**Professional Conduct**

**On-Line Course**

## Course Overview

How can advisers maintain their professionalism in delivering advice and services? The OISC [Code of Standards](https://www.gov.uk/government/publications/oisc-code-of-standards-commissioners-rules-2012) and [Guidance on Competence](https://www.gov.uk/government/publications/competence-oisc-guidance-2012) underpin all of the services that are provided by immigration advisers. All advisers must comply with the detailed requirements that are contained, as well as the legislation that applies. Central to the OISC Code of Standards are the principles of always acting in the best interests of the client, and maintaining client confidentiality.

In this course, you will learn about the OISC Code of Standards and how this relates to your role as an immigration adviser. You will also understand the principles of acting in the best interests of the client. Client confidentiality is a crucial theme and you will learn about the exceptional circumstances where you may breach confidentiality. Finally, you will consider withdrawing from a client, fees, and your professional obligations to others.

## Course Objectives

On completion of this course, you should be aware of:

1. the [OISC Code of Standards](https://www.gov.uk/government/publications/oisc-code-of-standards-commissioners-rules-2012) and the [Guidance on Competence,](https://www.gov.uk/government/publications/competence-oisc-guidance-2012) including the different levels of competence
2. the importance of identifying who your client is at the outset of the case
3. the principle of acting in the best interests of your clients
4. the principles of client confidentiality, including when they can and should be broken
5. when you should withdraw from acting for a client
6. the challenges when working with interpreters
7. the importance of clarity about any financial charges
8. the offences that an adviser can commit under The Immigration and Asylum Act 1999, as amended (hereafter ‘The Act’)
9. your professional obligations to others, apart from your client

## Module 1 – Laying the Foundations

### Module 1 – Overview

How can advisers maintain their professionalism in delivering advice and services? The Code of Standards and Guidance on Competence underpin all of the services that are provided by immigration advisers. All advisers must comply with the detailed requirements that are contained, as well as the legislation that applies. Central to the Code of Standards are the principles of always acting in the best interests of the client, and maintaining client confidentiality.

In this Module, you will learn about the Code of Standards and how this relates to your role as an immigration adviser. You will also understand the principles of acting in the best interests of the client. Finally, you will consider withdrawing from a client, fees, and your professional obligations to others.

### Module 1 – Objectives

On completion of this module, you should be aware of:

1. the Code of Standards and the Guidance on Competence, including the different levels of competence
2. the importance of identifying who your client is at the outset of the case
3. the principle of continually acting in the best interests of your clients
4. when and how you should withdraw from acting for a client

### Chapter 1 – OISC Code of Standards

The Immigration and Asylum Act 1999, as amended, empowers the OISC to regulate and oversee immigration advisers to ensure they are 'fit and competent' to give immigration advice and services.

Did you know:

Immigration advisers are not regulated by the Solicitors Regulation Authority (SRA).

Keypoint  
It is unlawful to give immigration advice and offer services without being regulated by either the OISC, a Designated Professional Body or a Designated Qualifying Regulator. Organisations can be either a not-for-profit organisation or operate for commercial purposes.

Think about...  
What is meant by 'immigration advice'? What do you understand by this? How might immigration advice be given? What are the different methods?

The Code of Standards gives clear guidance about what constitutes immigration advice. If advisers are merely signposting or making referrals, then that would not constitute 'immigration advice'.   
  
And what about immigration services?   
  
Immigration services generally refer to:

* making representations before a Court, Tribunal or an Immigration Judge or
* corresponding with a government minister or department, on behalf of an individual

The Code of Standards sets down the standards, behaviours and competencies required of all advisers. The three main parts of the Code of Standards are:

* the individual adviser's behaviour
* organisational standards
* running the organisation

It is vital that you familiarise yourself with the Code of Standards before engaging with clients. This maintains professionalism, ensuring the integrity and accuracy of any advice you give.

**Chapter 2 – Guidance on Competence**

The Guidance on Competence sets out the standards that advisers have to reach in order to be considered competent.   
  
It defines the three levels of immigration advice as follows:

* Level 1 – Advice and Assistance
* Level 2 - Casework
* Level 3 – Advocacy and Representation

Keypoint

You can find out more by referring to the Guidance on Competence corresponding to the three levels of advice.

The Guidance on Competence outlines the levels of activity at which an adviser can operate. It outlines the skills and knowledge required at each level. If an adviser is registered at a particular level, it is possible to graduate to the next level under close supervision of a senior caseworker in the organisation

Keypoint

Level 2 caseworkers can apply for temporary admission and Secretary of State for bail, but they are not allowed to apply for bail at a Tribunal before an Immigration Judge. This involves advocacy skills, which we expect Level 3 advisers to have.

Activity

The Standards and Guidance that apply - which of the following statements are true?

