

# **CHECKING AN ASYLUM APPLICANT'S REPRESENTATIVE IS LEGALLY AUTHORISED TO PROVIDE IMMIGRATION ADVICE**

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# 1. Scope

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This instruction should be followed by case owners who consider asylum applications. It explains the role of the Office of Immigration Service Commissioner (OISC) in regulating immigration advisers. The instruction provides guidance on the action to take if the asylum applicant's representative is not legally authorised to be giving advice. Such individuals and organisations will be referred to herein as Unregulated Immigration Advisers (UIAs).

This instruction does not provide information on the general handling of legal representatives during the substantive asylum interview. See the Asylum Instruction: [Conducting the Asylum Interview](#) for further information.

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## 1.2 Legal Representation

An asylum applicant must be given the opportunity to consult a legal representative at his own, or public expense (in accordance with provision made by the Legal Services Commission (LSC)) or otherwise. This could be a barrister, solicitor or adviser, all however must be qualified to do so under Section 84 of the Immigration and Asylum Act 1999 (the Act).

A regulatory scheme which is administered and enforced by the Office of Immigration Services Commission (OISC) came into force fully on 30<sup>th</sup> April 2001. Legal representatives must adhere to a code of standards; the following bullet pointed list provides an indication of activities that may warrant further investigation. This list is not exhaustive:

- providing immigration advice and services when unqualified to do so;
- knowingly representing clients in false identities;
- submitting identical applications for different applicants;
- advisers trying to pass themselves off as solicitors;
- being abusive or threatening;
- touting for business;
- being misleading or otherwise failing properly to represent a client;
- making applications on the wrong forms;
- being disruptive with the apparent intention of delaying the progress of a case.

The OISC is authorised to conduct investigations into complaints against an immigration advisor and members of designated professional bodies.

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## 2. The Office of Immigration Services Commissioner

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This section provides guidance for case owners on the role of Office of Immigration Services Commissioner (OISC) in regulating the legal representatives and/or immigration advisers i.e. persons that are allowed to provide immigration advice to asylum applicants.

The OISC is an independent public body established under Part V of the Act. The OISC which is funded by the UK Border Agency regulates immigration advisers ensuring that they are fit and competent, act in the best interest of their clients and do not abuse the immigration system. Since April 2001 it has been a criminal offence for anyone to provide immigration advice or services unless they are either regulated by the OISC or are otherwise qualified to act.

All OISC regulated advisers are required to display their certificate of registration or exemption. If an adviser is regulated by OISC this will be indicated by the OISC's global tick logo which will appear in the correspondence of the firm.



The OISC permits advisers to trade at one of three specific levels depending on their skills and competence; Level 1 - Initial Advice, Level 2 – Casework and Level 3 – Advocacy & Representation. An adviser must have attained a minimum of level 2 in order to be regulated to provide asylum advice or services.

Immigration advisers authorised to level 1 can only provide very limited services to an asylum applicant. No substantive asylum work is permitted and work for the asylum seeker/failed asylum seeker should be limited to one-off assistance covering limited services, e.g. notifying the United Kingdom Border Agency of a change of address, travel document applications for someone granted Humanitarian Protection.

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### 2.1 Organisations that do not have to be regulated by the OISC

Not all persons providing immigration advice need to be regulated by the OISC. Members of certain professional bodies (referred to in the Act as the designated professional bodies, DPB's) may give immigration advice since they are regulated by the DPB, as can people working under their supervision. The designated professional bodies are:

*The Law Society*

*The Law Society of Scotland*

*The Law Society of Northern Ireland*

*The Institute of Legal Executives*

*The General Council of the Bar*

*The Faculty of Advocates*

*The General Council of the Bar of Northern Ireland*

To be regulated by a DPB the individual needs to be in membership or generally on the roll of the DPB. Holding an LLB degree (Bachelor of Laws) for example is not sufficient. The position of Regulated Foreign Lawyers can be complicated and individual cases may need to be clarified with the Solicitors Regulation Authority.

