



# Consultation to amend the Code of Standards

July 2023

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# 1

## About the OISC

The Office of the Immigration Services Commissioner (OISC) is a governmental body established by the [Immigration and Asylum Act 1999](#) to regulate the provision of immigration advice and services throughout the UK.

The OISC is an independent non-departmental public body headed by the Immigration Services Commissioner. The Commissioner's general duty is to promote good practice in the giving of immigration advice.

The OISC is responsible for:

- Admitting immigration advisers into its Regulatory Scheme;
- Maintaining and publishing the register of advisers
- Regulating immigration advisers in accordance with the Commissioner's Code of Standards;
- Taking action against those that operate illegally outside of the Scheme;
- Receiving complaints about immigration advisers irrespective of whether or not they are regulated by the OISC, and
- Promoting good practice in the immigration advice sector.

The OISC regulates over 3000 individual immigration advisers and 1600 organisations. Making best use of resources, OISC aims to ensure that everyone who is seeking immigration advice receives good and reliable advice and are protected from the risks and dangers of illegal advice or poor service.

[Find out more about the Commissioner's functions and the types of organisations and advisers which the OISC.](#)

# 2

## Foreword

Over the last three years, the Office of the Immigration Services Commissioner has been undergoing a programme of transformation, fundamentally changing how it operates in order to most effectively serve the advice seeker and protect the integrity of the wider immigration system. We aim to be high-performing, outward looking and proactive, always putting the advice seeker at the heart of our work.

Our approach to regulation must also change and adapt in line with this goal, and in line with modern regulatory practice. It is in this context that we are consulting on a new version of the OISC's Code of Standards.

The immigration advice sector is incredibly diverse, and in turn it serves a hugely diverse range of clients. From sole traders or small charities specialising in specific nationalities and routes, through to multi-national organisations providing the full range of immigration advice services, we believe that a key part of the strength of this sector comes from this diversity. The sector adapts to the changing needs of advice seekers, and it is vital that the OISC's regulation is flexible and responsive in order to accommodate this.

The modern approach to regulation is to take a principle-based approach; that is to set out the core principles which regulated bodies should adhere to and provide a degree of flexibility as to how these are met. This approach supports a diverse sector; it allows for variation and adaptability, while still setting out the core standards that must be met in order to maintain a professional, fully competent sector which provides an excellent service to the end user – in our case, the advice seeker.

However, we must move towards this goal at a pace which is right for the maturity and capability of the sector. While many in the sector are meeting the high standards we expect, we also see evidence that some regulated advisers struggle to comply with our regulatory requirements. The new Code of Standards aims to take a step towards a more principle-based approach, whilst maintaining some of the safeguards needed to ensure we can take swift, appropriate action against those who undermine the reputation and quality of advice available within the sector.



I want to extend the OISC's gratitude to those in the sector who have helped to shape the proposed new Codes – particularly at a time when the sector is busier than ever.

I encourage all interested stakeholders to respond to this consultation setting out your thoughts on how this new approach will work in practice, for your organisation and the wider sector. It is only with your input and insights that we can produce a new Code of Standards which best supports a vibrant and diverse immigration sector focused on the needs of the advice seeker.

**Karen Eyre-White**

**Director of Service Delivery**

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## Introduction

1. The Commissioner is required under Schedule 5, paragraph 3(1) of the Immigration and Asylum Act 1999 (the Act), as amended, to prepare and issue a [Code of Standards. This Code\\_of\\_Standards\\_2016.pdf \(publishing.service.gov.uk\)](#) sets out the requirements placed on regulated organisations and advisers related to the way they conduct their business and the quality of the service they provide.
2. The document should be read alongside the [2021\\_Guidance\\_on\\_Competence.pdf \(publishing.service.gov.uk\)](#) which describes the skills and knowledge advisers need to provide good quality advice services at OISC Levels 1, 2 and 3 and the [OISC\\_Complaint\\_Scheme\\_2023.pdf \(publishing.service.gov.uk\)](#) which explains how the OISC deals with complaints against regulated advisers and organisations.
3. For the Commissioner to remain an effective regulator these documents, need to be fit for purpose - current, effective and useable - for the regulated, the regulator, the advice seeker and for the wider sector.