* immigration advisers are not regulated by other designated professional bodies   
  True
* the Guidance on Competence outlines the skills and knowledge required at three different levels  
  True
* the Code of Standards gives guidance on the levels of competence  
  False
* the Guidance on Competence enables anyone to give advice on any subject   
  False

### Chapter 3 – The Basic Principles

Everyone registered under the OISC scheme must comply with the Code of Standards. The Code aims to set out clearly what is expected of advisers in order to ensure that their clients are dealt with competently and fairly.   
  
To this end, there are a number of basic principles that all immigration advisers must meet. One of the fundamental principles is that of acting in the best interests of the client.

Think about...

Spend a few minutes thinking about when it has been difficult for you to act in a particular situation. This may be perhaps because of your ethics, values or principles, a religious belief, or for some other reason.

What did you do and how did you cope? How do you think that compares with the Code of Standards?

Here are some examples of different situations which you may find difficult or challenging in your role as adviser:

* an asylum-seeking former soldier in intelligence who admits to obtaining information from suspects in dubious ways
* a young pregnant woman who you strongly suspect has been trafficked sticking to a wholly implausible account of how she came to the UK
* a 15 year old boy (i.e. underage) who tells you he is gay and that is why he wants to stay in the UK
* a Muslim fundamentalist charged with complicity in a major terrorist attack
* a client who asks you to deceive the Home Office / First Tier Tribunal (Immigration Services) General Regulatory Chamber
* a client who asks what religion you have
* a client who makes racist or sexist remarks
* a client who is abusive to you or to other members of staff

Keypoint  
The latter two examples of offensive behaviour may link into Code 43, which is that an organisation must not withdraw or threaten to withdraw from a case without good reason.

Acting in the best interests of the client

Code 12 clarifies the position regarding acting in the best interests of the client. The Codes and related practice notes also provide guidance on areas such as equality, the adviser's behaviour and client care as well as confidentiality and organisational standards.

Think about...  
What should you do if a client asks (a) not to be advised by a specific adviser or (b) with a specific interpreter; for reasons that appear on the surface to be racist?

The Code of Standards can help you:

Codes 15 - 17: Equality

* 15 states "Organisations and advisers must treat their clients fairly and without prejudice or bias.“
* 16 states "Organisations must have a written equality and diversity policy that meets current statutory requirements.“
* 17 states "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."

Codes 3 - 5: Competence

* 3 states "Organisations and advisers must only act according to, and within, their authorisation.“
* 4 states “All organisations and advisers must remain fit and competent within the Level and Categories for which they are authorised.“
* 5 states "When giving immigration advice or immigration services, organisations and advisers must act competently."

Codes 7 - 14: Behaviour

How is the client's 'best interests' principle reflected in the adviser's behaviour?

* advisers must clearly identify themselves
* organisations must ensure no unauthorised person provides advice or services on their behalf
* advisers must operate within their authorised Level and Category
* organisations and advisers must not take advantage of a client's or prospective client's vulnerability
* organisations and advisers must not mislead their clients or prospective clients
* organisations and advisers must always act in their clients' best interests subject to regulatory and legal requirements
* organisations and advisers must, as far as reasonably practicable, satisfy themselves that documents supplied to them are genuine
* organisations and advisers must show respect, politeness and courtesy to all; be prepared to provide identification and confirmation of their authorisation to the relevant authorities; not mislead the Commissioner or relevant authorities; not permit themselves to be used in any deception and not abuse any procedures operating in the UK in connection with immigration or asylum

Codes 20 - 48, 79: Client Care

The importance of Client Care is reflected in the number of related Codes which can be summarised:

* explain fully any possible conflict of interest
* no referrals should be made for gain
* a client care letter must be provided
* confidentiality must be ensured
* clients to be kept regularly informed
* obtaining additional services and outsourcing of work must be with the client's consent
* arrangements must be in place in case of an adviser's temporary inability to work
* all documents to be returned to the client on termination of instructions
* arrangements must be in place for when withdrawing from a case
* on completion of a client's case a written statement should be provided, together with the return of original documents and a final financial statement if appropriate
* transferring the client's file to another organisation should be carried out as soon as possible or within three working days
* there must be a written procedure for handling complaints

Think about...

How does your organisation ensure that all advisers understand the principles of equality?

Are you, for example, given an opportunity to discuss issues and personal prejudices that may affect your relationships with clients?

### Chapter 4 – Who is Your Client

It is important to establish early on in an advice session just who your client is. This may be obvious if someone comes to you directly for advice. But, what happens if they are accompanied and both parties have different or conflicting viewpoints? Perhaps there are divided loyalties?   
  
What if someone is referred to you by their employer? Is your client the person in front of you, their employer, or both parties in this situation?   
  
To prevent any complications, you must establish who your client is from the outset.

Think about...

Why is it important to identify who your client is? When and how should you identify who your client is?

The Advisor's Dilemma

A young woman, Tabassum, came to see me with her father, Mohammad. Following an arrangement between their families, she is engaged to be married to Ahmed, who is in Pakistan.   
  