State educational institutions and their student unions, together with health sector bodies, and licensed sponsors for Tiers 2 and 4 of PBS are covered by specific Ministerial Exemption Orders and are similarly not directly regulated by the OISC, although they are required to comply with the Commissioner's Code of Standards.

The Employers exemption and/or Tier 2 & Tier 4 sponsors is restricted to immigration advice and services pertinent to work permits in the case of employers and T2&4 matters, or leave to enter for the licensed sponsor. They are **not** authorised to provide asylum advice or service.

For further information on the role of the OISC in regulating immigration advisers and exempt organisations officers should refer to the OISC Website.

If the legal representative is not regulated by the OISC and not otherwise authorised the case owner must follow the actions set out in the section [Mandatory check when informed of applicant's representative](#).

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### 3. Mandatory Check When Informed of Applicant's Immigration Adviser

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When notified of the applicant's legal representative the case owner must check that the person/organisation is qualified to act for example as a member of a designated professional body, (DPB) such as being a member of the Law Society, or through regulation by the OISC.

DPB's such as the Law Society have their own websites where a directory of solicitors can be consulted. The Law Society website can be found via this link:

<http://www.lawsociety.org.uk/home.law>

If the organisation is not a member of a DPB and should be regulated by the OISC a list of OISC regulated advisers can be found on the OISC website.

Using the [adviser finder](#) on the OISC website officers can search by level and postcode to determine if the immigration adviser has attained the required level to act in regards to asylum applications or appeal work.

If the case owner encounters difficulties the OISC can be contacted directly on 0845 000 0046.

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#### 3.1 Actions to take where an Unregulated Immigration Advisor (UIA) is acting for an asylum applicant

If it is found that that the representative is a UIA the following actions must be followed:

##### 1. Write to applicant's representative (ASL.4029)

Write to the potential UIA using the letter to representative ASL.4029. This letter informs them that they have 5 working days to provide evidence that they are authorised to provide asylum advice to their client.

Send one copy to the representative and keep one copy on file.

If they do not provide the evidence required the UK Border Agency should not correspond with them and future correspondence will be directly with the applicant.

##### 2. Write to applicant (ASL.4030)

If after 5 days the legal representative has not provided evidence that they are qualified to provide asylum advice officers should then write to the applicant using ASL.4030, letter to applicant, and select the appropriate options. Inform the applicant that the UK Border Agency will not correspond with their chosen legal representative as they are a UIA and they are therefore advised to find a suitably qualified alternative legal representative.

Send one copy to the applicant and keep one copy on file. Officers should then inform Intel.

##### 3. Inform Intel

If the representative can not provide evidence they are permitted to provide asylum advice then the regional intelligence unit must be informed via the IS46. This will then be passed through to the central Intel hub and on to the OISC.

The IS46 must be factual and objective since it could form the basis of an investigation and could subsequently be presented as evidence before the Immigration Services Tribunal or the courts.

Send one copy to Intel and keep one copy on file.

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### **3.2 Actions to take where a regulated adviser does not have the correct authorisation level**

If the case owner considers that the immigration adviser is only authorised to level 1 and has submitted representations that are beyond their authorisation level they should contact the OISC to confirm the authorisation level of the immigration adviser.

If the OISC confirms that the immigration adviser is acting beyond their authorisation level the case owner should:

#### **1. Write to immigration adviser**

Selecting the appropriate options inform the representative using ASL.4029 (letter to representative), that as they appear only to be regulated to level 1, the UK Border Agency will not correspond with them regarding asylum casework. They will then have 5 working days to provide evidence that they are regulated to the required level. If they do not provide the evidence required future correspondence on asylum casework will be directly with the applicant.

Send one copy to the representative, and keep one copy on file.

#### **2. Write to applicant**

If after 5 days the legal representative has not provided evidence that they are regulated to the required level, officers should then write to the applicant (using ASL.4030, letter to applicant). Select the appropriate option informing the applicant that their representative is only regulated by the OISC to level 1. This means they can only provide a limited service to asylum applicants therefore the UK Border Agency will not correspond with their chosen legal representative and they are advised to find alternative legal representation to assist with their asylum application.