4. In September 2022, we started a major review of the Code of Standards. We undertook informal consultation workshops both internally and externally on a new, more principle-based version of the Code of Standards and asked for responses on the style, structure and content of the document. The feedback we got from both workshops helped to shape the document we are now consulting on. A copy of the new draft Code of Standards can be found at [Annex A](#).
  5. A number of questions are asked throughout this consultation document. These questions are also listed within the response document.
  6. This consultation is being conducted in accordance with the requirements of and the [Consultation Principles that govern the activities that Government departments and other public bodies should adopt](#) for engaging stakeholders when developing policy and legislation. This consultation launched on 31 July 2023 and will remain open for twelve weeks, until 23 October 2023.
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# 4

## About the new Code of Standards

7. The new Code of Standards sets out nine core Principles that OISC advisers and organisations must adhere to. These Principles are overarching standards that seek to deliver positive outcomes for advice seekers and reflect the standards expected of professional legal advisers. The Principles are drafted at a high level of generality with the intention that they should be requirements that can be applied flexibly to a continuously changing industry. Regulated advisers will be expected to follow what is written in the Principle and adhere to its intention, abiding by the 'spirit' of the Principle.

8. Each Principle is underpinned by specific Codes which should be met to demonstrate overall compliance with the Principle. The Codes listed under each Principle are not exhaustive and an adviser may breach a Principle without breaching any of the listed Codes if they live up to the letter of the Codes, but not the spirit of that Principle.
  9. Regulated advisers must adhere to the Principles and meet the requirement of each Code at all times. Compliance with the Codes and Principles are assessed through our ongoing work with regulated firms during each registration year and in particular when we undertake an audit, investigate a complaint, and consider an application for continued registration. Failure to comply with a Code is likely to result in a breach of the corresponding Principle. However, an adviser who has not operated exactly as specified in a particular Code, may not be found to have breached the Principle where they can demonstrate that the same overall result has been achieved through another means which works better for his or her client. This provides some flexibility for organisations and advisers in dealing with unique client groups or business models, recognising that a single approach may not be fit for purpose in a diverse sector serving a diverse range of clients.
  10. Examples of how advisers or organisations may breach a Principle without breaching an explicit Code under that Principle, or breach a Code without breaching the Principle it relates to, are provided within the introduction to the draft Code of Standards within [Annex A](#).
- Q1. Do you support the introduction of overarching Principles, with Codes which underpin each Principle?**
  - Q2. Do you have any views on the proposed approach on the breach of the Principles and Codes?**
  - Q3. Do you have any comments on the introductory statements in the Code of Standards at [Annex A](#)? If yes, please set them out.**
  - Q4. Do you think the sector is ready for this kind of principle-based approach? What are the possible impacts on the sector?**

11. The new Code of Standards removes some requirements or obligations that are currently in place. We also believe that sufficient guidance exists, or can be created, related to other aspects of the old Code that will replace the need for regulated organisations to have prescriptive Codes in these areas, allowing them more flexibility. The new Codes also remove some requirements to seek permissions from the Commissioner prior to making changes.
12. The amendments that have been made are set out below. References to Code numbers relate to the numbers in the 2016 version of the Code of Standards.
  - a) Codes 7, 17, 18, 19, 24, 26, 33, 42, 43, 45, 50, 54, 69, 82 have been moved from the Codes to guidance.
  - b) Removal of the requirement to submit full details of supervision arrangements when seeking approval to supervise, as currently required under Code 9.
  - c) Removal of the requirement under Code 16 to have a written equality and diversity policy. The broad requirement to treat everyone fairly and without prejudice remains in Principle 7.
  - d) Removal of Code 51 which requires organisations to have a Business Plan.
  - e) Removal of Code 59 which requires organisations to submit to the OISC their fee scales for approval.
  - f) Removal of Code 60 which requires organisations to seek authorisation to amend their fee scale.
  - g) Removal of Code 72 which requires the display of the OISC certificate of registration, as these no longer exist.
  - h) The replacement of several highly prescriptive codes related to timeframes for action (e.g. “within three working days”) with less specific terms (e.g. “reasonable”, “promptly”).