Ahmed has been refused entry clearance as a fiancé. Mohammad asked me to assist them with the entry clearance appeal. I advised them about the fiancé rules, the appeal process, and lodged the appeal for Ahmed.   
  
Father and daughter left apparently happy, but two days later Tabassum came back to see me on her own saying she is being forced into marrying Ahmed, and that she doesn't want him to come to the UK. She stressed that, on no account, must her father find out what she had told me.

Question

Q: Who is your client in the above scenario?

A: The client is the fiancé Ahmed as he is the applicant / appellant, and in receipt of both advice and services. Tabassum is the sponsor, and could possibly be part of a joint retainer with Ahmed - but only so far as advice is concerned.

Task  
Spend a few minutes considering Tabassum's situation and make a few notes.

Consider:

* should you contrive to lose the appeal, and how do you go about doing it?
* should you try to win the appeal, making no mention of Tabassum's reluctance?
* in either case, what do you do about Tabassum's oral evidence, which will be crucial to the Immigration Judge assessment of the couple's intention to live together?
* would it make any difference if Tabassum tells you that, although she will be miserable living with a man she does not love, she will obey her parents' wishes if Ahmed does come over here?

Addressing Tabassum's Case: Key Issues

1. Due to the sensitivities of the situation, the adviser should think carefully about the different roles of Ahmed as the appellant, Tabassum as Ahmed's sponsor, and her father as a potential witness if the refusal of Ahmed's application doubted adequate maintenance and accommodation in the UK. Mohammad is not the client for the purposes of Ahmed's appeal.
2. The adviser should also check Tabassum's age. Was she initially accompanied by her father because she is a minor, or for other reasons? All fiancés/fiancées must be aged 18 for entry clearance purposes (with one exception that does not apply here). If Tabassum is under 18 or Ahmed would be under 18 when he intends to arrive in the UK, that is a legitimate reason for not proceeding with the appeal as it would be unsuccessful. There may be other reasons for advising Ahmed not to proceed with the appeal based on non-compliance with entry clearance requirements e.g. the English language test.   
     
   Code 14 (c) and (d) states "Organisations and advisers must: not mislead the Commissioner, government department or any other statutory or judicial body; not knowingly or negligently permit themselves to be used in any deception"

1. The adviser cannot consider deliberately losing a viable appeal because of the application of Code 14.
2. The adviser should explain this to Tabassum, including that the adviser must not abuse any appellate or judicial procedure concerning immigration or asylum, or advise anyone else to do so.
3. Tabassum's intentions do have a bearing on the viability of the appeal as if she does not intend to stay with Ahmed once he is in the UK, the requirements of the Immigration Rules are not met. She should be informed in objective terms that if she is being pressurised into giving untruthful evidence, or is afraid of repercussions for being truthful, she can write to the Tribunal or speak to Tribunal staff who will draw it to the attention of the Immigration Judge. The latter cannot in most circumstances act on anonymous letters, but can take into account a confidential letter from a sponsor or witness. The Immigration Judge can also direct that there are no observers in court, such as relatives, when oral evidence is given.
4. Tabassum can also be told that in cases of a marriage forced by threats and coercion, as opposed to an arranged marriage in which one party is simply reluctant, the Forced Marriage Unit gives confidential advice - see the Home Office website, and that of the FCO.

Of course, every client may have different needs and requirements. However, in general, before you act you should consider:

* What are your obligations to a client?
* What if you have two or more clients instructing you jointly?

Question

Q: Is it acceptable to work for more than one client simultaneously?

A: Yes, you can work for more than one client simultaneously. In fact, this might be desirable if two clients come to you for advice about the same case. However, you need to be sure that there will be no conflict of interest in representing more than one party.

Keypoint  
Sometimes, you may need to withdraw from a case in order to maintain your professionalism. In this situation, remember to follow the guidance in Codes 43 - 45.

Case Study: Viktor's call

Viktor, a Turkish national, calls and asks you to obtain a Tier 2 visa for him. He says his employer will provide all the necessary information.   
  
Here are some questions raised by this request:

Q: Does it make any difference if the employer pays your fees?

A: Who pays the fees is irrelevant to the question of who is the client.

Q: If the client is not the employer, how do you approach the representative's declaration at the back of the application in which you, the representative, have to declare that you are instructed by the employer to make the application?

A: Explain the concept of the Joint Retainer and the importance of making it clear from the outset, preferably in writing, what your obligations are to whom, including disclosure

Q: What if a member of staff at the employer business accidentally tells you that the job is fabricated?

A: If after making further enquiries, the adviser believes the job is fabricated, he/she must not mislead, nor knowingly or negligently permit themselves to be used in any deception.

**Q:** What are your obligations to the employer if Viktor tells you the application is being made merely as a device to get permission to remain so that he can work for an alternative employer?

A: If the prospective employee tells you the application is a device, refer to Code 14 (c), (d), (e)

Q: What are your obligations to the employer if Viktor tells you his reference is forged?

A: If the reference is forged, there are obligations under the Joint Retainer, so thus withdraw from acting.

