

Guidance on fitness (Advisers)

Guidance on How the Commissioner Determines Fitness (Advisers):

1. Section 83 (5) of Part V of the Immigration and Asylum Act 1999 (the Act) places a statutory duty on the Immigration Services Commissioner to exercise his functions so as to secure, so far as reasonably practicable, that those who provide immigration advice or immigration services:
 - a) are 'fit' and 'competent' to do so
 - b) act in the best interests of their clients
 - c) do not knowingly mislead any court, tribunal or adjudicator in the United Kingdom
 - d) do not seek to abuse any procedure operating in the United Kingdom in connection with immigration or asylum (including any appellate or other judicial procedure)
 - e) do not advise any person to do something which would amount to such an abuse.Section 83 applies to both individual advisers and advice organisations.
2. This Guidance concerns his duty to ensure that advisers and those owning and/or running an organisation are 'fit', and how the Commissioner fulfils that duty. The latter are referred to in the Commissioner's Guidance on Fitness for Owners.
3. For the Immigration Advice Authority's (IAA) purposes a person is considered an owner of the business if they have any ownership stake in the business. A person is considered to be involved in running an immigration advice organisation if they have a role in the governance of the business and occupy one or more of the following roles: self-employed sole trader, partner, company director (executive or non-executive), company treasurer, secretary, chief executive officer, chairperson or a trustee.

Fitness assessment criteria:

4. The IAA criteria for assessing fitness are:
 - the likelihood of compliance with the IAA's Regulatory Scheme
 - a history of honesty and legal compliance
 - a history of financial probity

What the Commissioner considers when assessing the fitness of those who will be providing advice:

5. While not exhaustive, the following are illustrative of the evidence that the Commissioner will take into account when determining the fitness of advisers:

- Criminal convictions in the UK or abroad regardless of whether or not they are spent included under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975)¹
- Particular consideration is given to offences relating to immigration (including offences under section 91 or 92 of the Immigration and Asylum Act 1999)², dishonesty, fraud, financial crime, violence, people trafficking, drug dealing and sexual offences
- No one convicted of an offence under section 25 or 26(1) (d) or (g) of the Immigration Act 1971 will be allowed entry into the regulatory scheme
- The person has accepted a caution, received a local warning, Penalty Notice for Disorder, final warning or reprimand from the police
- Any adverse finding or any settlement in civil proceedings, particularly if the matter relates to the provision of inadequate advice
- If the person has been, or is currently, the subject of any investigation or disciplinary proceedings or any potential proceedings or investigation which might lead to such proceedings by the IAA or by other regulatory authorities, professional bodies or government bodies or agencies in the UK or abroad
- If the person has committed serious, several or repeated breaches of the IAA's regulations or the equivalent standards or requirements of other regulatory authorities, professional bodies, or government bodies or agencies
- If the person has been the subject of any substantiated complaint relating to regulated activities³
- If the person has been refused the right to carry out a trade, business or profession requiring a licence, registration or other authority, or has had their authorisation revoked, withdrawn or terminated, or has been expelled by a regulatory or government body
- If the person or any business with which they have been involved has been investigated, criticised, disciplined, censured or suspended by a regulatory or professional body, a court or Tribunal, whether publicly or privately
- If the person has been dismissed or asked to resign and has resigned from employment or from a position of trust or fiduciary appointment.
- Any evidence that the person has not been candid or truthful in their dealings with any regulatory body or has failed to demonstrate a readiness and willingness to comply with the requirements and standards of the IAA regulatory system or with any other legal, regulatory and professional requirements and standards.

¹ [IAA's policy on applications from ex-offenders](#)

² Paragraph 4 Sch. 6 Immigration and Asylum Act 1999

³ Complaints not determined from a prior period of IAA regulation may be re-opened and investigated. Where a complaint investigation by another regulator was closed because the person ceased to be regulated by them, the IAA will seek to establish the reasons for this decision. Where there is evidence that the person may have deliberately left that body's regulatory scheme to avoid possible disciplinary action, this will be considered.

The assessment of fitness:

6. The Commissioner obtains the information they need to assess the fitness of advisers from a number of sources:

Information supplied with the application for regulation, especially self-declarations made on competence statements:

7. When a person initially applies to the Commissioner for admittance to the regulatory scheme or, if they are already regulated, permission to raise their advice level or for continued regulation, they will have to complete the relevant application form and provide the Commissioner with certain specified information and documentation. This includes a list of declarations in relation to their fitness.
8. The Commissioner will consider the contents of the application form submitted together with the supporting documentation. During the application process further information and/or supporting evidence may be requested.

DBS checks:

9. All applicants for admission to the regulatory scheme as an immigration adviser must undergo a Disclosure and Barring Service (DBS) Check⁴. Please see the separate guidance on [DBS Checks](#).

⁴ Existing advisers who are moving to a new organisation (with less than a three months' break), and those increasing their level or categories are not normally required to provide a DBS certificate. However, the Commissioner reserves the right to request a new DBS check any at time

References:

10. The Commissioner may request (and take up) references from an applicant's previous employers.

Audits:

11. Audits are one of the IAA's main tools for assessing fitness. Typically, these involve inspecting manual and computerised records (such as the organisation's case files or case management system); financial records; supervision arrangements and records (where applicable); and other systems and processes, including computerised systems. An audit may include interviewing staff and observing them working, as appropriate.

Pre-regulation audits:

12. Prior to admitting an organisation into the regulatory scheme, a pre-registration audit may be arranged to the organisation's premises to inspect these and the organisation's systems and to discuss the application. Such an audit may include interviewing staff.

Obtaining information from other sources:

13. Section 93 of the Act confirms that no enactment or rule of law prohibiting or restricting the disclosure of information prevents a person from giving the Commissioner information which is necessary for the discharge of his functions.
14. The IAA has specific information-sharing arrangements with various bodies including the Home IAA, the Police, the Solicitors Regulation Authority, the Bar Standards Board and CILEX. The IAA may also obtain information from such sources as the Charities Commission and Companies House. The IAA can also be given information in confidence by a member of the public or another adviser. The Commissioner will only rely on information received from such sources if it can be independently corroborated. Please note that this list is not exhaustive.

