Code of Standards 2024
Guidance Notes

Contents

Introduction

This set of ‘Guidance Notes’ supports the 2024 Commissioner’s Code of Standards. The ‘Guidance Notes’ do not form part of the Code of Standards but amplify and explain the Principles and Codes and provide indicative behaviours that the regulated sector and the Commissioner will use to ensure compliance with the Code.

Guidance Notes are not binding; however, organisations and advisers will need to be prepared to explain why a departure from the Guidance Notes was appropriate and prove that the Principle and Code was still adhered to when work is being reviewed at audit or through a complaint investigation. Guidance Notes are there to help provide sufficient certainty by providing explanations, examples and case studies taken from our experience.

The Code enables the Commissioner to police the spirit of the Principles as well as the letter, avoiding the need for the Code to anticipate every possible situation. It enables us to take targeted and proportionate action against those advisers who fall short of the required standards.

A failure to comply with a Code on its own will not necessarily result in regulatory action being taken unless it has also contributed to a breach of a Principle, because although not acting in line with the Codes, the adviser or organisation may be able to demonstrate that the Principle was still achieved on the particular issue through operating in a different, but still successful manner, to achieve the same outcome.

A serious failure to meet our standards or a serious breach of our requirements may result in our taking regulatory action against regulated advisers and/or regulated organisations. A failure or breach may be serious either in isolation or because it comprises a persistent or concerning pattern of behaviour. Regulated organisations who, having been informed that they are acting in a non-compliant manner with a Code and fail to take action to ensure future compliance are likely to face regulatory action.

The Guidance Notes include, where necessary, case studies and examples to illustrate good and bad practice and whether the bad practice is likely to lead to a breach of a Principle or failure to comply with a Code or both.

Links have been provided within the Guidance Notes to Practice Notes which provide additional information which may be useful to advisers.

The terminology to be applied where standards are not met will be non-compliance in relation to the Codes, and breach in relation to the Principle, to reflect the degree of severity of the unmet standard.

The following concepts will be applied in our interpretation and use of the 2024 Code of Standards and are set out below with examples and case studies.

Adherence to the spirit of the Principle

Adherence to the spirt of the Principle and what the Principle is trying to achieve will be expected and is paramount for organisations to demonstrate they remain fit and competent.

An adviser may breach a Principle without being non-compliant with 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.

Example

Under Code 6.3 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 be compliant with the Code but might be found to have breached the spirit of Principle 6 in relation to high standards of professional conduct, because the organisation is still engaged in touting, albeit through a third party.

Case Study

A Level 1 organisation wanted to be able to undertake higher level work. They employed an adviser registered with the Commissioner at Level 2, to raise the level of the organisation. However, the Level 2 adviser already worked at two other organisations and rarely attended the Level 1 organisation. The Level 2 adviser's role was to undertake this more complex work, but the work was on the whole being undertaken by the organisation's Level 1 advisers. The work was signed off and submitted in the Level 2 adviser's name.

While technically this Level 2 work was being submitted by a Level 2 adviser and thus might be considered compliant with Code 3.3 (not provide immigration advice and/or services or operate above your authorised Level or Category) the organisation might be found to be in breach of Principle 3 (complying with the Commissioner's regulatory requirements) because the spirt of the Principle is not being adhered to, as work was being undertaken by advisers who were not qualified to do so.

Breaching the most relevant Principle

An action may reflect on more than one Principle, but generally breaches will be laid against the most clearly relevant Principle.

Example

Principle 5 aims to ensure that clients receive a good quality of service and Code 5.3 requires an adviser to "Provide all prospective clients with an effective client care letter". In order for the client care letter to be effective, it would be expected to be issued in a timely fashion in relation to the action proposed, be clear to the client what the adviser will do for them and highlight any issues they need to be aware of such as documents to be provided or costs. Should the letter be issued in a timely fashion, but difficult to read and appears to be proposing a course of action which would be wholly unsuitable to achieve what the client is seeking, a non-compliance with Code 4.2 (provide prompt, clear and competent advice to your clients) and breach of Principle 4 (act competently) might be found, rather than a non-compliance with Code 5.3 and breach of Principle 5, because although Code 5.3 may be in part non-compliant, the more significant issue is the failure within the letter to provide competent advice.

Non-Compliance with a Code and effects on breaching a Principle

Failure to a meet a Code requirement will in most cases result in the finding of a breach of a Principle.

An adviser may however, in exceptional circumstances, be able to demonstrate why a Principle has not been breached even though they were found to be non-compliant with the Code/Codes. Exceptional circumstances might include where the non-compliance is not of a serious nature or is a singular event and demonstrably not intentionally done. It may be that the Code is partially complied with, complied with in a different but effective way, or that failure to comply with one Code is a direct result of the need to comply with another Code. The Commissioner will review all the circumstances when considering whether it is appropriate to find the Principle in breach.

Case Study 1

On initial premises audit a newly regulated organisation was found to have poor attendance notes on their client files. It was clear that some meetings had brief attendance notes, but these were not sufficiently detailed, and it was evident that records of other meetings had not been kept. They received an audit report finding non-compliance with Code 8.5 (requirement to keep a complete record of all your dealings with and on behalf of the client in the form of attendance notes). Because the organisation was able to demonstrate that they were aware of the requirements and had attempted to meet the standards, a breach of Principle 8 (managing client records effectively) was not found. On a return inspection the attendance notes continued to fail to meet the required standards. As the issue had been raised with them and had persisted, the organisation are likely to be found again non-compliant with Code 8.5 but now also found to be in breach of Principle 8.

Example

Under Code 5.4, advisers are required to obtain a signed and dated copy of the client care letter or evidence of their agreement electronically. However, where it is not possible for the adviser to get the client's agreement – such as where the client is in detention – if the adviser is able to demonstrate that the client was fully aware of the action being taken on their behalf and it was in the client's best interest to proceed, the Commissioner may decide that although Code 5.4 has not been met, Principle 5 (acting in the clients best interest and good quality of service) has not been breached.

Principles in Conflict

Where Principles come into conflict, those which safeguard the wider public interest, such as the rule of law (Principle 1), honesty and integrity (Principle 2) and public confidence in a trustworthy advisers' profession (Principle 6) take precedence over an individual client's interests as expressed through the other Principles.

Case Study

A client instructed his adviser to lodge an appeal against the decision to refuse his application for leave to remain as spouse of a British citizen. The application was refused on the basis that the client's sponsor, the partner, had failed to provide evidence that they met the minimum income requirement. The client provided evidence which suggested that his sponsor did indeed meet the minimum income requirement. However, after lodging the appeal the client separated from his sponsor but instructed the adviser not to inform the Home Office or the First -tier Tribunal as he may reconcile with his sponsor.

Although it may not be in the client's best interest (Principle 5) to withdraw from the case, continuing to act for them is likely to undermine public trust and confidence in the regulatory scheme and likely be a breach of Principle 6 (maintain high standards of professional conduct). So, the adviser cannot continue to act for the client as Principle 6 takes precedence over Principle 5.

Guidance related to Principle 1

Principle 1: Act in a way that upholds the Rule of Law and proper administration of justice

Codes - You must:

1.1 Act in accordance with UK Law.

If an adviser commits a criminal offence this may engage Code 1.1. The Commissioner will take into consideration the seriousness of the offence as well as the frequency of the offending.

Any aggravating factors are likely to be taken into account by the Commissioner when considering the offence.

Any behaviour which indicates a serious disregard for the UK law is likely to be non-compliant with Code 1.1 and therefore a breach of Principle 1.

The duty imposed may directly relate to their profession as immigration advisers or encompass actions and behaviour conducted outside of a professional context.

Example

An adviser knowingly facilitates organised people trafficking. This could involve:

- the handling and laundering of substantial funds through their client account
- the submission of knowingly false information concerning individuals' immigration status.