### Chapter 5 – When Should You Stop Acting for a Client?

Are there circumstances in which you should stop acting for a client and effectively withdraw from a case? If so, what are they and why is it necessary? And how should you do this?

Keypoint  
Code 20 outlines conflicts of interest that may arise, leading to withdrawal from a case.

There are five instances where conflict can arise:

1. Between your role as an advisor and another role. For example, an advisor, who is a charitable trustee cannot benefit financial from the charity.
2. Between the advisor and the client. Don't confuse roles.
3. Between two current clients. In immigration cases, the most obvious source of conflict is a split between spouses, parents and children and so on.
4. Between a new client and an old client of the agency. What processes are in place in your agency to identify potential conflicts between clients?
5. Between the client or case, and the ethos of your advice agency. Does your agency have any policies setting out its ethics and objectives?

Keypoint  
Consider why, and when you should aim to withdraw. The exception is where information causing such a withdrawal is received so belatedly. You should never withdraw from a case near to a court date, or withdraw from acting for a client at the last minute.

Of course, you must also withdraw from a case:

* when a client lies to you, to the court or to the Home Office
* if there is a serious breakdown in the relationship or confidence between the client and advisor
* if there are money issues:
  + if public funding has been withdrawn or the client has failed to pay agreed fees
  + if a client persistently fails to attend meetings with you, or otherwise fails to give you instructions, without a good reason

### Chapter 6 – Making Mistakes

Very occasionally, you may make a mistake or an error of judgment in a case. For example, you may:

* miss a deadline to lodge an appeal
* fail to submit a significant document to the Home Office
* submit an unapproved draft application with significant errors to the Home Office

Think about...  
What if you make any of the above mistakes in a case? Should you withdraw from that case?

Keypoint  
Codes 43 - 45 describe what you should do when wanting to withdraw from a case.

Remember that it is best practice to have a written policy and procedure in your organisation, giving information and guidelines on withdrawing from cases.

### Chapter 7 – Frequently Asked Questions

Q: What is the purpose of the Code of Standards?

A: The Code of Standards regulates all immigration advisers, ensuring they meet an acceptable professional code and maintain high standards in the profession.

Q: Who is my client?

A: Your client is the person who is receiving advice or services from you. You may give advice to one or more clients simultaneously. If instructed to lodge an application or appeal, the client is the applicant or appellant and not simply the person paying for your advice or services. It is important to consider who is the client where the applicant or appellant is overseas, and someone in the UK is paying and/or providing you with information.

Q: What is the client care letter? What is its purpose?

A: Codes 23 - 26 outline the importance of giving all clients a client care letter at the outset. This details such things as the services you will provide, terms and conditions of engagement, confirmation of costs including any additional costs, contact details of the adviser handling the case, the complaint handling procedure, full details of the client's instructions, advice given and work agreed to be done with estimated timeframes and so on.

Q: What is meant by the 'best interests' of the client?

A: An adviser is required to always act in the best interests of the client, Code 12, and put the client's interests before their own interests, subject to regulatory and legal requirements.

Q: Is it possible to advise more than one client at the same time

A: Yes. You may have a Joint Retainer agreement. It is advisable to set out clearly your obligations and expectations in a client care letter in this situation.

Q: When must I withdraw from a case?

A: An adviser should only withdraw from a case for good reason. You should consider withdrawing from a case if a client lies to you, or the Home Office; if there is a serious breakdown in the relationship of confidence with your client; the client has failed to pay agreed fees despite warnings or if a client persistently fails to attend meetings with you, or otherwise fails to give you instructions without a good reason.

Q: My client has threatened me. Can I withdraw from the case?

A: Yes

Q: How do I withdraw from a case?

A: In writing: you need to give the client notice in writing of your intention to withdraw. You should also provide information to the client of other advisers who may be willing to take on their case. You must inform other parties (fellow professionals, Home Office, etc) that you have withdrawn from the case, and you must not obstruct a client in finding another adviser (for example, by withholding information or client's documents).

Q: My client has offered me money as a gift. Should I accept it?

A: It's probably better not to accept the money as, in some circumstances, this may compromise your professionalism and might be seen as a bribe or inducement. Consult your organisation's best practice guidelines to find out if there are any circumstances in which you may accept money as a gift from a client (especially, for example, if you work for a charitable organisation). If you still unsure, you can talk to a more senior person in your organisation.

### Module 1 – Summary

1. All advisers must act in accordance with the Code of Standards and Guidance on Competence.
2. It is crucial to identify at an early stage just who your client is. It is possible to work for two clients simultaneously in a Joint Retainer arrangement but there should be clear procedures that are explained to all parties for this.
3. You should outline your obligations, requirements and expectations in a client care letter.
4. At all times, you should act in the best interests of your clients. If you cannot represent the client adequately (due to resources, lack of experience or due to personal issues), you must withdraw from acting for them.
5. Client confidentiality is very important. You must have a procedure to ensure client confidentiality unless information is required because of a legal or regulatory obligation. You must act lawfully and not mislead the authorities or encourage your client to do so.

