



Welcome to the Spring edition of the OISCNews



After much delay and many sleepless nights we have finally been able to publish our Annual Report for 2015/16. There is an article on our progress, as detailed in the report, later in this newsletter. Despite financial constraints, prudent budgeting combined with limited staff recruitment throughout the year has enabled the OISC to operate within its financial allocation. I am pleased to say that we met all but one of our 15 challenging Key Performance Indicators. We are already preparing material for our next Annual Report, which we hope to publish in the summer, and which we confidently predict will be able to record another highly successful year.

The Home Office also published its Triennial Review of the OISC in January. I am gratified that the two overarching conclusions were that there is a continued need for regulation of immigration advice; and that the OISC should continue as a non-departmental public body. This is testament not just to the work that the OISC has done and continues to do on the regulatory front but also to the flexibility and hard work of our staff and the growing maturity of the sector. We have started working on many of the recommendations, while others await the appointment of a new Immigration Services Commissioner. We hope that now the Review and Annual Report

have been issued, the recruitment process for this appointment can begin.

On 15 December 2016 the *Competition and Markets Authority* published its final market study *report* into legal services. It found that competition in legal services for individual consumers and small businesses is not working as well as it might, and made recommendations in order to address the issues that it has identified. There is an article presenting our view on the CMA's findings.

The OISC has been working on some dynamic new projects. There will soon be a special edition of the **OISCNews** that will address some of these, namely:

- The Guidance on Competence
- Electronic Applications
- Thematic Review

I am convinced that the changes the OISC is continuing to introduce will be beneficial to advisers and their clients. There is the opportunity for you to better shape your environment and better serve your clients. I look forward to continuing to work with you and to receiving your feedback. In the meantime I should like to take this opportunity to offer you my very best wishes for a happy, successful and prosperous new business year!

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Analysis 2015/16

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The report notes that trends from previous years have continued, but the OISC has also met and exceeded many of its targets.

The OISC's [Annual Report and Accounts for 2015/16](#) has



been published and was laid before Parliament on 11 January 2017. The report notes that trends from previous years have continued, but the OISC has also met and exceeded many of its targets.

2015/16 saw a reduction in the number of registered organisations, falling from 1,670 in 2014/15 to 1,615. There has been a similar reduction in the number of registered advisers from 3,667 in 2014/15 to 3,478 this year.

This may be due to a variety of reasons, but helping to stabilise the sector has also seen a small decrease in the number of organisations leaving the scheme from 187 in 2014/15 to 183 in 2015/16, a figure that had risen in previous business years. In relation to individual advisers leaving the scheme, 570 left in 2015/16 compared to 664 in the previous business year. This boosts confidence in the belief that organisations and their advisers will remain in a fully sustainable market.

In 2015/16 we set ourselves the target of deciding 75% Level 1 applications within 4 months of receipt, we decided 87%. We decided 97% of all applications within 6 months, the target was 85%. This was an improvement from 2014/15, when we achieved an 89% target. We achieved all of our targets in completing applications within set time frames, improving on last year's figures in most categories.

In addition to advisers joining the scheme as part of an organisation's application for registration, the OISC also considered 562 applications

by individuals to join existing organisations. Of these applications 68% (381 advisers) were approved. We also considered 1,163 applications for continued registration from organisations during 2015/16. Of these applications a much higher proportion (98%) were successful at gaining continued registration, which suggests that the vast majority of those permitted entry to the scheme are found to be fit and competent to remain in the scheme.

The OISC uses audits at an organisation's premises as an important regulatory tool to help us assess the fitness and competence of those wishing to be accepted into the scheme (pre-registration audit) and after entry. While the great majority of audits are pre-arranged, the Immigration Act 2014 gave the Commissioner the power to apply for a warrant to conduct an unannounced audit even at a private residence (where the residence is used to operate an immigration advice business). Our 2015/16 target remained the same as in 2014/15, and was to complete 350 audits. This was achieved and exceeded with 364 being undertaken, despite a reduced number of staff.

We received more complaints this year than in 2014/15, bucking the trend of the wider complaint-handling sector that has universally seen a decrease in complaints.

While our success rate with appeals was down from previous years, we still ensured that 78% of the Commissioner's regulatory decisions were upheld before the Tribunal. We successfully prosecuted 14 individuals for illegal activity this is up from 12 in the previous year. 2015/16 saw us cross the 200 mark in successful prosecutions since our creation.