Code 1.1 may also be engaged by conduct which although unrelated to the adviser's profession as an adviser, suggests a serious disregard for UK law. For example, an adviser who is repeatedly convicted of the same offence of driving uninsured is likely to be found non-compliant with Code 1.1.

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.

An adviser must not mislead or attempt to mislead clients, the Commissioner, the Home Office, the courts or tribunals or others, either by their own acts or omissions or allowing or being complicit in the acts or omissions of others (including the client). For example, Code 1.2 would be non-compliant where:

- an adviser allows the Tribunal to be misled if, when representing a client, the adviser files a misleading document and does not inform the Tribunal of the true picture at the earliest opportunity
- an adviser allows the Home Office to be misled if a client provides doctored supporting documents to the adviser and the adviser simply forwards them to the Home Office without attempting to satisfy themselves as to whether the documents are genuine. This is further compounded if the adviser is subsequently informed, e.g. by a third party, that the documents had been doctored but the adviser fails to put this to the client or withdraw from the case
- an adviser may also mislead clients if he or she takes money from clients for services they know they can't provide. For example, the adviser gets paid by a client after promising them a Certificate of Sponsorship (COS) for a job that does not exist
- an adviser may allow the Commissioner to be misled, where the Commissioner requests the adviser to confirm the number and details of cases the adviser has dealt with within a specific period and the adviser deliberately or recklessly[1] fails to disclose the true number of cases.

Organisations and advisers should, as far as reasonably practicable, satisfy themselves that documents supplied to them in support of an application are genuine.

1.3 Not abuse any judicial and/or immigration process.

Advisers must not abuse or seek to abuse any procedure operating in the UK in connection with immigration or asylum, including any appellate or other judicial procedure, or advise any person to do something which would amount to such abuse.

The Objective of Principle 1 is to impose a duty on advisers to always act lawfully both in their professional and private capacity and to uphold the proper administration of justice. For example, by knowingly or recklessly submitting a false witness statement to the Tribunal, an adviser will have demonstrated a failure to uphold the rule of law and the proper administration of justice.

As with Code 1.1, Code 1.3 may also be non-compliant in relation to the adviser's actions and behaviour conducted outside of a professional context.

[1] A person acts recklessly with respect to: (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur; and it is in the circumstances known to him unreasonable to take the risk. For example, if on the objective evidence the adviser should have known that the witness statement was false.

Example

An adviser suspected of drink driving who refused to provide the police with a breath test, may be knowingly obstructing the proper legal procedure from being implemented.

In a professional context, an adviser who repeatedly brings spurious or hopeless immigration applications knowing, or suspecting, that the true purpose of these is to delay the lawful removal of their clients from the country, may find themselves non-compliant with Code 1.3 and in breach of Principle 1 as this is likely to constitute an abuse of judicial and/or immigration process.

Limits of responsibility

Principle 1 does not require the adviser to monitor and report on behaviour of others. The Principle relates to individual conduct not the conduct of others. Serious misconduct of others within the practice and outside the practice is covered by Principle 2.

Guidance related to Principle 2

Principle 2: Behave with honesty and integrity

Codes - You must:

2.1 Conduct yourself with honesty and integrity in all your dealings.

The effectiveness of our regulatory system is dependent on regulated advisers being truthful, sincere and acting without deceit. It is crucial that their clients, other advisers, the courts, the Commissioner, other parties, and the public can trust an adviser without question.

This essential requirement is captured in Principle 2 which requires advisers to behave with honesty and integrity.

Honesty

A finding of dishonesty is very serious and will almost invariably lead to exclusion from our scheme. The most serious lapses are likely to result in a disciplinary charge being laid against the adviser and a possible ban from acting as an immigration adviser. The Commissioner is also likely to consider adverse findings reached by other regulators as evidence of misconduct which may also lead to exclusion from our scheme.

Case Study 1

The client instructed the adviser to lodge an in-time application for further leave to remain as a spouse. The adviser erroneously missed the deadline for making the application but informed the applicant that the application was lodged on time. The application was subsequently refused by the Home Office with no right of appeal as it was an out of time application. The adviser is likely to be found non-compliant with Code 2.1 and in breach of Principle 2 due to their failure to own up to their mistake and tell the client the truth.

Case Study 2

Following receipt of a client's complaint, the Commissioner requested the client's case file from the adviser. As the adviser had not memorialised the discussions he had with the client or given the client a client care letter, the adviser created attendance notes and drafted a client care letter which he sent with the client's case file. On examination of the documents, it was evident to the Commissioner that the attendance notes were not contemporaneous records of the discussions the adviser had with the client. There was strong evidence on the case file to suggest that the client care letter was only created recently, and it was never issued to the client. The

adviser is likely to be found non-compliant with Code 2.1(honesty) and may also be found to be non-compliant with Code 1.2 (misleading the Commissioner) but is likely to be breached on Principle 2.

Integrity

Integrity is a much broader concept than dishonesty and includes elements of moral principles which may include a disregard for potential consequences and harm or disrespect for clients or others.

While a finding of dishonesty may be relatively clear based on the evidence available, acting with integrity means different things in different situations and contexts.

When making any judgment and deciding whether to find a lack of integrity the Commissioner will make assessments on a case-by-case basis, recognising that each case is different and turns on its own facts.

Situations when we are likely to take action for a lack of integrity include:

- where there has been a wilful or reckless disregard of standards, rules, legal requirements or ethics, including an indifference to what the applicable provisions are or to the impacts or consequences of a breach
- where an adviser knowingly or negligently permits themselves to be used in any deception.
- where the regulated firm or adviser has taken unfair advantage of clients or third parties or has helped or allowed others to do so
- where the regulated firm or adviser has knowingly or recklessly caused prejudice, harm or distress to another, whether in a professional or personal capacity
- where clients or third parties have been misled or allowed to be misled (except where this is a result of simple error that the regulated firm or individual has corrected as soon as becoming aware of it)

Case study 1

An adviser acting on behalf of client did not declare his familial relationship with the client to the Tribunal when representing the client. The adviser was also the client's sponsor. Although there was no dishonesty per se on the adviser's part, as she was not asked about her relationship with her client, the Commissioner is likely to find that the adviser did not act with integrity when she failed to declare the relationship when representing the client as she owed a duty of candour to the Tribunal.

Case Study 2

A client complained to the Commissioner about his former adviser and online abuse. During the investigation of the complaint, the Commissioner learnt that the adviser had been posting derogatory, comments on social media about the client. Although

this was done in their personal capacity, the behaviour constituted a lack of integrity and hence the Commissioner may find the adviser non-compliant with Code 2.1.

2.2 When providing immigration advice or services to clients, or when interacting with prospective clients or third parties, clearly identify yourself.

Regulated advisers are expected to always identify themselves when providing immigration advice or services to clients, or when interacting with prospective clients or third parties by giving their full name, business address, the name of the company for which they work and their job title.

They are expected to be prepared to provide to a member of the Tribunal Service staff, immigration judge or government immigration and nationality staff, including those at posts abroad, identification and confirmation of their authorisation by the Commissioner to provide immigration advice or immigration services.

2.3 Promptly report to the Commissioner any indication of serious misconduct of which you become aware within your organisation.

The purpose of Code 2.3 is for advisers to notify the Commissioner, within a timely period, of issues that could adversely affect their organisation including matters relating to an adviser's fitness and/or competence. Examples of such serious misconduct would include but are not limited to the following:

- persons providing immigration advice or services whilst not regulated
- persons providing immigration advice or services above their authorised registered levels and/or categories
- persons involved in misleading the authorities, abusing the immigration system or advising others to do so
- persons making inappropriate demands of clients

Advisers can raise concern/s with the Commissioner at any time and they will be treated with strict confidentiality. The Commissioner will always ensure that the confidentiality of those who report serious misconduct is protected and their details are not disclosed to those accused of misconduct or third parties. Please refer to the Commissioner's Whistleblowing Policy.