**Module 1 – Learning Outcomes**

Now you've completed this module, you should be able to:

1. understand the Code of Standards, the Guidance on Competence, and the distinction between different levels of competence
2. recognise the importance of identifying who your client is at the outset of the case
3. understand the principle of acting in the best interests of your clients
4. recognise when and how to withdraw from acting for a client

## Module 2 – Immigration Casework

### Module 2 – Overview

Professional standards and conduct apply to the entire adviser-client interaction. Confidentiality is at the core of this relationship. In part, success rests on the adviser's ability to build trust with clients. In addition, how much should you charge for immigration services and advice? What offences may be committed by advisers? And what are your obligations to other professionals?

In this Module you will learn about client confidentiality and why it is so important to the client-adviser relationship. You will find out about the exceptional circumstances where you may breach confidentiality. You will also examine fees and dealing with interpreters. Finally, you will consider the types of offences that may be committed by advisers and your professional obligations to others, including the need to provide accurate and timely information.

### Module 2 – Objectives

On completion of this Module, you should be aware of:

1. the principles of client confidentiality, including when they can and should be broken
2. the challenges when working with interpreters
3. the importance of clarity about any financial charges
4. the offences that an adviser can commit under The Immigration and Asylum Act 1999, as amended
5. your professional obligations to others, apart from your client

### Chapter 1 – Confidentiality

Confidentiality is one of the fundamental principles of the client-adviser relationship and it is important to consider:

* the information that you use
* the material fact that you are being instructed by a client
* the information, documents and meetings that you have with a client (what is said and disclosed)
* third party confidentiality: for example, getting permission from a client to ask for advice from other professionals
* not discussing a case with relatives or friends, unless specific permission is given
* the fact that confidentiality must continue after a case

Think about...  
How might confidentiality be compromised when acting as an immigration adviser? Try to recall three examples from your own or your colleagues' experiences.

Keypoint  
Remember who your client is, particularly in overseas applications and appeals. Someone in the UK may be paying the fees and passing on information, but they are not necessarily the client. The latter may be happy for the third party to have confidential information and documents, but always think about the respective roles first.

In order to maintain confidentiality, remember that:

* all information given to your agency by a client is confidential
* the very fact that a client has instructed you is confidential. Obviously, the details of a client's circumstances are confidential, and the consequences of a breach can be serious
* the client should be informed about your policy on confidentiality and ideally, this should be confirmed in writing
* client confidentiality extends to documents and post
* client confidentiality extends beyond the end of the case
* third parties (for example, interpreters, experts etc) should understand your policy on client confidentiality
* if the client authorises you to disclose information to anyone, this should be recorded on the file, ideally in a signed consent form that includes relatives or friends

Think about...  
Are there ever times when you should breach confidentiality? Are there 'special circumstances'? What about for security reasons, if you consider that someone is at risk or vulnerable?

Make sure you are familiar with the General Data Protection Regulation (or GDPR), and the Data Protection Act 2018. The Information Commissioner’s Office (ICO) has issued a free guide.

Ensure you are familiar with the data protection principles. Each organisation processing personal data has to register with the Information Commissioner unless an exemption applies.

Some organisations will need to appoint a Data Protection Officer – please see the ICO’s guidance on this. If required, seek independent advice.

Question

A client comes to see you with her 7-year-old son. She has mental health problems for which she has treatment. Her medication has been changed and she is not reacting well. She threatens you, breaking a window in your office. You are concerned about her son's welfare.

What should you do? The issues to consider are:

* client confidentiality
* your moral obligation to the client
* the child is a minor and so child protection issues override the usual client confidentiality issues

You should inform social services and/or a GP of the impact of the client's mental health problems on her case, and whether an expert report or referral is required for her.

Q: Your client is 25 years old and has applied for asylum. She always comes to see you with a "friend", a much older man, who befriended her shortly after she arrived in the UK, and offered her a home. He is seemingly protective, but you are uneasy about the relationship and you have noticed he often tries to answer your questions

A: In this situation, you may raise the issue of trafficking. You will need to take control of the interview. You should exclude the "friend" and raise the issue delicately with the   
client directly. If your client was a minor, then you should expect to involve social services as it is a child protection issue.

Q: You are instructed by a new client who tells you he came to the UK in 2014 as a student for 3 years but has subsequently overstayed, which is a criminal offence. He wants to make a claim for benefits. Will you help?

A: You are not obliged to tell anyone that he is an overstayer in the country and this might breach client confidentiality. However, he is unlikely to have any viable benefits claim due to his lack of immigration status and to make a fraudulent claim for benefit is an offence. As an adviser, you must ensure that you do not mislead anyone, commit any offence or encourage any client to do this.

Did you know  
Under the Social Security Administration (Fraud) Act 1997, advisers must not knowingly assist with a fraudulent claim for benefits.