Review & CPD

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*... to assist
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Triennial Review

The Review of the OISC and its functions began in October 2014. After much delay the report on the [Triennial review of the Office of the Immigration Services Commissioner](#) was published on 11 January 2017. Triennial reviews help ensure that non-departmental public bodies continue to have regular independent challenge. A number of recommendations were made, many to be implemented after the new Immigration Services Commissioner has been appointed. The report's conclusions were:

- √ that there is a continued need for regulation of immigration advice ;
- √ the OISC should continue as a non-departmental public body.

A number of recommendations for the OISC and the Home Office were made in the Review. Some of them have already been overtaken by events, while we are working towards achieving others.

Some of the recommendations are listed here:

- The OISC should consider whether its current approach to monitoring CPD compliance is the most proportionate and appropriate one.
- The OISC should consider within 12 months of the publication of this report whether there is an appropriate light-touch way of assessing consumer satisfaction. This would have to be clearly distinct from the complaints scheme
- The OISC should keep under review mechanisms for engagement with registered advisers
- The OISC should assess trends in its own efficiency over time and should compare to other similar organisations, and publish this benchmarking activity in its Annual Report.

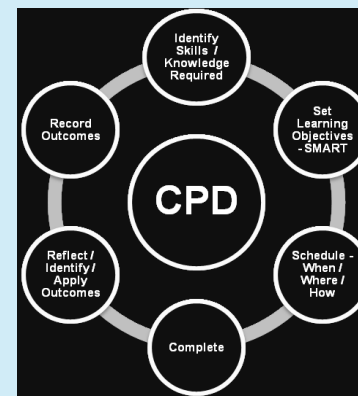
CPD

The revised Continuing Professional Development (CPD) scheme came into operation on 1 April 2017 and all advisers should now have read the [CPD Guidelines](#) and [information](#) on the OISC website to find out how to comply.

We have delivered 8 CPD seminars which have been well received. Those that attended have been encouraged to update their colleagues on the revised scheme and what their organisation now needs to do in order to comply with the CPD requirements.

The purpose of the seminars was to assist advisers in how to identify the skills and knowledge they, and their organisation, require to remain fit and competent; and to plan to effectively fill any gaps identified. Participants went away with tools to help to identify, plan for and fill those gaps.

The seminars focused on using an organisation's business plan as a tool to inform and direct individual advisers' CPD training needs. In addition, the seminars emphasised the importance of environmental scanning – looking at the political, legal, technical and social changes on the horizon - to ensure that organisations are better prepared and can easily adapt to such changes.



Registered organisations are reminded of the need to keep a plan and record of their adviser's CPD in order to demonstrate compliance with the Code 6. Templates can be found [here](#) .



CMA Report

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*The report...
intended to
promote
discussion
and change
for the
support and
protection of
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The Competition and Markets Authority (CMA) carried out an investigation into the legal services market in England and Wales

which encompassed the work of legal professions. The Report 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 CMA's recommendations were designed to make sure that consumers can be confident about the price and service they can expect when they hire a lawyer. They asked regulators to introduce enhanced standards:

- Lawyers will be required to publish prices on their website so that pricing is transparent
- Lawyers will be encouraged to engage with reviews and ratings so consumers know how good their lawyer is in advance
- For the first time customers can be confident they will have the right information at the right time

The CMA also asked regulators to make their data available to third parties:

- Data will be published by legal regulators to facilitate comparison tools to help customers find the right lawyer

The CMA want customers to have appropriate protection. They recommended that the government reviews whether customers of "unauthorised providers" (which is how they describe OISC registered

advisers) have sufficient access to redress.

They also want to ensure regulation encourages competition and innovation. The CMA recommended that the government reviews the regulatory framework for the longer term.

The report's recommendations were intended to promote discussion and change for the support and protection of consumers, enabling them to make informed choices when seeking legal advice.

The report itself focused on market transparency and structural reform. It is essential to overcome these twin challenges for the consumers of legal advice in general and those of immigration advice in particular. A sizable proportion of immigration and asylum clients are vulnerable, because of a possible lack of English or the legal system or because of their personal history. A reasoned, open approach to clients can only help. We believe that our principle-based approach will encourage competition and innovation. We firmly advocate transparency in all dealings between clients and their adviser.