2.4 Promptly report any serious misconduct of which you become aware to the relevant authority.

To promote the integrity of the profession, Code 2.4 requires advisers to promptly report any serious misconduct of which they become aware within their professional work to any relevant authority such as the Solicitors Regulation Authority (SRA), Bar Standards Board (BSB) or the Chartered Institute of Legal Executives (CILEx). For

example, should an adviser learn from his client that their previous representatives, a firm of solicitors, helped him fabricate his asylum account or his previous barrister was involved in facilitating sham marriages and the account appears compelling and credible, advisers are expected to report this misconduct to the relevant regulatory body.

Examples of serious misconduct:

- abuse of trust
- misuse of client money
- dishonesty
- sexual and violent misconduct
- harassment and criminal behaviour
- taking unfair advantage of clients
- discrimination
- human trafficking
- persons involved in misleading the authorities, abusing the immigration system or advising others to do so

The list above is not exhaustive and therefore advisers should objectively consider whether the alleged behaviour or conduct demonstrated a breach of Principle 2 and as such it should be reported to any relevant authority.

The requirement does not however impose a duty on the adviser to disclose confidential information about a client's affairs, unless disclosure is expected or authorised by law, or the client consents to it. Advisers will need to consider the information available to them carefully and whether it is compelling enough for them to form an opinion that a duty of confidentiality needs to be breached. The adviser should, where relevant, inform their client of the circumstances in which their duty to uphold the rule of law and other professional obligations will outweigh their duty to them.

Where there is a conflict between Code 2.4 and Code 4.5 (duty to maintain confidentiality) the adviser should consider whether to continue acting on behalf of the client is likely to result in non-compliance with Code 4.5 and if so, whether they should withdraw from the case. Any duty to report by law should however still be considered.

2.5 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.

Any demand or acceptance of money or benefits in kind, directly or indirectly, from any person in return for referral of professional work is failure to comply with Code 2.5.

For example, where an adviser is paid by a solicitor's firm for every client that the adviser refers to them. Even if this is referred to in terms other than referral fees, this would still amount to a failure to comply with the Code 2.5.

2.6 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.

Any payment of money, or the offering of any financial reward or other inducement of any kind whatsoever, directly or indirectly, to any person, in return for the referral of professional work would amount to a failure to comply with Code 2.6.

Example

An adviser sets up an arrangement with a third party and the third party takes on immigration clients for the purpose of referring them to the adviser for a fee, which may be described as an administration or marketing fee. If the purpose of this arrangement is considered to be that the third-party acts as a paid conduit for referring clients to the adviser, the Commissioner is likely to conclude that the adviser is non-compliant with Code 2.6.

However, Code 2.6 does not apply to genuine marketing or advertising arrangements.

2.7 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.

Where an organisation receives payment for immigration advice or services from all or some of its clients it must be registered with the Commissioner as a fee charging organisation, irrespective of who pays for these services or whether the fees represent only a cost recovery fee.

Non-fee charging organisations with legal aid contracts are required to register as fee charging organisations as legal aid fees paid to advisers under the contract constitutes charging clients indirectly.

Organisations that are registered as non-fee charging organisations, but which demand donations from clients are likely to be non-compliant with Code 2.7.

2.8 Inform your client(s) of the availability of Legal Aid and free legal advice where appropriate.

All registered advisers are under a professional duty to act in the best interests of their clients. When taking on new clients, advisers should make sure clients have the information they need to make informed decisions about the adviser's services. The adviser should explain their billing arrangements and discuss how and when the costs will be paid and consider whether the client may be able to apply for legal aid. This is particularly so where there are concerns that the client may not be able to afford the adviser's fee or be able to pay for disbursements, e.g. for a psychological report relating to a child.

Example

A client wants to lodge an appeal against deportation on Article 8 family life grounds that it would be 'unduly harsh' on the child for the parent to be deported. The client is only able to raise funds to pay the adviser but is likely to require a psychological report relating to the child to support the application. The adviser should advise the client that legal aid may be able to pay for the report.

Guidance related to Principle 3

Principle 3: Comply with your legal and regulatory requirements to the OISC acting openly, promptly and co-operatively.

Codes - You must:

3.1 Only provide immigration advice and immigration services on behalf of the specific organisation(s) you are authorised to work for under the OISC regulatory scheme.

Advisers cannot provide immigration advice and/or services, at different organisations also regulated by the Commissioner, without the Commissioner's approval.

3.2 Ensure that no unauthorised person(s) provide(s) immigration advice and/or immigration services on your behalf.

An "unauthorised person" is someone who is not regulated in accordance with legislation to provide immigration advice or services.

Being employed at a regulated organisation does not mean that the person is automatically permitted to provide immigration advice or services. This also applies to those who are regulated by one of the designated professional bodies or the qualifying regulators (under the Legal Services Act 2007).

Registered organisations must clearly differentiate activities that constitute the giving of immigration advice or services from those that do not. For example, if an administrator simply passes correspondence received from the Home Office to a client, this would not constitute immigration advice or services. However, if they explain the contents of the correspondence to the client and/or answer questions about it that would be considered giving unregulated advice.

3.3 Not provide immigration advice and/or services, or operate above your authorised Level or Category, without the written permission of the Commissioner.

Organisations and advisers must not provide immigration advice and/or services above their authorised level or category without the written permission of the Commissioner.

Organisations must submit an application for registration for all individuals they wish to provide immigration advice and await authorisation of registration from the Commissioner before any advice is provided.

Advisers can only provide immigration advice or services above their authorised levels and categories if a supervision arrangement has been authorised in writing by the Commissioner. For further detailed guidance and requirements on supervision, please refer to the Supervision Practice Note.

Case Study

The organisation's application for continued registration at Level 3 was refused by the Commissioner for, among other things, acting beyond the organisation's authorisation in a number of Judicial Review applications.

In their representations, the adviser denied acting beyond their level of registration. The adviser explained that those they assisted were "litigants in person" and the support provided did not constitute immigration advice and/or services. They claimed that they did not provide immigration advice and services beyond the pre-action protocol process and that the role of the adviser with regards to those applicants was characterised as that of a McKenzie Friend.

However, the Tribunal found that the practice adopted by the organisation of drafting JR applications on behalf of clients which were then submitted as though from litigants in person actively misled the Tribunal. The Tribunal stated that in any case the Commissioner's regulatory framework expressly prohibited registered advisers from acting as McKenzie Friends.

In addition to working above level the Tribunal also found that the organisation had breached the Commissioners Codes around providing advice and services when not authorised to do so and that these matters were relevant to the question of whether advisers could be considered fit and competent to provide immigration advice.

3.4 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.

An organisation may, with the client's written consent, outsource a particular aspect of the client's case. Outsourcing work is where a registered organisation uses a third-party agent to undertake work that the registered organisation is authorised to do. The registered organisation remains responsible for the work done by the third party and work must be limited to delegated functions or tasks, not the entire case. Work should only be outsourced to third parties who are appropriately regulated and/or legally permitted to undertake the services required.

Registered organisations will be expected, through their written record keeping, to demonstrate to the Commissioner that their client agreed to the outsourcing and the reason why the work was outsourced. If the work is outsourced to an affiliate office abroad, then the reason for this should be fully explained to the client and full agreement is expected to be evidenced. Where work is outsourced abroad, clients have a legitimate expectation that they will receive the same standard of service they would have received from the UK based office in accordance with the Commissioner's Code of Standards.

Payment of fees for outsourced work remains the responsibility of the instructing organisation irrespective of whether the client has agreed to pay the fees direct to the agent organisation.

Where firms outsource services, they will need to consider the arrangements they have in place to ensure adequate protection of clients' confidential information.