Keypoint  
It is an offence to aid, abet, counsel or procure the commission of any criminal offence. Advisers must be careful that they are not seen to be encouraging a criminal offence such as money laundering, or the use of false documents showing fake immigration or employment status. A Home Office priority is also pursuing those who arrange or appear to be facilitating sham marriages.

### Chapter 2 – Written Policies

Codes 27 and 28 advise that it is best practice for your organisation to have a written confidentiality policy covering the basic principle that information will not be disclosed unless the enquiring authority demonstrates a legal or regulatory obligation on the organisation to do so. It should set out clearly:

* when information can be disclosed
* the data protection legislation
* client forms of authorisation
* the procedures for referring requests for information to a senior member of the organisation

Keypoint  
Remember that other agencies or experts will need a written and signed consent form from your client before they release information. It is essential to have a system of getting clients to sign consent forms to release files for OISC audits.

Activity: Confidentiality and You

Which of the following statements are true?

* It is an offence to aid, abet, counsel or procure the commission of any criminal offence.   
  True
* It is acceptable for advisers to assist with a fraudulent claim for benefits.   
  False
* Other agencies may need signed consent forms before releasing information to you about your clients.   
  True
* You must never breach confidentiality, in any situation.   
  False
* Child protection issues override client confidentiality.   
  True

### Chapter 3 – Working with Interpreters

Often it may be necessary to use interpreters to assist you in dealing with a client. If you do this, it is vital that you follow a clear code of conduct to ensure professional conduct at all times.

Keypoint  
It is best practice for all organisations to have a list of approved interpreters and a written policy about how interpreters are recruited. See the Guidance Note relating to Code 35

Why are Interpreters used?

Without them we could not hope to support and advise our clients adequately. They are an 'interface' with many of our clients playing a key role in the work we do.

Some clients may recommend a friend or a family member who could work as an interpreter. In this instance, the adviser must assess and decide if the person is sufficiently competent and able to do so.

It is best practice to use an interpreter who has a legal or immigration background and who is suitably qualified. There may also be conflicts of interest with a relative or friend and sensitive information that they should not hear. They or other informal interpreters may be tempted to re-interpret what is said, and/or offer their own advice or views.

So, what are the main considerations when using interpreters?

You should:

* use a qualified interpreter who is experienced in immigration matters
* ensure that interpreters are able to interpret any legal terminology you may need to use or explain to the client
* ensure that interpreters are independent of the case
* ensure interpreters preserve client confidentiality
* be aware of client's needs and sensitivities when using interpreters - for example, gender, dialect, tribal, ethnic or religious conflicts

Question

You are advising your colleague who is using an interpreter for the first time. What tips and guidelines should you give them? Write down a few suggestions that would be important for your colleague.

* explain the role of the interpreter to the client
* ask the client and the interpreter if they understand each other
* ensure the interpreter tells the client that s/he is bound by the same duty of confidentiality as the adviser is
* keep questions and explanations short
* explain to the client that it is helpful if s/he gives information in short sentences, or parts of sentences, so that the interpreter can remember the information and translate it immediately
* avoid technical language or jargon
* avoid colloquialisms: they may be culturally specific or difficult to translate.

In addition, you should speak directly to the client and if the interpreter doesn't do so, remind him/her to use direct speech too.

So, instead of saying: "Can you ask the client when she arrived in the UK?", you should say: "When did you arrive in the UK?". Similarly, the interpreter should not say: "She said she arrived on 1st May", but instead should say: "I arrived on 1st May".

Keypoint  
You can also refer to Codes 34 - 37 for more information about using interpreters.

Activity: Reuben's Work

Reuben is an interpreter working at the CAB office in Slough. He is fluent in five different languages. What rules should he follow in his work?

* He should use indirect language, for example, "My client says she agrees" to show respect.   
  False
* He needs no understanding of legal terminology.  
  False
* He is governed by client confidentiality rules  
  True
* He should show respect to clients' needs and sensitivities.  
  True

### Chapter 4 – Money, Money, Money

Advisers at all levels must ensure that clients are informed of any likely costs at the outset of the case. Look at the Guidance Note on fees and accounts.

Keypoint  
Where relevant, clients should also be advised of any actions which are likely to significantly increase the costs estimate. Does your organisation have a policy on accepting gifts? It is important to distinguish between a 'donation or gift' and payment. Donations must be wholly voluntary, made to the organisation and not the individual, and formally recorded.

Keypoint  
You should also review the Codes 21-22, 26, 58 - 69 for more about financial arrangements and guidelines.

The key points are:

* Codes 21 and 22: Referral fees that are an inducement are not permitted.
* Code 36: The client care letter must include information about fees, including a costs estimate. Any further fees and costs must be made known to the client in writing and agreed by the client before any request is made.
* Code 48: If a client requires their case to be transferred, this must be done irrespective of any payment outstanding.
* Code 58: An organisation that 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.
* Code 61: Only a reasonable fee should be charged that directly relates to the work done.
* Codes 64 - 69: If client's money is held, it must be held in a separate client account, and the funds remain that of the client.