Send one copy to the applicant and keep one copy on file. Officers should then inform Intel.

#### **3. Inform Intel**

If the representative can not provide evidence they are permitted to provide asylum advice then the regional intelligence unit must be informed via the IS46 which will then be passed through to the central Intel hub and on to the OISC.

The IS46 must be factual and objective since it could form the basis of an investigation and could subsequently be presented as evidence before the Immigration Services Tribunal or the courts.

Send one copy to the Intel and keep one copy on file.

### **3.3 Evidence that Representative is permitted to provide Immigration Advice**

If the representative provides evidence within 5 working days that they are permitted to give advice in terms of section 84 of the 1999 Act, the case owner should check the information and if satisfied they should continue to respond to the applicant via the representative. If after 5 days the officer is satisfied that the organisation can act on behalf of the applicant to provide immigration advice on asylum matters they should write to the applicant and organisation informing them both that the organisation can act on behalf of the applicant in asylum matters. If the organisation is still acting for the applicant then they should be forwarded any relevant documents relating to the applicants claim (for example decision paperwork).

The correspondence should also be copied to the OISC.

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## 4. Dealing with an Unregulated Immigration Adviser at an Interview

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It may be that the first time the case owner identifies that the applicant has legal representation is when the representative attends with their client at the interview stage. Access to interviews should be denied to representatives who are not qualified to provide immigration advice or services.

If a case owner is in doubt that an immigration adviser is regulated by the OISC or has the required minimum level 2 authorisation for asylum representation they **must** check the OISC website. For further clarification the OISC can be contacted on 0845 000 0046.

Following this case owners must refer to the actions found in [Mandatory check when informed of applicant's representative](#).

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## 5. Dealing with Submissions from an Unregulated Immigration Adviser

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If an Unregulated Immigration Adviser (UIA) has sent in representations on behalf of an asylum applicant in relation to their claim (e.g. where human rights articles are raised), they should still be considered but the subsequent response from the UK Border Agency must be sent directly to the applicant.

The case owner should still follow the actions detailed in [Mandatory check when informed of applicant's representative](#) ensuring that Intel is informed if the immigration adviser is not qualified or regulated to provide asylum advice (in this context the immigration adviser may be unregulated or only regulated to level 1, meaning they can for example inform the UK Border Agency of a change of address but not submit representations about the applicant's claim).

Occasionally the representations from an UIA may give cause for concern, for example where the applicant has given an account of their claim and the further submissions from the representative significantly differ or contradict that account. In such cases the case owner should check with the applicant that the representations submitted are an accurate account of their claim.

The case owner should also report their concerns about the UIA to Intel (using IS46) who will make a referral to the OISC to investigate.

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## 6. Addressing Concerns regarding a Regulated Immigration Adviser

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The OISC, as well as prosecuting immigration advisers who act illegally, are mandated to ensure that regulated immigration advisers are fit and competent, act in the best interest of their clients and do not abuse the immigration system.

If the case owner is concerned about the advice given to an applicant by their representative then the case owner should:

- a) Clarify any points of concern with the applicant and their legal representative
- b) Discuss with their senior caseworker

If appropriate the case should then be reported to Intel (using IS46) to be referred to the OISC to investigate.

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## Glossary

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<b>Term</b>	<b>Meaning</b>
ASL.4029	Letter to representative informing them that it appears they are either not regulated / or not regulated to the required level 2 level to provide asylum advice or services and asking them to provide evidence that they are regulated or regulated to the appropriate level. The letters also informs that the OISC will be informed.
ASL.4030	Letter to applicant informing them that the representative is either not regulated and hence not authorised to represent them in immigration matters / or not regulated to the required level 2 level to provide asylum advice or services.
ASL.4031	Letter to the OISC informing them of a potentially Unregulated Immigration Advisor or that a representative regulated only to level 1 authorisation has been acting as legal representatives in an asylum matter.

# Document Control

## Change Record

Version	Authors	Date	Change Reference
1.0	G Trimmer	18/05/09	First draft
2.0	M-A. Marshalleck	26/02/10	Updated to reflect IDI process