Case Study

In providing immigration advice and services to clients, an adviser used a solicitor who was not regulated by the Commissioner and who purportedly did not work for the organisation but acted as their supervisor, to carry out work on clients' cases. The Tribunal found that this amounted to outsourcing parts of clients' cases and therefore clients should have been told specifically that part of work on their cases would be carried out by a separate entity.

Furthermore, the Tribunal also found that the organisation's failure to formally clarify and agree the solicitor's regulatory position with the Commissioner prior to him undertaking work on behalf of the organisation, reflected adversely on their fitness and competence to provide immigration advice and services.

3.5 Have and implement an effective written procedure for the handling of complaints.

Organisations are expected to have an effective written procedure for the handling of complaints, and ensure it is always applied when dealing with complaints against the organisation.

A good complaints procedure should include, but is not limited to, the following details:

- how to complain to the registered organisation
- how to complain to the Commissioner
- who to complain to at the registered organisation
- timescales for acknowledging and investigating complaints
- how complaints are investigated

- how a complaint investigation will be communicated to a complainant
- the action that may be taken following a complaint; and
- how complaints will be recorded in a central complaints log held by the registered organisation

The procedure should also include a statement informing clients that they have the right to complain to the Commissioner at any time.

3.6 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.

A 'significant change' in circumstances for a registered organisation may include, but is not limited to:

- a change in the way immigration advice or services is provided (for example, changing from face-to-face contact to online provision of immigration advice or services) or providing immigration advice and/or services abroad
- the creation of links with other immigration related organisations such as colleges or other advice-giving organisations
- a change in management and/or business ownership
- changes to regulated staff
- changes to bank accounts or professional insurance providers
- a change of address
- ceasing to trade
- change of legal entity (prior to the change being made)
- creation of an offshore office and providing of advice from there

A 'significant change' in personal circumstances for individuals may include, but is not limited to:

- if an adviser has become seriously ill and is unable to work
- if an adviser has to have an extended period away from the office
- if an adviser or any person owning and/or running the organisation is subject to bankruptcy proceedings
- if an adviser, or any person owning and/or running the organisation no longer has a right to work in the UK
- if an adviser, or any person owning and/or running the organisation is arrested or is investigated by the police or the Home Office
- If an adviser or any person owning and/or running the organisation is being investigated by another regulatory authority e.g., SRA, BSB, CILEx

regulation or a subject of conduct proceedings before the Solicitors Disciplinary Tribunal (SDT)

The above lists are not exhaustive but are presented to give an indication of the type of issues that would constitute a significant change.

3.7 Immediately notify the Commissioner in writing of any criminal charge, conviction and/or relevant civil proceedings issued against regulated advisers and those involved in the running of the business.

The Commissioner should be informed as soon as reasonably practicable in writing when a registered adviser and those involved in the running of the business, for example a partner, company director, chief executive officer, trustee etc, are criminally charged, convicted, or any civil proceedings which may be relevant to their fitness, for example bankruptcy, insolvency, repossession of property or discrimination, are issued against them.

If civil or criminal proceedings have been issued against the adviser, the business owners or those involved in the running of the organisation, the organisation should not wait for the conclusion of the case against them to notify the Commissioner about the matter but instead inform the Commissioner immediately.

3.8 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.

There may be good reasons why a particular Code will not work well for a particular type of organisation. Where an organisation believes it can make a justifiable case why a Code should not apply to them, they can seek permission from the Commissioner to be exempted from the requirements of this Code. They must await written authority form the Commissioner before they can disregard the requirement.

Guidance related to Principle 4

Principle 4: Act competently and respect confidentiality

Codes - You must:

4.1 Be fit to provide immigration advice and/or services.

Advisers should not do anything which causes the organisation, or anyone in it, to breach their own regulatory obligations.

As such, the Commissioner must be satisfied that advisers are 'suitable' for the role. This means they:

- must be of good character
- satisfy the Commissioner that they will safeguard regulatory compliance
- meet any specific requirements of the role.

The factors the Commissioner considers when assessing suitability include criminal convictions and regulatory or other offences or findings, financial history including bankruptcy, and evidence of behaviour which indicates a lack of honesty or integrity. Where a fitness issue arises from either the declarations or our external checks, the Commissioner will require the adviser to provide detailed information about the matter.

A persistent or concerning pattern of behaviour which points to unwillingness to comply with any of the Codes may constitute a lack of fitness and a likely breach of Principle 4. This is particularly so when the failure to comply has been brought to the adviser's attention on a number of occasions following audits or following the determination of complaints.

Case study 1

An adviser was the owner of two OISC organisations which were both refused continued registration. This was due to significant and repeated breaches of the Commissioner's Code of Standards over a period of time. The adviser appealed these decisions to the First-tier Tribunal (General Regulatory Chamber) but his appeals were dismissed.

After some time, the adviser applied to the Commissioner trying to re-register one of the previous organisations. The Commissioner had concerns regarding the application given the previous breaches of the Code. In response, the adviser sought to blame former members of staff. Altogether, the adviser lacked an understanding or acceptance of the issues that led to him being deregulated in the past. In light of this,

the Commissioner could not be satisfied that this adviser was likely to comply with the regulatory regime if registered.

As such, the Commissioner refused his application on the basis that the adviser was not fit to provide immigration advice and/or services.

The adviser appealed this decision to the Tribunal. The Tribunal also noted that the adviser did not accept responsibility for his previous regulatory failures and failed to acknowledge his previous non-compliance and that no adequate information or evidence had been provided by the adviser to demonstrate that the previous failings had been addressed.

Case Study 2

An applicant applied for registration with the Commissioner. Upon conducting the necessary checks, the Commissioner discovered that the applicant had a Cost Order against him, ordering him to pay costs to another party by a certain date. The Commissioner became aware that this applicant had not complied with the Cost Order.

This applicant was in breach of a Court Order. The Commissioner refused this application as it demonstrated that the applicant did not have a history of legal compliance.

4.2 Provide prompt, clear and competent advice to your clients.

An adviser is expected be able to demonstrate that they have taken appropriate instruction from the client at the initial and later stages of the matter and provided the client with sufficient detail as to the proposed course of action, application requirements, timescales, risks and costs involved, so as to allow the client to make a well-informed decision on how they wish to proceed. Any proposed course of action should be appropriate to the client's circumstances and outcomes sought. Consideration should be given as to whether an interpreter or translator should be engaged to ensure effective communication of advice. Please refer to the guidance on the use of interpreters and translators for more information.

Case Study

The client approached the adviser four days after his application under the EU settlement scheme (EUSS) was refused by the Home Office. The client was advised by the adviser to make an application for administrative review which was rejected by the Home Office on the basis that it was not a valid application. Although the adviser was registered at Level 1 and was authorised by the Commissioner to make applications for administrative review, the adviser was not aware that following changes to Appendix AR and Appendix AR (EU), for decisions made from 5 October 2023, the scope for administrative review under the EUSS had been removed. The

adviser's lack of knowledge and the resultant failure to provide competent advice, can be attributed to his failure to keep up to date with the changes in immigration law and policy.

4.3 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.

Advisers are expected to maintain a high level of competence in their immigration work and ensure that their legal knowledge is current and of sufficient depth for their role, identifying and addressing any deficiencies in their knowledge or training, or that of their staff, so as to maintain a level of competence and knowledge appropriate to the work and level of responsibility in which they or their staff are engaged.

Advisers are expected to act only on matters that are within their competence and should not act for a client in an area of law where they have insufficient knowledge or experience even if authorisation has been granted in such areas.

4.4 Be able to demonstrate that you are compliant with the Commissioner's Continuing Professional Development requirements.

Authorised advisers, like other professionals, need to continue learning and developing as they keep up to date with best practice and must remain alert to ways in which they can improve the services they provide to their clients and run their businesses effectively.

