full details of  
the  
application  
process and  
the  
Competence  
Statement ....  
for  
applications  
for JRCM will  
be available  
from 1 June*

carried out by advisers authorised at Level 1. Some exceptions exist for more complex Administrative Review matters and details can be found in the *Guidance*.

At Level 1 we have given more detail and examples to assist you in better understanding the work that can and cannot be done. We have explicitly included advice on Shengen Visas as work regulated under the EEA regulations area at Level 1. The *Guidance* confirms that in relation to these Regulations, that complex EEA applications such as the *Surinder Singh* route, retained rights of residence for non-EEA nationals and derivative rights of residence must not be carried out by Level 1 advisers.

### Changes at Level 2

We have updated the terminology about Asylum & Protection work that Level 2 advisers can do and as noted above Settlement (protection applications) have been added to the list of work only permitted at this Level and above. This reflects that such cases are now actively reviewed by the Home Office. References to CIO bail have been removed as this is changing to Secretary of State Bail.

### Changes at Level 3

At Level 3 we have introduced the ability for Level 3 registered advisers to undertake Judicial Review Case Management work. We have outlined how JRCM will work in relation to other categories, for example, you can only continue to manage asylum clients through judicial review matters if you are authorised in JRCM and Asylum & Protection at

Level 3, or with Immigration clients if you are JRCM authorised to do Immigration at Level 3.

### Judicial Review Case Management (JCRM)

JRCM has its own sets of knowledge and practice requirements.

There is now a separate document -

[The Practice Note on Judicial Review Case Management](#)

to assist you in understanding activity permitted in this category.

For advisers registered at Level 3 who are interested in applying for authorisation in JRCM, the process of applying will reflect the current process for applying for a new category of authorisation, that is, you will be asked to complete and submit to the Commissioner a Competence Statement outlining your experience and training in the area. Full details of the application process and the Competence Statement specifically designed for applications for JRCM will be available on our website from 1 June 2017. This application document will outline the extent of training and experience required for applicants to be successful granted approval in this area. Applications will be decided based on the information and evidence provided by the applicants. It is not the Commissioner's intention to carry out a formal written assessment in this area at this time.



# Thematic Audit of Organisations' websites



Office of the  
Immigration  
Services  
Commissioner  
News

April 2017

In our winter news letter, we told you that we intended to carry out a thematic review of organisations' websites to establish how easy it is for consumers to access and make informed decisions when instructing an immigration advice provider. We examined 70 randomly selected organisations. This was across all three Levels, whether fee charging or not.

In general the review showed a high degree of compliance with the Code of Standards. Those websites that we reviewed:

- were user-friendly, giving much relevant information;
- none were charging when not allowed;
- showed no evidence of organisations making statements of success rates or criticising other advice providers; and
- did not raise issues regarding the organisation's name that might mislead or confuse clients.

However there were five areas that we thought could be improved on. These will assist clients when instructing immigration advisers.

These areas were:

## Providing misleading information

Of the sample reviewed some websites presented inaccurate information in relation to areas of work outside of an organisation's approved Levels and/or Categories. Examples of this included an organisation claiming to be able to deal with all complex immigration matters despite being regulated at Level 2 and examples of Level 1 organisations seemingly advertising appeals work. In both of these areas this may be unregulated and criminal activity. The advisers were potentially breaching Codes 1- 3. We will pass the instances of where there have been examples of poor practice on to caseworkers to follow up with the organisations concerned.

Similarly, there were examples of organisations referring to "teams" of immigration advisers despite the organisation being regulated as a 'sole trader' possibly breaching Code 8. In one instance an organisation referred to itself as a law firm with "a team of solicitors and barristers" and in another example the organisation referred to their advisers as 'paralegals'. The use of some of these

terms may be in breach of Code 73, is potentially misleading and may in fact be criminal. Again, where there have been instances of poor practice we will pass these on to caseworkers to follow up with the organisations concerned.

There were also examples of Level 1 organisations advertising complex EEA applications such as Derivative Rights of Residence or Retained Rights of Residence applications. The 2017 Guidance on Competence makes it clear that this area of work does not fall under the OISC's definition of Level 1 or 'basic' immigration advice and services.

Further information on the OISC's Standards on [Promotional Material](#) can be found here.

