



# The Code of Standards

## The Commissioner's Rules

Office of the Immigration Services Commissioner

Regulating Immigration Advice

2012





# The Code of Standards



# Foreword



The Immigration and Asylum Act 1999 (the Act) made it unlawful for anyone to provide unregulated immigration advice or immigration services.

Immigration advisers must be fit and competent. The Act requires that I issue a code setting the standards that immigration advisers must meet. This Code of Standards applies to those whom I directly regulate and those who are exempted by Ministerial Order. Immigration advisers who are regulated by one of the designated professional bodies or the qualifying regulators (under the Legal Services Act 2007) are an exception to the Code.

The OISC (Office of the Immigration Services Commissioner) has always made it clear that 'immigration advice and services' covers a wide variety of activities ranging from advocacy before an Immigration and Asylum Tribunal to ensuring that an applicant completes the correct application form. This is because of the seriousness of the outcome of such advice or action.

I also have power under the Act to make rules concerning the professional practice, conduct and discipline of 'registered persons'. These are contained in a separate document, the Commissioner's Rules, which can be found at the back of this publication. Registered persons must comply with both the Code and the Rules. All advisers must comply with the Code.

This third edition of the Code of Standards will take effect from 1 January 2013.

A handwritten signature in black ink, which appears to read 'Suzanne McCarthy'. The signature is written in a cursive, flowing style.

Suzanne McCarthy  
Immigration Services Commissioner  
December 2012



# Contents

<b>Foreword</b>	
<b>Introduction</b>	<b>1</b>
<b>The Codes of Standards</b>	<b>3</b>
<b>Adviser behaviour</b>	<b>4</b>
<b>Organisational standards</b>	<b>8</b>
<b>Running the organisation</b>	<b>13</b>





# Introduction to the Code of Standards

This Commissioner's Code of Standards (the Code) is made in accordance with paragraph 3 of Schedule 5 to the Immigration and Asylum Act 1999 (the Act) as amended.

## Who the Code applies to

This Code applies to any person providing immigration advice or immigration services, other than a person:<sup>1</sup>

- who is authorised by a designated professional body to practise as a member of the profession whose members are regulated by that body or who works under the supervision of such a person;
- holding an office under the Crown, when acting in that capacity;
- employed by, or for the purposes of, a government department, when acting in that capacity; or
- acting under the control of a government department or otherwise exercising functions on behalf of the Crown.

The term 'Commissioner' in the context of the Code and the Commissioner's Rules (the Rules) relates to the Immigration Services Commissioner, his/her staff and any agent acting for, or on behalf of, the Commissioner.

The Code and the Rules relate to those who provide immigration advice or immigration services in the UK in relation to a relevant matter. These terms, defined in section 82 of the Act, are outlined below:

## Immigration advice and immigration services

As defined by the Act<sup>2</sup> 'immigration advice' means advice which:

- a. relates to a particular individual;
- b. is given in connection with one or more relevant matters;
- c. is given by a person who knows that he is giving it in relation to a particular individual and in connection with one or more relevant matters; and
- d. is not given in connection with representing an individual before a court in criminal proceedings or matters ancillary to criminal proceedings.

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<sup>1</sup> Section 84, the Act

<sup>2</sup> Section 82, the Act

As defined within the Act<sup>3</sup> 'immigration services' means the making of representations on behalf of a particular individual:

- a. in civil proceedings before a court, tribunal or adjudicator in the United Kingdom; or
- b. in correspondence with a Minister of the Crown or government department; or
- c. In connection with one or more relevant matters.

## Relevant matters covered by the Code

As defined within the Act<sup>4</sup> 'relevant matters' means any of the following:

- a. a claim for asylum;
- b. an application for, or for the variation of, entry clearance or leave to enter or remain in the United Kingdom;
- c. an immigration employment document;
- d. unlawful entry into the United Kingdom;
- e. nationality and citizenship under the law of the United Kingdom;
- f. citizenship of the European Union;
- g. admission to Member States under Community law;
- h. residence in a Member State in accordance with rights conferred by or under Community law;
- i. removal or deportation from the United Kingdom;
- j. an application for bail under the Immigration Acts or under the Special Immigration Appeals Commission Act 1997; or
- k. An appeal against, or an application for judicial review in relation to, any decision taken in connection with a matter referred to in paragraphs (a) to (j).