The Commissioner's Continuous Professional Development (CPD) Scheme is not prescriptive as to how much CPD activity should be undertaken by authorised advisers but is instead a principle-based scheme which focuses on the outcomes of learning and development. It places the responsibility on advisers and organisations to demonstrate to the Commissioner that they are taking action to remain fit and competent in the areas they are authorised to operate in.

For further detailed guidance and requirements on CPD, please refer to the CPD Practice Note.

4.5 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.

Advisers are under a duty to ensure that information relating to their clients is kept confidential. Advisers are required to ensure that information is accessible only to those authorised to have access to it. Certain types of information such as

communication between the client and their adviser, the client's personal details or their financial records must not be discussed or divulged to third parties.

Advisers are responsible for the conduct of those who undertake work on their behalf. They are expected to ensure that all staff are aware of the need to handle and dispose of confidential material securely, including electronic data.

There are exceptions to the strict confidentiality requirements such as when required by statute, by court order or by the Commissioner. Furthermore, the duty to ensure that the client's confidential information is not disclosed, does not override the adviser's duty not to mislead the Commissioner, the Home Office, the courts, and tribunals and/or third-party agencies. Where there is a conflict between the duty of confidentiality and the requirement not to mislead, the adviser is expected to withdraw from the case.

Confidentiality applies to all information given to the adviser, by their client or a third party, in connection with the case in which the adviser or the firm are instructed. Should the adviser have information unrelated to the case this may not be covered by the duty.

In each case where the adviser considers a breach of confidentiality, it is necessary to be able to justify the action both to themselves and to others if the decision is challenged. There are no hard and fast rules here; each decision must be made on its own merits. Advisors are expected to think about all the factors set out below and be cautious in making disclosures of confidential information until they are sure of the legal and ethical basis for the disclosure. Where appropriate, they should seek legal or other professional advice.

Areas where disclosure may be considered appropriate include the need to prevent serious harm or crime. Areas for consideration include but are not limited to:

- serious harm to the client or others e.g. where a client has indicated their intention to commit suicide or serious harm or domestic violence.
- serious crime (e.g. murder, manslaughter, child abuse)
- terrorist activity - The Terrorism Act 2000
- drug trafficking - Drug Trafficking Act 1994
- money laundering - Money Laundering Regulations 2007
- child protection - Children Act 1989

Case Study

An adviser was instructed by his client that the witness statement he submitted with the application was drafted by a firm of solicitors, who were his previous representatives, without his input. He also informed the adviser that indeed his previous representative put all the evidence together for him without his input for a fee which was on top of the fee they charged for representing him. He also informed

the adviser that he was introduced to his previous representatives by a friend who had received similar services from them.

As the adviser is aware that there is an attempt to mislead the Home Office by the client, the adviser is expected to inform the client that he is unable to continue acting on their behalf if they intend to rely on the evidence already submitted. The adviser however does not have a duty to inform the Home Office, but they are required under Code 2.4 to report the alleged serious misconduct by the client's previous representatives to their respective regulators, in this case the SRA.

Guidance related to Principle 5

Principle 5: Act in the best interest of your client, deal with clients professionally and ensure they receive a good quality of service

Codes – You must:

5.1 Always act in the best interest of your client.

An adviser is required to act honestly, fairly and professionally in accordance with the best interests of the client. They should ensure that clients receive advice that meets their objectives, financial situation and needs.

The adviser's job is to know and advise clients on the best possible course of action given their specific case. The adviser is expected to tailor their advice to the client's unique needs.

Advisers have an obligation to provide advice that is in the best interest of their client. In providing advice, the adviser is expected to bring reasonable care, skill and knowledge to the performance of the professional services they undertake.
For example, if it is not in the client's best interest to lodge an appeal e.g., where there is no right of appeal or if it is not in the client's best interest to make a claim because it is clearly groundless and most likely to be refused, the adviser should advise the client not to proceed with the appeal or application. The adviser may refuse to represent the client, should they insist on an appeal or application which is without any merit.

Where it is clear that a case is frivolous and vexatious, the adviser is duty bound to take all reasonable steps to ensure that the client is aware of this and the risks of going ahead with the case.

If an adviser suddenly withdraws from a case, it may not comply with Code 5.1. However, if there is a valid reason for withdrawal or if there is a requirement to withdraw, it is unlikely that a non-compliance with Code 5.1 or a breach of Principle 5 will be found.

Withdrawing from a case by the organisation

The following are examples of 'good reason' for an organisation to withdraw from a case:

- a conflict of interest becomes known

- the client's matter becomes too complex for the registered organisation or reaches a level at which the registered organisation is not authorised to practise
- if the relationship between the client and adviser breaks down
- by acting on behalf of the client there is likely to be a fundamental breach of the Code of Standards by the adviser
- the client fails to pay fees as agreed and this cannot be resolved

In most of the examples given above immediate withdrawal may be necessary. In relation to outstanding fees, consideration should be given to withdrawal in a timelier manner so as to limit any prejudice to the client's case.

5.2 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.

The adviser is expected to ensure that their independence is not compromised and should not act or continue to act where there is a conflict of interest or a significant risk that a conflict may arise, unless the client is aware of the potential conflict and content to proceed.

Conflicts of interest arise where an organisation or adviser has a conflicting interest which may lead to them recommending a course of action which may not be in the client's best interest.

Conflicts of interest may arise in several ways. For example:

- a registered organisation/adviser may have competing commercial or financial interests that make it difficult to fulfil their duties to the client
- a registered organisation/adviser may have cultural, community or political affiliations that could potentially undermine the relationship of trust with the client
- a registered organisation/adviser may have, for example, several clients with contradictory requirements or accounts

Registered organisations and advisers are under a duty to make clear to clients where they may have a conflict of interest and ensure that this is fully understood. They are expected to give clients sufficient time in which to decide if they wish to continue to instruct the firm and, if so, under what conditions. Irrespective of the client's wishes, the organisation/adviser is expected to determine whether it is correct to continue to act in the circumstances.

Where there is a real or potential conflict of interest, be it identified prior to the adviser acting for the client or after the adviser has begun acting for the client, the registered organisation/adviser is expected to only act if the client has consented to this in writing. In such circumstances, the Commissioner would expect to see

evidence that the conflict was fully explained to the client (using a suitable interpreter, if necessary) and signed and dated written consent from the client allowing the adviser to continue to act on the client's file.

It may also be the case that a conflict of interest is perceived, even if an actual conflict of interest does not exist. An adviser should bring out into the open any perceived conflict of interest they become aware of, in order to ensure that the trust between the client and the adviser is maintained.

Case Study 1

The organisation had been approached by their client's former spouse to act on her behalf. The client's former spouse informed the adviser that they wanted the adviser to make an application for leave to remain on grounds of domestic violence purportedly perpetrated by the client and that the former spouse was also aware that their client's application for leave to remain was based on fraudulent evidence. As there was clearly a conflict of interest in that the client's application was likely to be impacted by his former spouse's claim, the adviser could not accept instructions from the former spouse. The adviser may withdraw from the client's case as based on the information provided by the former spouse, they were not satisfied that the client's application was genuine.

Case Study 2

An adviser ran an investment firm as well as running an organisation that provided immigration advice.

The client approached the adviser about advice on how to obtain leave to remain in the UK as an investor.

The adviser provided immigration advice to the client but also referred the client to his investment firm for advice without disclosing that he owned the firm. The adviser is likely to be non-compliant with Code 5.2 as he is required to disclose his relationship to the investment firm to the client and obtain written consent from the client before he proceeds to act on their behalf.

Case Study 3

The client approached a registered organisation for advice. The client was an asylum seeker who fled his country following persecution for being a member of the opposition party. The adviser was also from the same country as the client, but he was a member of the ruling party, and he was the diaspora party chairman. The client was not aware of the adviser's role in the ruling party when he instructed the adviser to act on his behalf.