**Q5. Do you support the removal of the requirements or obligations that exist within the 2016 version of the Code of Standards (as set out in paragraph 12 of the consultation document)?**



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13. While providing additional flexibility in some areas, the OISC believe that there are also areas where introducing higher levels of responsibility around professional conduct is needed to protect the good reputation of those who operate as OISC advisers. The new responsibilities introduced in the draft Codes are set out below. References to Principle and Code numbers relate to the draft Code of Standards at [Annex A](#).
- a) The introduction within Principle 3 and Code 3.8, of a requirement that regulated advisers/organisations not bring the OISC into disrepute.
  - b) An expansion of responsibilities under Code 4.3 to report any serious misconduct within their organisation to the relevant authority in addition to the OISC.
- Q6. Do you support the addition of the new requirements to the new Code of Standards (as set out in paragraph 13 of the consultation document)?**
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## The relationship between the new Codes and Guidance Notes

14. Guidance on the Codes will be provided for in the 'Guidance on the Code of Standards', which will be published alongside the new Code of Standards when finalised.
15. Guidance Notes provide some "flesh on the bones" in the sense that they set out, but not exhaustively, the ways in which organisations and advisers can demonstrate compliance with a particular Code. Guidance Notes offer helpful explanation and direction and are instructive to the regulated as to what the Commissioner expects in order for a Code obligation to be fulfilled, but they are not themselves provisions of the Code.
- Q7. What guidance or other support might regulated advisers or organisations find helpful in supporting them with understanding and complying with the new Code of Standards?**

# 6

## Key consultation questions and how to respond

16. The OISC welcomes comments on the proposed amendments to the Code of Standards from all stakeholders who may be interested.
17. Seven key consultations questions have been raised which we would like your views on. These are repeated in Annex B.
18. In addition, the OISC invites you to review the draft Code of Standards which can be found at [Annex A](#) and provide any more specific comments with respect to each of the Principles and the Codes that accompany it.
19. You can give general comments and/or specific comments on the Principles or the Codes that appear in each section, and advise if you think anything needs amendment, deletion, addition or would benefit from an accompanying Guidance Note.
20. We would find it very helpful if respondents would give the reasons for their comments and suggestions for improvement and/or clarification. If you think a Principle or Code needs amendment or a new Principle or Code is needed, it would be helpful if you would include in your response suggested drafting or alternative wording.
21. In relation to the impact on the sector, the OISC would welcome comments on the potential impact of the new Code on the OISC as the regulator, on those we regulate, the advice seeker and the wider sector. We are interested in any comments on the range and scale of costs and/or benefits and risks associated with any specific section or generally.
22. A consultation response document is included at Annex B. This includes the 7 key consultation questions set out above, along with space to comment on each section of the draft Code of Standard and any additional comments you wish to make on the potential impact of the new Code of Standards.
23. Please [send your completed response](#) forms by no later than 23 October 2023.
24. If you have any [questions regarding the consultation](#), or any reason you are dissatisfied with the consultation process, please contact us and mark the email for the attention of Edmond Birigwa.

# 7

## Confidentiality and Freedom of Information

25. The information you send to us may need to be passed to colleagues within the OISC, published in a summary of responses and referred to in the published consultation report.
  26. All information contained in your response, including personal information, may be subject to publication or disclosure, if requested, under the Freedom of Information Act 2000 (as amended). By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.
  27. The OISC is subject to the Freedom of Information Act 2000 (as amended), and will consider any request for information relating to responses made to this consultation in accordance with that Act.
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# 8

## Impact Assessment

28. An initial assessment of the consultation's proposals has indicated that it is likely to have an impact on regulated advisers and therefore an impact assessment will be produced following the consultation. We accept that there may be some impacts on immigration advisers in understanding the changes, but we hope these will be mitigated by the detailed guidance notes that will accompany the Code of Standards. The Guidance is not issued for consultation at this time, but it will aim to provide clarity by identifying indicative actions and behaviours that illustrate or exemplify compliance with a code.



