

Practice note on signposting and referrals

Introduction:

1. Where a registered organisation cannot provide the legal service needed by someone either enquiring about immigration advice or services (an enquirer) or an existing client, it should direct them to a suitably qualified legal representative. This may be either by signposting or by referral.

Signposting:

2. Signposting means directing an enquirer to other more suitably qualified legal representatives where the registered organisation cannot provide the service required or lacks the capacity to do so.
3. Before signposting an enquirer, it is good practice for a registered organisation to first assess what level of service the enquirer needs.
4. If it is appropriate to signpost the enquirer this should be done at the earliest possible opportunity, preferably at the first meeting or enquiry.
5. If the registered organisation cannot provide the services needed, it may direct the enquirer to:
 - the IAA's Adviser Finder
 - telephone the IAA
6. Circumstances where it would be appropriate to signpost to another suitably qualified legal representative include, but are not limited to, where:
 - the service required is beyond the IAA authorised level of the registered organisation
 - the service required is specialist legal advice on a specific subject or area of law that the registered organisation cannot provide
 - the registered organisation cannot deal with the case due to its workload or the limitation of its business charter
 - the registered organisation believes that there could be a conflict of interest if it takes on the case

Referrals:

7. A referral is where a registered organisation can no longer provide the service required to an existing client and must refer them to a suitably qualified legal representative. This differs to signposting as the person is already the adviser's client and so a fiduciary and financial relationship will exist.
8. Registered organisations should seek a referral when:
 - there is a real or potential conflict of interest between two of its clients or between the registered organisation and the client
 - the case becomes too complex or involves a type of representation that the registered organisation cannot provide
 - the case involves conducting an aspect outside its expertise, where outsourcing is not suitable because the work required is above the registered organisations authorised Level
 - the adviser does not have capacity or time to handle the case properly
 - the client has lost public funding having previously been granted legal aid
9. If a registered organisation decides to refer a client, it must:
 - inform the client in writing at the earliest opportunity setting out their reasons
 - direct them to other possible service providers
 - make a note on the client's file of the referral (Code 8.5)
10. In accordance with Code 5.1, the decision to stop representing or to refer a client must be in the client's best interests. A registered organisation, for example, must not leave the client without representation at short notice at critical stages of their case without first making an appropriate referral. The adviser should ensure that the client receives a seamless service and is not placed at a disadvantage during, or because of, a referral.
11. The choice as to who represents a client should remain solely that of the clients. The registered organisation making the referral may recommend a suitably qualified legal representative, but the decision must remain with the client.
12. A registered organisation must not force a client to choose a particular legal representative, nor recommend a particular organisation from which it receives an inducement for doing so (refer to paragraphs 16 & 17 below). A registered organisation acting without any inducement is however free to recommend a particular legal representative whom they believe will be able to assist the client.
13. The transfer of the client's complete case file, including all documents, either to the client or the client's new representative should be done in a timely manner. The registered organisation should, however, keep a copy of the client's file for their records to ensure their compliance with Code 5.10.
14. Depending on the circumstances of the referral, the Commissioner considers it good practice for advisers to:

- Contact the new adviser and make an appointment for the client
 - arrange for the prompt transfer of the client's file with the client's consent
15. A referral has taken place when the adviser passes the whole of the handling of the client's case to another suitably qualified legal representative who then takes over responsibility for it. A referral does not occur if the adviser is only seeking advice on a particular aspect or point in case while keeping ownership of it or if they outsource a particular aspect of the client's case (in accordance with Code 3.4).

Referrals for gain:

16. Codes 2.5 and 2.6 prohibit an organisation or adviser from demanding or accepting from, or offering an inducement to, any organisation or person for referring or recommending a client. The role of third-party marketing firms in directing clients to registered organisations is one that requires careful consideration. Genuine advertising and marketing of the services being provided does not constitute a breach of Codes 2.5 and 2.6. However, the following factors, whilst not exhaustive, may suggest that a referral is being made or received in breach of Codes 2.5 or 2.6:
- The inducement offered or made to, or received from, a third party is not a set fee but is linked to specific client referrals or to the number of referrals
 - The inducement (usually financial) is offered to a marketing or advertising agency, and the amount depends solely on whether instructions or clients are received.
17. Where an inducement appears to be related to referrals the registered organisation should be able to show that the payment is genuinely made in return for an advertising or marketing service, and not a referral service. A third-party marketing firm should not have taken any instructions from the client as they are unlikely to be authorised to do so and therefore should not be in a position to refer clients to anyone. Registered organisations should be cautious of entering into agreements with such firms, as they may be abetting the provision of immigration advice and services by unregulated organisations or individuals.