The adviser is likely to be in breach of Code 5.2 if he does not disclose his affiliation with the ruling party and seek written consent from the client. Furthermore, given the adviser's central role in the ruling party, the adviser may have to withdraw from the case even where the client is made aware of the adviser's links to the ruling party and consents to the adviser to continue acting for them. This is because the situation is open to accusations that the adviser's actions, judgment, and/or decision-making may be biased.

5.3 Provide all prospective clients with an effective client care letter.

A prospective client is someone:

- with whom an adviser has had an initial consultation; and
- there is an expectation of a continuing professional relationship.

An effective client care letter should include:

- a statement identifying the client for whom the organisation is acting
- a statement of the client's immigration status, if known
- full details of the client's instructions, advice given and the work agreed to be done with estimated timeframes
- confirmation of the costs estimated or agreed
- confirmation that if client money is held by the organisation on behalf of the client, such money remains the client's until the client is invoiced and payment is due
- information explaining what, if any, additional costs may be incurred for which the client may become liable
- contact details of the adviser dealing with the matter including their name, address, telephone number and email address
- confirmation that if the client is required to hand over any original documents to the organisation, the client will, if necessary, be given copies of those documents as soon as reasonably practicable
- the organisation's complaint-handling procedures
- all other terms and conditions of the agreement, and, if online selling regulations are relevant, the client's protections under relevant legislation
- confirmation that the organisation is regulated in the UK by the Commissioner and that the Commissioner has the power to examine the client's file; and
- confirmation that the organisation retains full responsibility for all work done on behalf of the client.

If there are any changes to the organisation's contact details, the organisation is expected to notify its clients promptly in writing.

5.4 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.

An adviser should always ensure that the client understands the contents of the client care letter and that the client confirms in writing that they agree with them. If subject to an audit or complaint investigations, the onus is on the adviser to demonstrate to the Commissioner that the client is aware of and understands the contents of the letter.

There may be exceptional circumstances in which a registered organisation or adviser might undertake work on behalf of a client without the client having yet agreed their client care letter or even being issued with one. For example, where a client is in detention and is about to be removed and there is an urgent need to submit representations on their behalf, it might not be possible to get agreement to a client care letter before acting for the client.

A note explaining the situation together with a full record of the initial discussion with the client is expected to be placed on the client's file. However, as soon as reasonably practicable, a client care letter has to be issued to the prospective client and the contents agreed with them before any further work is undertaken.

5.5 Ensure that each of your clients is kept regularly informed, in writing, of the progress of their case.

As a professional legal adviser there is an expectation that clients will receive written updates on their case progression. This does not mean that messages cannot be relayed through other means, but any significant updates should also be confirmed more formally, and an adequate record of all interactions is expected to be maintained by advisers for regulatory purposes and client protection.

Formal written communications with clients and all other relevant third parties should be by hard copy letter or e-mail. Text messages and instant messaging platforms may be used for booking appointments and informal messaging, and a record of such messages should be retained but instant messaging platforms should not be used for formal updates or any significant communications related to the client's matter.

Organisations and advisers must ensure that each of their clients is kept regularly informed in writing of the progress of their case. How often they need to keep their clients informed will depend on the circumstances of the case, but it should be at least be every three months.

An adviser on receiving notification of the outcome of a client's case must, as soon as possible notify the client in writing accordingly. This should be at least within 3 working days.

An adviser should explain to the client the implications of any substantive changes in the client's circumstances or in their case of which the adviser becomes aware and advise them on any suggested course(s) of action, including any associated costs or expenditure. This is expected to be done as soon as possible and without prejudice to the client. If given orally, the adviser is expected to promptly provide the client with a written statement summarising the above.

5.6 Have arrangements in place to ensure that, should you be temporarily unable to work, the client's case can continue to be progressed.

There may be occasions where a registered organisation is unable to provide immigration advice or services to a client due to an adviser being temporarily unable to work. This may include either planned or unplanned absences. In such situations the registered organisation is expected to make suitable arrangements for cover as soon as practicable. This may include the referral of cases requiring urgent action to a suitably qualified person, either within or outside the organisation, and informing the client in writing of these arrangements. In cases where it is either known by, or becomes apparent to, the registered organisation that an adviser will be absent for more than one month, the registered organisation is expected to contact the Commissioner so that Adviser Finder can be updated and to discuss how cover for the work will be arranged during the period of absence.

5.7 Return all documents relating to the client's case when requested and without delay.

If a client terminates their instructions, the organisation is expected to arrange for all documents relating to the client's case and the client's file to be returned to the client or to such third party as the client may direct as soon as practicable. The organisation must keep a copy of the client's file for its own records in accordance with Code 5.10.

5.8 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.

On the completion of a client's case, or where the client has withdrawn instruction or the organisation has withdrawn from acting, the organisation should provide the client with a written statement including the following information:

- confirmation that the case has been completed or instruction/representation withdrawn, including a statement of the case's position or outcome and implications. This should include any dates or restrictions on the client's leave, if known
- a list of the original documents returned to the client
- a final financial statement, if appropriate

5.9 Transfer, as soon as possible and without prejudice to the client, their file and all documents where requested by the client, irrespective of whether any payment is outstanding.

Where a client requires that their case be transferred to themselves or to another organisation, the fact that the client may still owe money to the organisation should not be a reason not to transfer the case. All documents relating to the client's case and the client's file should be transferred as soon as possible and this should normally be within three working days from the receipt of notification of termination of the instructions unless it is impracticable to do so. The timeliness of action in this regard is of particular importance where the client is in detention, or their removal is imminent.

Case Study

An organisation submitted an asylum application on behalf of a client. Prior to submitting the application, the client had agreed with the adviser that he would pay the fees owed to the organisation after the application had been submitted. However, after the application was submitted the client asked the organisation for more time to pay and furthermore instructed the organisation to transfer his file to a non-fee charging organisation.

Although the client has failed to pay the organisation as agreed, the organisation cannot hold on to the client's documents in lieu of fees owed. Instead, if not paid, the organisation may take the client to a small claims court for unpaid invoices.

5.10 Retain all client files and records for at least six years, thereafter, securely destroying the files and records.

An organisation must ensure that all client records are kept for at least six years, and thereafter for the client file and associated electronic data should be securely deleted or destroyed.

This requirement applies even if the client's records have been transferred to a new advice organisation or given to the client. A copy of the client's file must be retained even if the original file is no longer held by the organisation.

The reason for this generic six-year period is because most civil claims, broadly, can be brought within a six-year period. If an organisation feels it is necessary to retain files beyond six years, the Commissioner expects them to keep an attendance note detailing their reasoning for further retention along with the file(s). However, organisations must keep every file for at least six-years as a starting point.
The Commissioner would recommend that organisations keep retention and destruction schedules so that they are aware of files that have been destroyed and retained.

Registered organisations must comply with the requirements of current and relevant data protection legislation and guidance. Please see the Commissioner's Practice Note on Data Protection for further details.

Guidance related to Principle 6

Principle 6: Maintain high standards of professional and personal conduct, ensure public trust and confidence in the OISC regulatory scheme and do not bring the regulatory scheme into disrepute

Codes – You must:

6.1 Display the OISC registration number where appropriate.

The OISC registration number and digital badge allow clients and potential clients to satisfy themselves that an adviser and organisation are regulated and provide details of registration levels and contact details. The Commissioner expects the registration number to be displayed on the organisation's letterhead, website and e-mail and the digital badge can be displayed on its website.

