Guidance

**OISC regulation and solicitors**

Updated 5 November 2020

Section 84 (2) of the [Immigration and Asylum Act 1999](http://www.legislation.gov.uk/ukpga/1999/33/section/84) (IAA 1999, as amended) allows persons to provide immigration advice and/or services without being regulated by the OISC if they are authorised to practise by a Designated Qualifying Regulator (DQR).

This includes solicitors regulated by the Solicitors Regulation Authority (SRA), as the SRA derives its regulatory authority from the Law Society, a DQR.

In November 2019 the SRA introduced new Standards and Regulations which removed some of the restrictions on the ways in which solicitors may provide services to the public. Restrictions were maintained however for particular types of services, including the provision of immigration advice and services. Following a consultation exercise in March 2020, the SRA amended their Standards and Regulations in relation to the provision of immigration advice and services.

The amendments mean that solicitors, Registered European Lawyers (REL)and Registered Foreign Lawyers (RFL) will continue to be able to provide immigration advice and services to members of the public from:

• SRA-regulated law firms.

• Authorised non-SRA firms (meaning firms that are authorised by another approved regulator under the Legal Services Act 2007).

• Law centres and other non-commercial advice services that are authorised by the OISC.

They also mean that solicitors, RELs or RFLs who wish to begin providing immigration advice and/or services to the public from OISC regulated organisations, other than Law Centres or other non-commercial advice services, will need to be otherwise qualified to do so under the IAA 1999, as will any people that they supervise under those circumstances.

The OISC has set out below what these changes mean **for immigration solicitors practising in England and Wales**, along with some guidance for organisations that employ solicitors where the organisation may need to apply for OISC regulation.

Organisations which employ solicitors practicing in Scotland and Northern Ireland should check with the respective Law Societies for confirmation that their solicitors are directly regulated by the Law Society to provide immigration advice and/or services to the public.

**1. Solicitors that do not require OISC regulation**

1.1 Where a solicitor holds a current practising certificate and is working in a traditional law firm, an SRA regulated Alternative Business Structure (ABS) or an authorised non-SRA firm (meaning firms that are authorised by another approved regulator under the Legal Services Act 2007) neither the organisation, nor the individual solicitor or any non-solicitor advisers who are supervised by the solicitor (whether or not under a contract of employment), need apply to the OISC for regulation.

1.2 Solicitors who provide immigration advice and/or services only in an ‘in house’ capacity within an organisation, providing no immigration advice and services to the public, do not need to be regulated by the OISC. If the organisation also provides no immigration advice and/or services to the public, it also does not need to seek regulation from the OISC as an organisation.

**2. Solicitors or organisations that employ solicitors, that do require OISC regulation**

2.1 Law centres and other non-commercial advice services\* will require regulation by the OISC where they provide immigration advice and/or services to the public and are not regulated as an ABS. Individual solicitors in England and Wales who hold a practising certificate and work in a Law Centre or other non-commercial advice service, will be regulated by the SRA. Any non-solicitor advisers within the organisation will however need to seek OISC authorisation and the organisation will need to seek OISC regulation.

2.2 Solicitors within Law Centres and other non-commercial advice services cannot supervise non-solicitor staff so as to make them a ‘qualified person’ under the IAA 1999. This does not mean they cannot act as their line manager or carry out normal supervision work, it simply means the non-solicitor adviser must apply and be authorised by the OISC in their own right. The OISC also allows trainee advisers, who are not yet authorised by the OISC to work under supervision, but these supervision arrangements must be discussed and agreed with the OISC in advance. Details of the OISC’s supervision scheme can be found on the OISC website and in the OISC’s [Guidance note on Supervision](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/510424/Guidance_note_on_Supervision.pdf).

\* Non-commercial advice service is a service operated by an organisation such as a charity or similar type of organisation that is operating otherwise than with a view for profit. It may or may not charge fees but if it does so then they must be paid to the organisation for furthering the provision of the organisation’s services.

2.3 Solicitors who work in a fee charging organisation that is none of the following:

1. An SRA regulated law firm;
2. An Authorised non-SRA firm (meaning a firm authorised by another approved regulator under the Legal Services Act 2007);
3. A Law centre or other non-commercial advice service,

are not individually regulated by the SRA to give immigration advice and/or services to the public.

In order to provide immigration advice and/or services to the public, those organisations must apply to the OISC for registration, with the solicitors applying to become an OISC authorised adviser. Such solicitors will be required to submit documents related to their fitness and competence to the OISC and will be subject to competence assessment.

2.4 Solicitors who become authorised as an OISC adviser may maintain their practising certificate and RELs and RFLs will be able to remain registered with the SRA, but while operating within the OISC regulated organisation, they will be bound by the OISC Code of Standards and Guidance on Competence. In this setting they will be acting in the capacity of an OISC adviser.

**3. Applying for OISC registration**

3.1 The OISC provides [guidance](https://www.gov.uk/government/publications/how-to-become-a-regulated-immigration-adviser/how-to-become-a-regulated-immigration-adviser) on how to apply for registration. This guidance is applicable in full to all solicitors who wish to work in or establish a Fee Charging (Commercial) OISC immigration business.