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<sup>3</sup> Section 82, the Act, and section 123 of the Nationality, Immigration and Asylum Act 2002

<sup>4</sup> Section 82, the Act

# The Code of Standards

1. The Code of Standards covers all those who provide immigration advice or immigration services within the UK. The Code of Standards relates to:
  - those regulated advisers who provide advice or services without charge and operate on a not-for-profit basis and are exempt from paying the Commissioner an application fee;
  - those regulated advisers who charge for advice for profit, who are also governed by the Commissioner's Rules and are registered by the Commissioner; and
  - those under Ministerial Orders.
2. The Code of Standards shall apply in its entirety. If an adviser believes that the provision of any policy as outlined in the Code is inappropriate in their given circumstances, they must satisfy the Commissioner as to why.

## Regulated advisers

3. Within this Code 'adviser' means both an organisation or an individual providing immigration advice or immigration services in the course of business, whether or not for profit, within the UK, and includes a sole practitioner.
4. All advisers must satisfy the Commissioner that they are fit and competent to provide immigration advice or immigration services and that they continue to be so.
5. All advisers and/or those in actual control of a regulated advice organisation must notify the Commissioner of any significant changes in their personal or business circumstances within ten working days of those changes occurring.
6. Advisers must not operate beyond the level of competence approved by the Commissioner or in categories that have not been approved.
7. An adviser must keep a clear written record of all advice given, all work done, all transactions made on behalf of each client and all fees paid by each client, where fees are taken. Such records should be available for inspection by the Commissioner.

8. An advice organisation's current OISC certificate of regulation must be prominently displayed at the organisation's main business premises. Further, if the organisation also carries out business at branch offices, those offices must also prominently display information as to where the advice organisation's Office of the Immigration Services Commissioner (OISC) certificate can be viewed.

## Adviser behaviour

9. An adviser must always act in their client's best interests and put their interests before the adviser's own, subject to regulatory and legal requirements.
10. An adviser must recognise that some clients, as a consequence of illness or traumatic experience, may be unable to provide a full account of events pertaining to their case. An adviser must aid such clients in seeking appropriate assistance including obtaining at an early stage reports which may be required as part of the proper handling of the client's case.
11. An adviser must ensure that the client receives a full explanation, using an interpreter to explain if necessary, the implications of their position and any proposed course of action. This advice and any instructions must be confirmed in writing.
12. An adviser must not abuse their position in respect of a client or take any advantage of the client's vulnerability.
13. An adviser must act in accordance with the laws of the UK.

An adviser must at all times:

- i. show due respect, politeness and courtesy to their client, the Tribunal Service (Immigration and Asylum Chamber) and the Commissioner;
- ii. act objectively and fairly with respect to the client;
- iii. be prepared to provide – e.g. to a member of staff of the Tribunal Service (Immigration and Asylum Chamber), immigration judge or government immigration and nationality staff, including those at posts abroad – identification and confirmation of their authorisation by the OISC to provide immigration advice or immigration services under the Act at the authorised level;
- iv. not mislead those mentioned at (i) to (iii) above, nor permit themselves to be used in any deception;

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

## Confidentiality

14. An adviser must have a procedure in place for ensuring client confidentiality. They must keep the affairs of their clients and all information relating to their clients confidential, except where the adviser is compelled to disclose information by reason of a legal or regulatory obligation.

## Conflict of interest

15. An adviser must explain fully and clearly to the client any circumstances in which they might have any personal interest or advantage in acting for the client.
16. Unless the adviser's client has consented in writing with full knowledge of the facts, an adviser must not act where there is a real or potential conflict of interest between them and the client or between two or more clients.