# Annex A

Draft Code of Standards

# A

## Introduction

1. This introduction forms part of the Code of Standards (the Code). This Code is made in accordance with paragraph 3 (1) of Schedule 5 of the Immigration and Asylum Act 1999 (the Act), as amended. The term 'Commissioner' for the purpose of the Code includes the Immigration Services Commissioner, the Deputy Commissioner, their staff and any agent acting for them, or on, their behalf.
2. The Code applies to any organisation or person providing immigration advice or immigration services in the UK in relation to a "relevant matter" as listed in section 82 of the Act except for those listed in Schedule 5, paragraph 3 (3).
3. The Code set the standards of conduct which are expected to be met by regulated advisers and regulated organisations and delivered for clients.
4. It is intended that the Code should meet the OISC's regulatory objectives, which are: to promote good practice to immigration advisers, set standards for immigration advice and services, and make sure those standards are upheld.

# Compliance with the Code

5. The Code of Standards is comprised of 9 core Principles derived from the OISC regulatory objectives set out above. The 9 Principles permeate our entire regulatory arrangements; you must adhere to the Principles at all times. We believe our set of Principles reflect the universal values we expect all those we regulate to hold.
6. The Principles are underpinned by specific Codes. The Codes listed under each Principle are not exhaustive. An adviser may breach a Principle without breaching any of the listed Codes if they live up to the letter of the Codes but not the spirit of that Principle. Advisers must not only follow what is written in the Principle but must also adhere to its intention. For example, under Code 3.3 advisers are prohibited from touting for the business of providing immigration advice or services. By using a third party to tout for business the adviser may not have breached the Code but without doubt they would have breached the spirit of the Principle.
7. Failure to meet a Code requirement will in most cases result in the Principle being found to be in breach. An adviser may, however, in exceptional circumstances breach a Code without breaching the Principle. For example, although under Principle 6 Code 6.4, advisers are required to obtain a signed and dated copy of the client care letter or evidence of their agreement electronically. Where it is not possible for the adviser to get the client's agreement, for example where the client is in detention, the Commissioner may decide, based on evidence that the client was fully aware of the action being taken on their behalf and it was in their best interest to proceed, that although Code 6.4 has not been met, Principle 6 has not been breached.
8. You are accountable for compliance with this Code and our other regulatory requirements that apply to you and must always be prepared to justify your decisions and actions. A serious failure to meet our standards or a serious breach of our regulatory requirements may result in our taking regulatory action against you. A failure or breach may be serious either in isolation or because it comprises a persistent or concerning pattern of behaviour.

9. Guidance Notes assist in the application and interpretation of the principles and the Codes, but they are not themselves provisions of the Code. If a regulated organisation or adviser fails to follow a Guidance Note, then the Commissioner may consider that they have acted in breach of the Principle or accompanying Codes, although whether a failure to follow the guidance would amount to a breach of a Code provision would depend on the circumstances. The OISC will not require regulated organisations to seek permission for a departure from the guidance, but organisations will need to be prepared to explain why a departure was appropriate and prove that the Principle was still adhered to when work is being reviewed at premises audit or through a complaint investigation. Where departures from the guidance are not found to be meeting the specified Code, organisations found in breach will, at a minimum, be required to adjust their processes. In essence organisations may find that following the guidance provides a simple method for ensuring compliance with the Principle, while departure from it has some risks. Organisations will need to determine for themselves if they believe they can manage such risks. This should be possible where the Principle is carefully considered, and actions and outcomes clearly documented.
10. Where a complaint is made about the conduct of anyone subject to the Code, OISC will assess whether the alleged conduct has breached the Principles within the Code of Standards, or failed to meet any of the individual Codes. The investigation into the conduct will be carried out in accordance with the [OISC Complaint Scheme](#).
11. In this Code references to:
  - ‘the Commissioner’ refers to the Immigration Services Commissioner;
  - ‘organisations’ encompass both registered organisations and advisers even if the word adviser is not used. Some Codes refer to advisers and this is to make clear where there are personal responsibilities; and
  - ‘written notifications and communications’ where referred to in the Code, can be given by hard copy letter, email or fax.
  - **You** and **your** means OISC advisers or the regulated entity or those working for it.