Question

Q: A client visits your office for advice on how you might be able to help her settle permanently in the UK. Then she tells you that she is an overstayer and that she said she'd give a donation to your charity if you helped her claim benefit.

A: Under no circumstances should you accept any gifts or donations that might be construed as inducements to act in a particular way for a client. It is good practice to

have an organisational policy regarding the receiving of gifts. This also ensures that clients don't feel hurt if you decline any gift.

### Chapter 5 - Your obligations to others and the offences committed by advisers under The Act

You have a professional duty not just to your client, but also to behave professionally to other people. This duty extends to the Courts, Tribunals, the Home Office, experts, interpreters, and colleagues.  
  
The relevant Code is 14.  
  
There are also criminal offences under The Act for which advisers can be punished by fine and/or imprisonment.

Keypoint  
The basic principle is that you should never knowingly mislead the immigration authorities or the Courts, or advise a client to deceive the Courts or the immigration authorities.

Read the Case Study and answer the questions that follow.

Precious M - Case Study

Precious M. comes to see you about an application she wants to make to the Home Office for further leave to remain as a student. She can meet the financial requirements, but tells you that is because she runs her own business as a self-employed cleaner. She does not study at all, but if the college writes to her about attendance, she sends her sister to a few classes to pretend she is Precious.

Q: Will Precious be committing an offence if she tells the Home Office that she has been studying tourism at college for the past year?

A: Yes, she would be attempting to deceive the Home Office about her activities.

Q: Would you submit the application for further leave to the Home Office? If not, why not?

A: No, you should not submit the application for further leave because you know the truth. You must not put forward as true something you know to be false.

Q: What advice would you give Precious M?

A: That you cannot act for her in connection with the application she wants to make, that if she makes it herself she will be committing an offence; and that she is currently not in compliance with the conditions attached to her stay, and the implications of this.

Q: Would you tell the Home Office that Precious is not a genuine student?

A: If Precious has already signed and submitted a false application without your help, she is committing a criminal offence under s.24A of The Act. If she has named you as her adviser, you may become implicated when the Home Office makes further enquiries about the application. Whether or not she has named you as adviser, you should refuse to act for her immediately, and put this in writing, although you are not obliged to say why. That letter can be shown to the Home Office if necessary. The duty of client confidentiality only applies where someone is or was a client, and in any event an adviser can breach confidentiality if the police or relevant authority are investigating a crime.

What are the main offences under The Act?

s.25 Knowingly facilitate the breach by a non-EU citizen  of the immigration law of any EU Member State, including the UK.

s.25A Knowingly and for gain facilitate the entry of asylum-seekers to the UK unless acting for a bona fide organisation that does not charge for assisting asylum- seekers.

s.25B Knowingly doing any act that assists someone's entry to the UK in breach of deportation or exclusion orders.

s.26 General offences in connection with administration of The Act such as failure to co-operate with immigration and other officers granted powers under Schedule 2 of The Act; refusal or failure to provide required information or documents; making false statements; altering immigration or employment documents, or using false ones; and obstructing an immigration or other appropriate officer.

s.26B Possession of an immigration stamp without reasonable excuse.

This list is not exhaustive and a range of other offences may be committed.

Keypoint  
Because of the sweeping investigation and enforcement powers in The Act, advisers should be on their guard against being naive or credulous. Only a small number of clients (and advisers) are unscrupulous, but they may be difficult to spot due to personal charm, or being well rehearsed. A youthful or venerable client may also appear more credible, and worthy of allowances being made, than is actually warranted.   
  
An adviser who suspects that their client is implicated in terrorism or preparation for a terrorist act, money laundering, or is involved in a sham or forced marriage or in people-trafficking should consult a senior adviser-colleague immediately.

Read the case study and answer the questions that follow.  
  
Case Study: Omar's Case

Omar is your client. He has applied for asylum and has always told you he is 16 years old. You have therefore been treating him as a minor, and have been arguing with the Home Office and the Local Authority saying that they should also treat him as a minor. You have been with him to the Asylum Screening Unit twice now. You commissioned a paediatrician to prepare an age assessment but you haven't yet received it. Finally, after a long wait at the ASU, the Home Office accepts that Omar is 16.

On the train back from the Home Office, Omar confides in you that not only is he actually 19½ years old and that he was in Germany for 1 year before coming to the UK, where he also claimed asylum.

Q: Could you continue to act for Omar? If not, why not?

A: You can only continue to act if Omar instructs you to make full disclosure to the Home Office, as you cannot deceive the Home Office. If you do, you would be committing a criminal offence. However, even if he does so instruct you, unless he has very good reasons, the relationship of trust between adviser and client may well have broken down and you may decline to act further.

Q: If you decide you can continue to act for Omar, do you disclose to the Home Office the information Omar has confided to you about his true age, and that he has applied for asylum in Germany in the past?