## Competence and training

17. An adviser operating at any given level of activity and category must have the relevant knowledge, competencies, resources and information sources as set out in the most recently published version of the *Commissioner's Guidance on Competence*.
18. An adviser must have and continue to have the necessary skills, knowledge and competencies to meet their client's needs, and must satisfy the Commissioner of this via the processes and systems approved by the Commissioner for this purpose.
19. An adviser must be able to show that they have acquired the relevant knowledge, competencies and resources, and that these are kept under review in order to ensure that they are up to date. Advisers are required to review their performance regularly.
20. An adviser must not act in a reckless or negligent manner.
21. An adviser must have ready access to up-to-date information on immigration law and

practice, and a written procedure as to how they will keep themselves up to date.

22. Advisers must have a training plan, which must be documented and regularly reviewed.
23. An adviser must be able to demonstrate to the Commissioner that their knowledge has been kept up to date by the production of a training log or similar appropriate document, and must ensure their continuous professional development in accordance with any scheme as may be prescribed by the Commissioner from time to time.

## Changing level of competence

24. An adviser who is seeking either to expand their area of expertise or to increase their level of competence should seek effective supervision. Authorisation of any such supervision, including the supervision plan, must be obtained from the OISC prior to any such arrangements being put into effect.
25. Any individual adviser who is seeking to expand their level of competence should be supervised by a regulated adviser at that higher level or above or by an otherwise suitably qualified person.
26. Advisers seeking to act in a supervisory role must satisfy the OISC that they:
  - a. have at least two years' recent and ongoing relevant experience in immigration advice and/or services; and
  - b. have experience of managing and/or supervising others.
27. A supervisor must:
  - a. work for the same organisation as the person being supervised by them and be readily accessible to them;
  - b. oversee the allocation of cases to the supervisee;
  - c. monitor the progress of the supervisee's cases;
  - d. provide both general and specific guidance and assistance to the supervisee;
  - e. review the cases conducted by the supervisee and, having conducted such review, require the supervisee, as necessary, to take corrective action; and
  - f. spend on average a minimum of 12 hours per week supervising the supervisee while continuing to satisfactorily maintain their own caseload.

28. A supervisor or other competent person must undertake random sampling of the supervisee's work in order to assess the quality of the supervisee's advice. The sample must be sufficient, along with other indicators, for the supervisor or other competent person to be able adequately to assess the overall quality of the advice the supervisee has given. A record of the conclusions of this sampling must be retained on both the case file of the client concerned and the supervisee's personal file, and made available to the Commissioner upon request.

# Organisational standards

## Equality

29. An adviser must have a written policy that precludes discrimination on the basis of race, gender, age, nationality, faith, sexual orientation, physical ability and any other irrelevant consideration, and must be committed to providing equality of service to all clients.
30. An adviser must not discriminate against their clients and must treat all clients fairly and without prejudice or bias. This must be done regardless of any personal views.
31. Where an adviser's principles or charter only permit services to be offered to specific client groups, this must be clearly reflected in their signposting and referral procedures.

## Client information - confirmation of adviser's status

32. At the time of initial contact an adviser must provide written confirmation to the client that the Immigration Services Commissioner regulates them.

## Client care letter

33. Having agreed to act for the client, and prior to undertaking substantive work, an adviser must explain to the client in a client care letter the following:
  - a. details of the services and the individual adviser's responsibilities as agreed with the client. These details must make clear what instructions were taken, what advice was given and what action was agreed upon with the client;
  - b. all terms and conditions of engagement, including that the OISC may examine the file;
  - c. confirmation of the costs estimated or agreed;
  - d. information regarding any additional costs likely to be incurred or for which the client may become liable (e.g. disbursements);
  - e. details of the person dealing with the case, including their location and telephone contact number; and
  - f. details of the adviser's complaint-handling procedures.<sup>5</sup>

A copy of the client care letter must be retained in the client's file. Advisers must ensure, as far as reasonably practicable, that this copy is signed and dated by the client.