3.2 The [guidance](https://www.gov.uk/government/publications/how-to-become-a-regulated-immigration-adviser/how-to-become-a-regulated-immigration-adviser) is also applicable to non-commercial advice services who need to seek registration for their organisation, however the following points about the process and the actual authorisation that will be granted to organisations that include SRA regulated solicitors (non-commercial advice services only), should be noted:

The Application Process

* Solicitors who will continue to be regulated by the SRA by virtue of working in a non-commercial advice service, do not need to complete a Competence Statement and will not be required to take the OISC competence assessment or submit a DBS check. Applicant advisers who are not regulated solicitors, will need to complete Statements of Competence, supply DBS checks and will be subject to the OISC’s competence assessment.
* The organisation should note on page 4 of the [Application for Registration](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/639122/Application_for_Registration_2017__2_.pdf) the solicitor’s details as an adviser, but should indicate that they are an SRA regulated solicitor and include their SRA ID number.
* Organisations are free to set up whatever reasonable management structures they wish to ensure the provision of quality assured immigration advice and services. As such a solicitor may act as the OISC point of contact for the organisation or as a manager with normal oversight responsibilities for advice staff. How the immigration advice service is managed can be explained within the organisation business plan, or other documents which are submitted in support of the organisation’s application for registration.
* Applicant organisations which employ solicitor advisers who will remain regulated by the SRA, should consider what Level of immigration advice and/or services they, as an organisation, wish to provide. SRA regulated solicitors will not be restricted in the advice and services they provide as set out in the OISC’s Guidance on Competence and may represent clients in relation to Judicial Review work. The OISC will assume that applicant organisations that have listed an SRA regulated solicitor on their list of advisers, will wish to provide immigration advice and services at OISC Level 3, in all categories of work and undertake Judicial Review work. If this is not the case and no advice staff, including the solicitor, will be engaged in work beyond OISC Level 1 or 2, they should inform the OISC of this within the application (preferably in a cover letter).
* As some non-commercial organisations do charge clients a fee (normally representing a cost recovery fee rather than profit making fee) these organisations will be considered ‘fee-charging’ applicants and will be required to pay an OISC application fee. The fee required will depend on the Level of authorisation that the organisation are seeking and the number of advisers (including solicitor advisers). The scale of fees is set out in [The Application for Regulation Guidance Notes](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/847709/Application_for_Regulation_-_Guidance_Notes__NOVEMBER_2019_.pdf).

Registration and Authorisation

* Organisations that gain registration with the OISC will be granted a certificate of registration and will be added to the OISC register. The certificate and register will list all authorised advisers along with their Levels and Categories of authorisation. Any SRA regulated solicitors working within the organisation will be included on the certificate and the register, where it will be noted that they are a solicitor regulated by the SRA.
* SRA regulated solicitors working within OISC regulated firms are not restricted in any way as to the advice and services they can provide. They can undertake work at Level 3 and represent clients in Judicial Review matters. In order to be able to do this however the organisation must have applied and been approved by the OISC at Level 3.
* Once an organisation has gained registration it may apply to the OISC to have trainee advisers working under the OISC’s supervision scheme. Details of how to apply under this scheme can be found in the OISC’s [Guidance note on Supervision](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/510424/Guidance_note_on_Supervision.pdf).
* Registered organisations will be invited to apply for continued registration with the Commissioner normally on an annual basis.

**4. Compliance and Complaints**

4.1 Where solicitors work within OISC regulated organisations and are directly regulated by the OISC, they are required to abide by the OISC Code of Standards and work is limited to the authorisations they have been granted and reflected in the OISC’s Guidance on Competence. In dealing with clients, such solicitors should ensure that clients are aware that they are regulated by the OISC. Their work will be subject to review by the OISC through the OISC premises audit process or OISC complaints scheme, should the need arise. They will be required to carry out CPD in line with the requirements made by the OISC on authorised advisers.

4.2 Solicitors working in OISC regulated organisations should still be aware that the SRA Code of Conduct for Solicitors, RELs and RFLs applies to solicitors, RELs and RFLs wherever they work. Generally, the principles of both regulatory bodies are aligned but there are in places some differences in approach between the SRA’s Regulatory Framework and the OISC’s Code of Standards. In situations where solicitors, RELs and RFLs act as an OISC registered adviser and are providing services from a commercial OISC regulated organisation, the OISC’s Code of Standards prevails in any instances of conflict between the two codes. This reflects the principle of section 54 of the Legal Services Act 2007 that in instances of conflict, entity regulation overrides individual regulation. The OISC’s Complaints Scheme will be applied to situations where a complaint is made about solicitors, RELs and RFLs while they were acting as an OISC registered adviser and providing services from an OISC regulated organisation.

4.3 Solicitors working in OISC regulated organisations which are Law Centres or other non-commercial advice services and individually regulated by the SRA, will need to continue to practise compliance with the SRA Code of Conduct for Solicitors, RELs and RFLs. They should be mindful of the OISC Code of Standards as it applies to the requirements on the organisation but are not bound by the Codes that apply to the individual adviser. Again, the two regulators requirements are in principle aligned but for these Solicitors the SRA Code of Conduct for Solicitors prevails in any instances of conflict between the two regulators codes. Where complaints are received regarding the advice and services provided by the SRA regulated solicitor, such complaints will be referred to either the Legal Ombudsman or the SRA as appropriate.

4.4 The OISC will not generally look to review the files of solicitors regulated by the SRA when they conduct premises audits. However if the OISC believe that the overall fitness or competence of the organisation is called into question by the conduct or quality of work being undertaken by the Solicitor, the OISC may refer the matter to the SRA or with the solicitors agreement or SRA support, ask to see examples of the solicitors work. The SRA have indicated that they will support any reasonable request by the OISC to review the work of a solicitor working within an OISC regulated firm.

4.5 As both SRA and OISC have a responsibility to ensure that persons regulated by them are operating in fit, competent and professional manner, providing good quality advice and services to the public, the regulators will share information with one another where complaints, audits, reviews or disciplinary action suggest there may be concerns regarding the conduct of individuals.