6.2 Only use the OISC logo in accordance with the instructions contained in your approval letter from the Commissioner.

The conditions for the use of the logo are:

- the logo may only be used whilst your organisation has valid registration
- the logo may be used in any of your printed or electronic publications for as long as your organisation has valid registration
- the OISC owns the logo artwork and any reproductions of it
- the minimum size for printing the logo is 13mm x 10mm
- the organisation must not allow the logo to be altered in any way, apart from varying the size, subject to point 4
- the logo may only be reproduced in its original colour or in black and white

Any use or display of the logo should only be in line with the adviser or organisation's function as a registered adviser or organisation.

Example

In addition to immigration advice to the UK, if the organisation also provides other services e.g., assisting clients who wish to emigrate from the UK, or provides immigration training, the logo should not be displayed on the organisation's website

without clear delineation of what services are not covered under the Commissioner's regulation. For example, this may be done by including a caveat in bold letters stating that "The OISC only regulates Immigration Advice and Services to the UK. It does regulate advice and services provided to those who wish to emigrate from the UK", or "The immigration training provided by this organisation is not accredited by the OISC".

6.3 Not tout for the business of providing immigration advice or immigration services.

An adviser will be regarded as being engaged in touting for professional work if they either personally or through the agency of another, procures or seeks to procure, professional work through unsolicited approaches. Such approaches may include in person, by telephone or online approaching of members of the public. However, advisers may contact current or former clients directly in order to publicise immigration advice and services provided.

An example of touting for the business of providing immigration advice or services would be cold calling people offering to provide them with immigration advice or services or attending Home Office premises such as detention centres, with the intention of encouraging individuals to instruct their organisation.

6.4 Not include criticism of other organisations or advisers in any promotional material.

Criticism of other organisations or advisers in any promotional materials is a questionable marketing practice that is likely to harm the organisation or adviser and is therefore not permitted by the Commissioner. Such a practice may also harm the reputation of the profession notwithstanding that the assertions may be erroneous or untrue.

Where an organisation or adviser has concerns about another organisation or adviser, they should report their concerns to the Commissioner to investigate but should not criticise them in their promotional material.

Example

A disgruntled former client may inform their new adviser that their previous representatives failed to provide them with competent and diligent representation. This may or may not be true. However, the adviser should not rely on these allegations to criticise the organisation in their promotional material as they run the risk of being non-compliant with Code 6.4 if they do so.

6.5 Not make publicly, orally or in writing, promotional statements about your success rates.

Success rates do not provide a definitive indication of ability within immigration work and can be interpreted without context within promotional material. The purpose of this Code is to protect clients who may be unduly influenced to instruct an organisation based on its promotional statements[2] about its success rates. This is a particular risk when dealing with vulnerable clients.

Given the potential risk to clients, the Code prevents organisations from making statements about their success rates when publicising their services to increase sales and public awareness. The Code does not prevent organisations from providing success rate figures that can be backed up to a prospective client, or to its funders. Answering clients honestly when asked specifically about the success rate is not prevented under this Code. For further information, please refer to the Practice Note on promotional material.

6.6 Not have an organisation name that has the potential to confuse or mislead clients. The Commissioner has the power to require you to change your name.

This Code requires that the names of regulated organisations must not have the potential to confuse or mislead clients. Given that clients may be vulnerable and have a limited knowledge of English, advisers must be careful in selecting a name for their organisation.

There are also sensitive words and expressions that could imply a connection with a government department, a devolved administration, a local or specified public authority or a relevant body that should not be used.

In addition, the term UK/U.K/U.K. or any variation thereof cannot be used if it implies a connection with His Majesty's Government or a local or specified public authority. The Commissioner will look at the context when the term is included in a business name. However, a name like Immigration Bureau (UK) plc may, for example, fall foul of this requirement.

The Commissioner will treat with caution any advisers who seek to name their organisations with titles whose initials could confuse because the acronym represents that of an already established body. Examples of this are Immigration Law Practice Agency (ILPA) and Skilled Registered Advisers (SRA). It would be difficult to argue that the use of such initials was entirely coincidental, and the Commissioner may require businesses to change such names.

---

[2] *Promotional Statements means statements printed or displayed on advertisements, brochures/leaflets, the organisation's web site and public statements made by the organisation, its advisers and spokespersons.*

6.7 Obtain the Commissioner's authorisation before making any change(s) to the organisation's name or legal status.

Regulated organisations that want to make changes to their name or want to change their legal status, for example from being a sole trader to becoming a limited company, from a partnership to a registered charity, or from a limited company to a partnership, are expected to obtain the Commissioner's permission first before making the changes. For those organisations that want to change their legal status they are required to complete an Application for the Registration of a New Legal Entity. A failure to do so may mean their new entity is not regulated.

6.8 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.

Advisers must not behave in a way, in a professional or personal capacity, which would call into question their suitability to work in the immigration advice-giving profession or risk tarnishing the public perception and reputation of other advisers and the Commissioner's regulatory scheme.

The Commissioner will act where he sees conduct in a registered organisation or by an adviser, which would undermine public trust or confidence in regulated advice provision.

Persistent allegations of impropriety against an organisation or adviser e.g. charging clients for poor services or for services not provided, irrespective of whether those services are regulated by the Commissioner, could result in a breach of Principle 6 given the organisation's association with the Commissioner's regulatory scheme. Advisers who repeatedly bring spurious or hopeless immigration applications knowing, or suspecting, that the true purpose of these is to delay the lawful removal of their clients from the country, are likely to be found in breach of Principle 6, in addition to Codes 1.2 and 1.3.

Another example is where the Commissioner receives repeated complaints from the public relating to the immigration training that is being provided by a registered organisation or adviser, which implies that the training is accredited by the Commissioner. Although the training is not regulated by the Commissioner, the organisation may be found in breach of Principle 6 due to its association with the Commissioner's regulatory scheme.

Case Study

An adviser in addition to providing immigration advice and/or services as defined under Section 82 of the Immigration and Asylum Act 1999 (as amended), also provided assistance to those who want to emigrate to Australia, Canada or New

Zealand. Although this assistance does not fall for regulation, the Commissioner received numerous complaints about the services provided by the organisation, with allegations of poor advice and overcharging.

The Commissioner was unable to investigate the complaints as they are outside his jurisdiction. However, the Commissioner may consider, after discussion of the issues with the regulated organisation, that the number of complaints and the similar nature of the allegations constitute compelling evidence of failure by the organisation to comply with Code 6.8.

Any legitimate challenge, action, appeal, or judicial review brought by a prospective immigration adviser or an already registered adviser, against the Commissioner's decision/guidance, rules and/or regulations will not be considered a failure to comply with Code 6.8.

Guidance related to Principle 7

Principle 7: Treat everyone fairly and without prejudice

Codes - You must:

7.1 Treat everyone fairly, with dignity and without prejudice.

Organisations and advisers must not take advantage of a client's or a prospective client's vulnerability. They must not abuse their position by taking unfair advantage of clients or others.

For example, an organisation should not threaten to report the client to the Home Office for an alleged immigration offence, simply because the client has complained to the Commissioner about the adviser's behaviour. This would, among other things, amount to an abuse of their position as an adviser.

Advisers should not exploit clients by encouraging them to make applications that lack any merit and are likely to fail simply for the adviser to obtain undue pecuniary advantage.

Clients are expected to be treated with dignity and respect. For example:

- clients should be treated with care and compassion.
- all communication with clients and people using services should be respectful. This includes using or facilitating the most suitable means of communication and respecting a person's right to engage or not to engage in communication.
- people using their services should be addressed in the way they prefer
- advisers are expected to provide the same level of dignity and respect to all clients without prejudice or discrimination.

7.2 Provide each client with equal opportunity to secure a favourable outcome in their matter, irrespective of their vulnerability or susceptibility to discrimination.

Advisers must not unfairly discriminate by allowing their personal views to affect their professional relationships and the way in which they provide their services.
Clients or prospective clients must not be discriminated against in any way and the adviser must take account of protected characteristics, set out in the Equality Act 2010.