We will closely examine the developments on price/service comparisons and measurements of "how good" advisers are. We do however believe that the proposals may help advisers provide a better, more tailored service to their clients. We are also working with other regulators to see how these proposals can improve the immigration advice sector.



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Now that the OISC has adopted a more principle-based approach to regulation it is of greater importance that immigration advisers act to the highest ethical standards.



Client Accounts & More



We have had reports/complaints that some banks are only allowing “legal professionals” (e.g. barristers, solicitors) to open client bank accounts. We have asked banks, the

Financial Ombudsman and the Financial Conduct Authority (FCA) why this would be and whether there has been a policy change to limit the availability of these accounts. Contrary to this, the FCA stated that they have thousands of approved persons with client bank accounts who are not legal professionals. They were not sure why these banks refused OISC registered organisations however they do not think that it is because these organisations are not registered with the designated professional bodies (solicitors, etc). The FCA went on to state that various non-professionals such as estate agents and letting agents as well as other service providers taking client deposits have client deposit accounts and these service providers are not necessarily affiliated with the legal profession.

From a quick online search on the availability of client accounts it would appear that although some banks make reference that these accounts are only available to ‘professional’ clients, ‘professional’ clients include insurance and managing agents whom are probably not legal professionals. It would thus appear that the term ‘professional’ may be wrongly interpreted too narrowly and that there is no legal professional affiliation requirement.

The FCA advise that if there are difficulties, advisers should inform the banks of the above.

SHOULD I REPORT IT?

Code 1 of the Code of Standards states: Organisations and advisers must always act in accordance with UK law.

Code 27 states: 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.

Code 84 provides that: 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.

We have recently been asked what these and other Codes mean in terms of regulation. There is legislation, such as the **Terrorism Act 2000**; and the **Proceeds of Crime Act 2002**, that impose a positive duty on all of us to report if we suspect criminal activity in specific instances.

Now that the OISC has adopted a more principle-based approach to regulation it is of greater importance that immigration advisers act to the highest ethical standards. 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. This includes how to guard their reputation. There is a marked difference between *legal* duties and *moral* duties. It depends entirely on the conscience of the individual to perform *moral* duties or not. The Commissioner will not intervene in an adviser’s moral dilemma, but if that dilemma disadvantages a client or brings the sector into disrepute, he will have to act.



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There is no statutory power for the Commissioner either to review whether the suspension remains appropriate or to refer the adviser to the First-tier Tribunal for consideration.



Integrity of the Sector

The vast majority of the immigration advice sector acts with integrity. There are however some advisers that occasionally appear to act dishonestly. When this happens, as in the case below, the Commissioner must intervene to protect clients and the reputation of law-abiding registered advisers.

[RD v The Immigration Services Commissioner \[2017\]](#)

UKUT 0096

A Level 3 adviser appealed the First-tier Tribunal's decision to suspend the adviser's registration on the Commissioner's application. The basis of the application was that the adviser has been charged with an offence under s. 25 of the Immigration Act 1971: **Assisting unlawful immigration to a Member State.**

In summary, the applicant's grounds of appeal were that:

- The original criminal charge against him had been either amended or withdrawn and a new charge substituted in its place in the light of the amended charge, the tribunal erred in law as there was no valid criminal charge against the Applicant when he was suspended.
- The criminal charge was false and thus there was a miscarriage of justice.
- The tribunal had been misled by the Commissioner and by the police



and had not taken his representations into account. The adviser emphasised the financial hardship he was experiencing as a consequence of his suspension.

Judge Gwyneth Knowles QC found:

- √ There is no statutory power for the Commissioner either to review whether the suspension remains appropriate or to refer

the adviser to the First-tier Tribunal for consideration.

- √ Whilst an adviser remains charged with an offence, the Commissioner lacks statutory authority to consider any fresh developments which might affect the adviser's suspension.
- √ In this case the Applicant remained charged with an offence contrary to section 25 of the Immigration Act 1971. Whilst the particulars of the charge were amended, this did not equate to either a withdrawal or a discontinuance to trigger either of the relevant provisions of paragraph 4B(2) of Schedule 6 to the 1999 Act.