## Displaying evidence of regulation

Several organisations did not make use of displaying visual cues for the public to identify them as an OISC regulated organisation. They did not display either the OISC logo and or their unique registration number. This is a possible breach of Code 70. Having these identifiable badges of regulation raises awareness about regulation and increases client confidence, not just in the individual adviser, but also the sector.

An example of good practice was demonstrated in one organisation which provided a link on its website to the [OISC's adviser finder](#) tool allowing potential clients to view their authorised levels and categories directly from the regulator. This is more likely to have the effect of increasing consumer confidence.

## Advertising an Organisation's approved Advisers including their contact details and their authorised levels and categories

Over half of the websites we reviewed did not list an organisation's approved advisers, including their authorised levels and categories and contact details. Whilst there is no requirement within the Code for organisations to publicise this, we believe that this is a missed opportunity. Displaying such information on a website is likely to increase the prospect of potential clients conducting initial web research to actively engaging with an advice provider. It may increase client awareness, and assurance in the advisers and organisation they are dealing with.





April 2017

*The need to  
send  
documents to  
the OISC  
attached to  
emails will no  
longer be  
necessary with  
a more secure  
application  
process in  
place.*



## It's Electric!



### Advertising an Organisation's services including fees

In the majority of websites for fee charging organisations that we reviewed, the fee scales were not available for clients to review on-line prior to instructing the provider. Potential clients are therefore at a disadvantage when initially researching an advice provider and have no way of establishing the market rate for the costs of immigration advice. In addition, because of the unavailability of this information, clients are unable to make comparisons between advice providers in relation to costs. If you were buying goods or services, would you enquire further without knowing the price? Our findings reflect the Competition and Markets Authority's (CMA) investigation into the legal services market in England and Wales which encompassed the work of legal professions. They found that there were problems of transparency of price and quality and that consumers did not have the information they needed before employing a lawyer. The Legal Services Board in responding to the CMA report agreed that there is a need to increase competition in the market and a major part of achieving this will be to ensure there is better information available for consumers in relation to price, quality, redress and regulation. We at the OISC believe that without being as open and transparent with your potential clients as possible, you may not be best serving your clients' needs and actually be losing business!

### Organisations that provide some or all of their services on-line

The majority of websites reviewed did not provide advice and services in an on-line capacity and therefore did not engage the Consumer Contracts (formerly Distance Selling) Regulations. However, 8% of websites allowed clients to submit a completed on-line enquiry form along with a fee for a one-off consultation. In these instances no organisation displayed evidence on-line notifying potential clients of a 'cooling off period', possibly in breach of Code 19, which allows clients to change their mind before consuming the service, without incurring a fee. You are therefore reminded of the need to comply with Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

### Electronic Application Forms

**The OISC has made changes to its application forms.** From 30 March 2017, all those applying for registration or continued registration have been able to complete the appropriate OISC Application form online by visiting [our website](#). The new system will provide a secure file sharing system that will allow us to retrieve the forms electronically. The system will also allow you to submit your supporting documents electronically. The major benefits of this scheme include:

- Greater speed and efficiency in the completion and submission of applications for registration
- Removal of the requirement to post documents, reducing the likelihood of documents being lost or misdirected in transit
- Reduction in the financial burden on your organisation with the removal of print, paper and postage costs

We are using *Dropbox*, a secure file hosting and sharing facility which will allow us to retrieve application forms following their electronic submission. In line with the system of submitting application forms to the OISC online, you will be also be able to submit your supporting documents electronically, again using the *Dropbox* file sharing facility.

Full instructions explaining how to complete the new application forms correctly are provided on the relevant page on our website and can also be found [here](#).

One of the major benefits to you of this new system is the efficiency of it - no more downloading, printing and posting the form back to the OISC. It also reduces your financial burden, with no use of unnecessary paper, printer cartridges or registered post to ensure applications are received securely, as well as the obvious wider benefit to the environment by the omission of those current requirements. The need to send documents to the OISC attached to emails will no longer be necessary with a more secure application process in place.

We will retain the option for you to continue to use print application forms and send them via post or scanned email should you wish or if you are unable to use the new system for any reason. Furthermore, whilst we strongly encourage the use of electronic BACS payments where application fees are required, we will continue to accept cheque payments in order to be as inclusive as we possibly can.

If you have any further queries regarding OISC electronic application forms, please contact [info@oisc.gov.uk](mailto:info@oisc.gov.uk) for assistance.