# Code of Standards

The Code of Standards sets out the nine core Principles to which advisers and organisations must adhere in their conduct, practice and professional performance.

Each Principle is supported by a series of Codes. You must adhere to the Principles and comply with the codes.

The OISC issues Guidance Notes in respect of the Code of Standards, which assist advisers and organisations to remain compliant.

## **Principle 1. Uphold the law**

**Codes** - You must:

- 1.1 Act in accordance with UK Law.
- 1.2 Not knowingly or recklessly allow clients, the Commissioner, the Home Office, the courts, and tribunals and/or third-party agencies to be misled.
- 1.3 Not abuse any judicial and/or immigration process.

## **Principle 2. Comply with your legal and regulatory requirements to the OISC acting openly, promptly and co-operatively**

**Codes** - You must:

- 2.1 Only work for the specific organisation(s) you are authorised to work for under the OISC regulatory scheme.
- 2.2 Ensure that no unauthorised person(s) provide(s) immigration advice and/or immigration services on your behalf.
- 2.3 Not operate above your authorised Level or in Categories for which you are not authorised.
- 2.4 Seek written authorisation from the Commissioner to allow persons to operate above their authorised Level or in Categories for which they are not authorised, but within the Level and Categories granted to the organisation.
- 2.5 Only outsource work within your approved level and categories and obtain the client's prior consent to seek additional advice, opinions and other professional services on their behalf.



- 2.6 Have and implement an effective written procedure for the handling of complaints.
- 2.7 Notify the Commissioner in writing of any significant change to the business and/or of any significant changes to the personal circumstances of regulated advisers and those involved in the running of the business within a reasonable period of time.
- 2.8 Immediately notify the Commissioner in writing of any criminal charge, conviction and/or civil proceedings issued against regulated advisers and those involved in the running of the business.
- 2.9 Apply in writing to the Commissioner if you wish to be exempted from any part of the Code of Standards. You must await prior written approval of the exemption.

**Principle 3. Maintain high standards of professional and personal conduct, ensure public trust and confidence in the OISC regulatory scheme and do not bring the OISC into disrepute**

**Codes** - You must:

- 3.1 Display the OISC registration number where appropriate.
- 3.2 Only use the OISC logo in accordance with the instructions contained in your approval letter from the Commissioner.
- 3.3 Not tout for the business of providing immigration advice or immigration services.
- 3.4 Not include criticism of other organisations or advisers in any promotional material.
- 3.5 Not make publicly, orally or in writing, promotional statements about your success rates.
- 3.6 Not have an organisation name that has the potential to confuse or mislead clients. The Commissioner has the power to require you change your name.
- 3.7 Obtain the Commissioner's authorisation before making any change(s) to the organisation's name or legal status.
- 3.8 Act in a way that upholds public trust and confidence in the OISC regulatory scheme and in the immigration advice and/or services provided by authorised persons.

## **Principle 4. Behave with honesty and integrity**

**Codes** - You must:

- 4.1 Conduct yourself with honesty and integrity in all your dealings.
- 4.2 Promptly report to the Commissioner any indication of serious misconduct of which you become aware within your organisation.
- 4.3 Promptly report any serious misconduct of which you become aware to the relevant authority.
- 4.4 Not demand or accept from any organisation or person, directly or through an intermediary, an inducement, be it financial or otherwise, for referring or recommending a client.
- 4.5 Not offer, directly or through an intermediary, an inducement, be it financial or otherwise, to any other organisation or person for referring or recommending a client.
- 4.6 Not charge clients directly or indirectly a fee for the provision of immigration advice where you have registered with the Commissioner as a non-fee charging organisation.
- 4.7 Inform your client(s) of the availability of Legal Aid and free legal advice where appropriate.