The criminal charge faced by the Applicant went to the very heart of the system of regulation that Parliament has entrusted to the Commissioner and to the tribunal. The judge held that it would be entirely at odds with that system if the Applicant's suspension were to be rendered ineffective by changes to the particulars of charge in circumstances where the Applicant remained charged with one of the offences listed.

The Applicant also made allegations about the conduct of the Commissioner's staff. However, at the hearing he accepted that the OISC was not acting fraudulently. The judge said that she found no evidence in her perusal of the material to suggest such allegations might be remotely plausible let alone arguable.

Fortunately the power of suspension is rarely used, but we must all be on our guard to ensure the public and the advice sector are protected.

Prosecuting Illegal Immigration “Advisers”



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“The victims were vulnerable and have suffered significant levels of stress, loss and harm; worse still their immigration status is severely at risk.”

██████████, pleaded guilty at Luton Magistrates’ Court on Tuesday 24 January 2017, to two offences of providing unregulated immigration advice between 5 June 2012 and 28 December 2012.

██████████ was previously regulated by the OISC but this ceased on 21 February 2012 however he continued to provide immigration advice unlawfully.

On 14 February 2017 ██████████ was sentenced to 6 weeks imprisonment on each count suspended for 12 months, to run consecutively. He was also ordered to complete 200 hours unpaid work within the next 12 months, and to pay compensation to the victims of £480 and £1,352. He was ordered to pay prosecution costs of £1,581.

When sentencing magistrates said:

“These were serious offences against two vulnerable victims. ██████████ knew the implications and devastating consequences for the persons he advised when he knew he was no longer qualified.”



██████████ was convicted on Monday 16 January 2017 at the Chelmsford Magistrates’ Court of providing unregulated immigration advice and services

between 1 December 2010 and 24 January 2012.

██████████ was sentenced to 5 months imprisonment and ordered to pay £4,000 compensation and an £80 victim surcharge, on his release.

On sentencing the magistrates said:

“The offence for which you were convicted – of providing immigration advice and services – is so serious that only an immediate custodial sentence can be justified. This is because this offence took place over a long period of time between 2010 and 2012, and a significant amount of money was involved.

“The victims were vulnerable and have suffered significant levels of stress, loss and harm; worse still their immigration status is severely at risk. It could be argued that you acted in a fraudulent manner misleading the victims, presenting false documents and misrepresenting yourself to them. All of these are reasons why an immediate custodial sentence is necessary.”



REQUEST AN OISC SPEAKER FOR YOUR EVENT

Immigration advice organisations are invited to contact the OISC if they have an interest in receiving input or representation from the OISC at one of their future events.

Advisers organisations should email sharon.harris@oisc.gov.uk in the first instance to register an interest. Advisers will subsequently be contacted to discuss possible options.

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Changes specifically addressing employment issues were implemented from 6 April 2017.

IMMIGRATION RULE CHANGES

Last year's changes to the Immigration Rules were to be implemented in two phases, November 2016 and April 2017. Changes specifically addressing

employment issues were implemented from 6 April 2017.

Some of the changes announced are:

- An Immigration Skills Charge to reduce demand for migrant labour and make sure British people have the right skills to fill jobs
- Tier 2 (General) workers sponsored in the education, health and social care sectors will need to provide a Criminal Record Certificate for themselves and any adult dependants as part of their applications.
- Tier 2 (General) salary thresholds will be increased to £30,000
- The Tier 2 ICT short term category will close to all new applications



- Intra-company transferees will (with some exceptions) be required to meet a minimum salary threshold of £41,500
- Minimum salary threshold for intra-company transferees working in the UK for 5-9 years will be reduced from £155,300 to £120,000

Tier 5

The following changes are being introduced to the Resident Labour Market Test (RLMT) requirements:

- The RLMT is being waived for creative jobs on the Shortage Occupation List in the Creative and Sporting sub-category.
- The RLMT is being waived where a performer is required for continuity or is engaged by a unit company in relation to productions outside the UK, rather than outside the EEA, as at present.
- The Rules have been amended to provide for the operation of arrangements to manage the allocation of places under the Tier 5 (Youth Mobility Scheme) allocation for Taiwan, where demand is expected to significantly exceed supply

On 2 March 2017 the Home Office published new guidance to their staff on [general grounds for refusal](#). This guidance may allow, in some cases, for refusals on the basis of perceived deception or even mistakes.

OISC News is published by the Office of the Immigration Services Commissioner.

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