A: You should only continue to act on the basis that Omar permits full disclosure to the Home Office, and the relationship of trust has not broken down. If there are mitigating factors for Omar not telling the truth over a sustained period of time (such as being cruelly abused by detainees in a juvenile detention centre in Germany), these should be put forward forthwith.

### Chapter 6 – Frequently Asked Questions

Q: What does confidentiality relate to?

A: Everything. Documents, correspondence, meetings, telephone calls, reports. The material fact that you are acting for someone is confidential and you should take particular care when transporting documentation to the Courts or to meetings away from your premises, that no confidential information can be seen by anyone without authorisation. Always encrypt any personal information that you send electronically and make sure that you obtain consent from your client to share information with relevant third parties including family and friends.

Q: Is it ever acceptable to breach confidentiality?

A: Yes. Occasionally. In cases where you believe that a minor is at risk, then this has child protection issues and so client confidentiality is overruled. Also, you may feel a moral obligation to breach confidentiality, for example, where you are dealing with a vulnerable client. Legal, regulatory and criminal investigation obligations can also override client-confidentiality.

Q: My client is threatening suicide. Is it safe to inform a GP?

A: The SRA Professional Ethics Helpline (0370 6062577) advises that it would be a breach of confidence to disclose this information to anyone without the client's consent. The only exception to this is to avoid the commission of a criminal act. Suicide is not a criminal act. Thus, you should get the client's consent to disclose information to, for example, a doctor, prison service etc.

If your client has already shown to you signs of mental health problems, you should already have considered referral to a specialist medical practitioner for a report. If this is a new development, ask the client's permission to disclose it so that they can be helped.

If the client refuses, there is no legal or regulatory obligation to disclose information to prevent a client's suicide. However, Code 12 requires an adviser to act in the client's best interests, subject to regulatory and legal requirements.

Q: My client is threatening suicide. Is it safe to inform a GP? / Continued

A: Where you believe the client is genuine in their intention to commit suicide or serious self harm and there is no other way of dealing with the issue, you should consider seeking consent from the client, if appropriate, to disclose the information to a third party so that help might be given. e.g. to a ward nurse where the client is in hospital.

Where it is not possible or appropriate to get consent you may decide, to protect the client or another, to disclose that information without consent.

Q: Can I charge clients if the organisation I work for is not required to pay the Commissioner an application fee?

A: No

Q: How much can I charge for my services?

A: This depends on where you work but standard rates apply. Commission, inducements and/or referral fees are not permitted. See Practice Note on fees and accounts.

Q: Can my client's friend act as her interpreter?

A: This is not advisable. It is important for any interpreter to be impartial and suitably-qualified. A client's friend might act as a witness or support for your client, but it's important that any interpreters understand the legal terminology that is used, and have prior experience of immigration work.

Q: What are the challenges and main issues when working with interpreters?

A: You should:

* try to use a qualified interpreter who is experienced in immigration matters
* ensure that interpreters are able to interpret any legal terminology you may need to use or explain to the client
* ensure that interpreters are independent of the case
* ensure interpreters preserve client confidentiality
* be aware of client's needs and sensitivities when using interpreters - for example, gender, dialect, tribal, ethnic or religious conflicts.

Q: What are the main offences that an adviser may commit?

A: The main offences under The Act are assisting unlawful immigration to the European Union, helping asylum seekers to enter the UK, assisting entry to the UK in breach of deportation or exclusion orders, and general offences.

It is also an offence to knowingly mislead the immigration authorities, the Courts, or fellow professionals, or to advise a client to do this.

Q: What are my obligations to other bodies?

A: In general, to provide timely, accurate and comprehensive information to other bodies, enabling better decisions to be made. Never knowingly or negligently mislead other parties.

### Module 2 – Summary

1. Client confidentiality is very important. You must have a procedure to ensure client confidentiality unless information is required because of a legal or regulatory obligation. You must act lawfully and not mislead the authorities or encourage your client to do so.
2. Interpreters are often invaluable in helping to advise clients who do not speak English. But, remember to follow recognised procedures, ensuring that interpreters are independent, impartial, familiar with immigration issues and understand the legal terminology.
3. You should never knowingly deceive or mislead the immigration authorities or the Courts, or encourage a client to do so.
4. Avoid conflicts of interest and confidentiality problems by taking into account the Guidance Note on Meeting client needs and client care.
5. Ensure financial and accounts procedures conform to the Practice Note on fees and accounts.

### Module 2 – Learning Outcomes

Now you've completed this module, you should be able to:

1. apply the principles of client confidentiality in your work and be aware of when the rules can and should be broken
2. identify the potential challenges when working with interpreters
3. recognise the importance of clarity about any financial charges
4. identify the powers of Immigration Officers and the offences that an adviser can commit under The Act
5. understand your professional obligations to other bodies

**Thank You**

Thank you for taking your time to complete this course and we hope that you found it interesting and useful.