## **Principle 5. Act competently and respect confidentiality**

**Codes** - You must:

- 5.1 Provide prompt, clear and competent advice to your clients.
- 5.2 Maintain the required level of competence in your immigration and/or asylum work and ensure that your immigration and asylum knowledge is current and of sufficient depth for your role.
- 5.3 Be able to demonstrate that you are compliant with the Commissioner's Continuing Professional Development requirements.
- 5.4 Be fit to provide immigration advice and/or services..
- 5.5 Maintain confidentiality in respect of your client's affairs except where to do so would conflict with the law or the Code or where your client explicitly authorises you to disclose confidential information.

## **Principle 6. Act in the best interest of your client, deal with clients professionally and ensure they receive a good quality of service**

**Codes** - You must:

- 6.1 Always act in the best interest of your client.
- 6.2 Explain to your clients and potential clients, fully and clearly, in writing, where there is a real or potential conflict of interest. In these circumstances written consent must be obtained before acting for the client.
- 6.3 Provide all prospective clients with an effective client care letter.
- 6.4 Keep a record of the client's agreement to their client care letter either by way of a signed and dated copy of the letter or evidence of their agreement electronically.
- 6.5 Ensure that each of your clients is kept regularly informed, in writing, of the progress of their case.
- 6.6 Have arrangements in place to ensure that, should you be temporarily unable to work, the client's case can continue to be progressed.
- 6.7 Return all documents relating to the client's case when requested and without delay.
- 6.8 Provide the client with a closure letter/statement where a client's case is concluded, or where the client withdraws their instructions, or you have decided to withdraw from the case.
- 6.9 Transfer all documents relating to the client's case and the client's file where a client requires that their case be transferred, irrespective of whether any payment is outstanding. All documents relating to the client's case and the client's file must be transferred as soon as possible and, in any event, no later than three working days of the request being made.
- 6.91. Retain all client files and records for at least six years, thereafter, securely destroying the files and records.

## **Principle 7. Treat everyone fairly and without prejudice**

**Codes** - You must:

- 7.1 Treat everyone fairly, with dignity and without prejudice.
- 7.2 Provide each client with equal opportunity to secure a favourable outcome in their matter, irrespective of their vulnerability or susceptibility to discrimination.
- 7.3 Show due respect to your clients, the Commissioner, the Home Office, the courts and tribunals and all other third-party agencies and/or organisations.

## **Principle 8. Manage your business affairs and client records effectively**

**Codes** - You must:

- 8.1 Have an effective governance structure, governance arrangements, processes, and policies, to support and maintain a viable and sustainable business.
- 8.2 Have current and adequate professional indemnity insurance.
- 8.3 Maintain complete, clear and accurate financial records.
- 8.4 Implement and maintain an effective file management system.
- 8.5 Keep a complete record of all your dealings with and on behalf your clients in the form of attendance notes.
- 8.6 Store client records securely and ensure the records are accessible to the client at any time and available to the Commissioner upon request.
- 8.7 Ensure that where you retain a client's original documents, the client has a copy of those documents. The original documents must be returned to the client as soon as possible after they have served their purpose.

## **Principle 9. Charge fairly and transparently, dealing appropriately with client money**

**Codes** - Organisations that charge clients fees must:

- 9.1 Have a fee scale and only charge a reasonable fee that directly relates to the work done where you charge for your immigration advice and/or immigration services.
- 9.2 Submit an invoice to the client when payment is required and provide the client with proof of payment of the sum taken.
- 9.3 Ensure that, where the client has given prior authorisation for payments to be made from a credit or debit card, you only take fees invoiced seven days after the invoice has been provided to the client.
- 9.4 Hold client money in a distinct client account that is separate from your business account where you take money in advance or hold money for a client.
- 9.5 Promptly return to the client any remaining money in the client account at the end of the client's case or when the client has decided to terminate their instructions, or the organisation has withdrawn from the case.
- 9.6 Promptly return to the client any refund(s) received in respect of any disbursement(s).
- 9.7 Promptly return money to a client where there is agreement to a refund and/or where a client is entitled to a refund.



# Consultation to amend the Code of Standards

July 2023