The protected characteristics are age, disability, sex, gender reassignment, pregnancy and maternity status, race, religion or belief and sexual orientation.

This means that advisers must not discriminate, harass or victimise people because of these protected characteristics. This includes direct and indirect discrimination, which is described in the Equality Act 2010.

Organisations should have a written equality and diversity policy that meets current statutory requirements and ensure it is complied with. Where organisations are found not to be compliant with Code 7.2, the lack of a written equality and diversity policy will be considered an aggravating factor.

Where an organisation has a policy of offering immigration advice or immigration services only to specific client groups, the organisation is expected to make this publicly clear.

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.

The adviser should:

- be courteous and polite in all communications
- listen to others and respect difference in beliefs and opinions
- respect personal space and property
- not use inappropriate language, or be aggressive in their communications
- not engage in violent behaviour; violence in this context includes actual or threatened physical violence or verbal abuse which leads to fear for a person's safety

Example

An adviser should not send messages to a client that appear to be threatening violence, in order to force the client to pay any outstanding fees. The adviser should instead use the courts to resolve the matter.

Case Study

A registered organisation was directed by the Upper Tribunal (UT) to provide information that showed that the organisation was permitted to act in a Judicial Review (JR) Case, as they had made an application for JR on behalf of a client. The Commissioner, during an investigation of a complaint, noted that the tone of the adviser's response to the UT directions was aggressive and very critical of the UT. Among other things, the adviser accused the judge of abuse of his position and misusing public resources to cause operational difficulties for the organisation. In his

claims the adviser also appeared to accuse the UT of bias without providing evidence.

The Commissioner would be likely to find the adviser non-compliant with Code 7.3.

Guidance related to Principle 8

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.

Clients will have a legitimate expectation that a professionally regulated business will be well managed and operating on a secure financial footing. As such, a regulated organisation is expected to have and effectively apply appropriate management structures, governance arrangements, processes and policies to support and maintain a viable and sustainable business. Evidence of these should be available for inspection by the Commissioner.

Management policies and processes should enable the organisation to deliver services that are in keeping with the Commissioner's Code of Standards. For example, recruitment processes should seek to ensure that new advisers joining the organisation are fit and competent to provide immigration advice and services at the levels desired by the organisation. Recruitment processes should ensure sufficient checks are carried out on prospective employees, so the organisation is satisfied that this is the case.

An organisation should inform the Commissioner of the individual who has specific overall responsibility as the organisation's primary contact with the Commissioner. An organisation is expected to notify the Commissioner of all its business addresses and any changes to those addresses within 10 working days.

An organisation should have a clear understanding of its business, its clients and areas of work, giving consideration for how the business will be sustained and developed in the future.

An organisation which advertises immigration advice or immigration services should ensure that its material clearly explains the advice or services offered and these descriptions, along with the qualifications and authorised levels and categories of those who provide them, must be accurate and not misleading. The organisation retains overall and absolute responsibility for this information.

Organisations which offer immigration advice or immigration services online should ensure that their online information clearly explains what immigration advice or immigration services they are authorised to provide, the generally expected timeframes for delivery of such work and any associated costs.

Organisations which provide immigration advice or immigration services online should have a clear and prominent statement on their website that they comply with current regulations including any cooling-off period to which clients are entitled.

8.2 Have current and adequate professional indemnity insurance.

Organisations are required to have professional indemnity insurance to cover the advice and services they provide to their clients. Organisations are expected to maintain at least a minimum cover of £250,000.

8.3 Maintain complete, clear and accurate financial records.

An organisation should maintain complete, clear and accurate financial records and have annual audited, certified or otherwise verified business accounts. The Commissioner should be given access to all such accounts and financial records upon request.

8.4 Implement and maintain an effective file management system.

Client records should be capable of being easily understood by colleagues and others.

Registered organisations are expected to maintain a full list of all their clients. This should include, where relevant, each client's name, date of birth, Home Office reference number, the type of application made and the date that the case was opened and closed, including the outcome of the matter.

Case records should include copies of any relevant correspondence with the client or third parties, copies of applications and supporting evidence including electronic correspondence. Client records should be maintained in an orderly manner with the progress of each case being clearly recorded.

8.5 Keep a complete record of all your dealings with and on behalf your clients in the form of attendance notes.

An adequate record of interactions would include everything relevant to the client's case. It must include details of instructions taken, advice given (including the merits of any proposed action), action taken and by whom, and any other relevant matters. Interactions include communications by telephone and e-mail, and although the Commissioner would not expect significant interactions to have taken place via instant messaging, if instant messages have been received which are relevant to the case they should be recorded on the file.

The attendance note of any meeting or conversation between the adviser the client and any relevant third party (for e.g. the Home Office) is expected to include a full record of their discussion. The note of the first substantive meeting/conversation between the client and their adviser should include full details of their discussion of the client's immigration history, the instructions taken, any advice given, and action agreed.

When writing to the client and other interested parties such as the Home Office, correspondence from advisers is expected to include the adviser's full name, business address, name of the registered organisation for which they work and their job title.

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.

For paper records, the organisation will need a lockable cabinet or room, a fireproof safe, and a shredder. Organisations can outsource the secure destruction of files. For electronic records, the organisation will need a reliable computer system and a secure network.

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.

Advisers and organisations should ensure that the client's original documents are only retained where necessary. Otherwise, copies should be made of the documents and the originals returned to the client as soon as reasonably practicable.

Guidance related to Principle 9

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.

An organisation that charges for its immigration advice or immigration services is expected to have a fee scale and the organisation should share the fee scale with its client's and prospective clients. A copy of this fee scale is expected to be made available to the Commissioner upon request.

The Commissioner insists on transparency in all dealings with clients. Discounts are acceptable but the reasons for providing the discount should be recorded in writing in the client care letter and in the attendance notes. Any discounts provided should not be subsidised by fees paid by other clients.

Clients should always be charged according to the fee scale and any deviation from the fee scale should be explained to the client in writing.

Where an organisation charges a range of fees instead of fixed fees, the Commissioner considers that a small range would be acceptable. For example, where the highest fee is almost twice the lowest fee, without a reasonable explanation for charging the client the higher fee, the Commissioner is likely to find that the client was overcharged by the organisation. Therefore, to be compliant with Code 9.1, the organisation will need to be able to explain why a particular client is/was charged at the upper end and evidence to support this must be retained in the case file.

9.2 Submit an invoice to the client when payment is required and provide the client with proof of payment of the sum taken.

Where payment from the client is required, the client should be issued with a formal invoice for payment. Clients should always receive a receipt for any payments made whether this is in relation to a deposit on work to be completed, or payment for work completed. For further information, please refer to the Practice Note on Invoicing.

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.

Advisers should follow this protocol to give the client sufficient time in case they need to add money to their account, or they wish to dispute the invoice, before money is debited from their card/s.

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.

Money paid by the client for work not yet completed does not belong to the business and should not be available for use by the business until the work is completed. For further information, please refer to the Practice Note on Fees and Accounts.

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.

Organisations are expected to ensure that client money is returned promptly to the client or third party for whom the money was held, as soon as there is no longer any proper reason to hold those funds. Any interest accrued on client money held in the client account should also be given to the client.

In some cases, you may be unable to return the money because a client has died or does not respond to attempts to contact them. Such money should not be retained by the business but may be donated to a charity.

9.6 Promptly return to the client any refund(s) received in respect of any disbursement(s).

Refunds in respect of any received disbursement(s) should be returned to the client within 3 working days.

A 'disbursement' is an expenditure incurred which is necessary to progress the matter on which adviser has been instructed.

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.

The Commissioner would expect an organisation to record in writing when a client requests a refund and when a refund is made. If a refund is not made the Commissioner would expect the organisation to record their rationale in writing and keep this with the case file. The client should also be notified as to why any requested refund is not given.