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<sup>5</sup> See Codes 49 and 50



## Requirements for informing the client on the progress of their case, significant events and outcome

34. All advisers must ensure that their clients are kept regularly informed of the progress of their case, and, at a minimum, clients should be updated at least every three months.
35. Upon the adviser being notified of any significant event they must promptly inform their client in writing and at most within three working days.
36. All advisers must promptly inform their clients in writing and at most within three working days of the outcome of their case.

## Obtaining additional advice or opinions

37. An adviser, after having obtained the client's consent, may obtain additional advice or opinions on the client's case while still retaining responsibility for that case, provided that it is within the adviser's OISC-authorized competence level to obtain such advice or opinions.
38. An adviser, on obtaining any additional advice or opinions, must document on the client's file the action subsequently taken with respect to that advice or those opinions.
39. Any fees likely to be incurred for the obtaining of additional advice or opinions must be notified in writing to the client in advance of seeking that additional advice or those opinions and that client's consent sought. A file note documenting the client's consent to paying those fees must be placed on the client's file and a copy given to the client.

## Obtaining other professional services

40. An adviser, after having obtained the client's consent, may obtain professional services to assist with the client's case. Responsibility for the payment of any fees incurred as a result of the giving of these services remains with the adviser, although the adviser may, in turn, obtain any monies expended for such services from the client.

## Withdrawing from a case and referrals

41. An adviser must not withdraw or threaten to withdraw from a case except for good reason.

42. An adviser who seeks to withdraw from a case must do so if it is in the best interests of their client. Advisers wishing to cease to represent or assist a client must:
- a. give reasons to the client in writing as soon as possible;
  - b. where practicable, inform the client of other advisers with the appropriate skills, knowledge and competencies who are registered, exempt or authorised to practice under the terms of the Act and who are likely to have the capacity to advise or act for the client;
  - c. inform other persons involved in the case that they have withdrawn from the case and to whom (if anyone) the papers have been passed; and
  - d. not obstruct a person's freedom to instruct an adviser of their choice.
43. An adviser who, having taken on a client, finds that they cannot provide the service needed by that client because it would require them to act beyond either their authorisation or their business resources, should inform the client of this immediately in writing and, in any event, must do so within three working days, giving the reasons why they cannot continue to act, and, where possible, should direct the client to another provider.
44. The adviser must make a written note of the adviser, if any, who has taken over the client's case.

## Referral fees

45. A regulated person must not demand or accept from any person a fee, commission or any other compensation for referring or recommending a client.
46. A regulated person must not offer or accept an inducement for taking on a client or offer such for referring a client to another person.
47. Where a client requests that their file be transferred while they owe money to the adviser, the adviser should not seek to retain the client's file and/or documents in lieu of payment owing to them. They should instead seek civil remedies.

## Complaints

48. Advisers must have in place a written procedure for the handling of complaints, including a complaints log detailing the complaints received, resolution timescales and complaint outcomes.

49. Where a complaint arises, an adviser should attempt to resolve the situation themselves. Any such attempt at resolution must be evidenced in writing and a note placed on the client's file.
50. Code 33 requires the adviser's client care letter to include details of their complaint-handling processes. In addition, if a client makes a complaint, the adviser must again provide the client with details of those processes, which must include:
- a. that any complaint will be properly addressed within defined timescales, as agreed with the client;
  - b. the name of the person responsible for handling any complaint; and
  - c. details of the OISC and its Complaints Scheme.
51. In every case, the client must be informed that, if they are not satisfied with the outcome of the complaint or if they do not wish to complain direct to the regulated person, a complaint may, at any time, be made to the Commissioner directly.

# Running the organization

## Management policies and structures

52. An adviser must have in place management policies and structures. All policies and structures must be reviewed annually and be available for inspection. The policies must be accessible to the adviser's staff and must be dated, with any changes made to them recorded. These policies and structures should include, where appropriate:
- a. a statement showing how their service is organised, including the decision-making structure;
  - b. a statement showing their service's key objectives and what they aim to achieve within the current year and the subsequent two years;
  - c. a statement showing how financial control of the service is exercised and who is responsible for financial management;
  - d. job descriptions and person specifications for all staff, including volunteers, who provide advice; and
  - e. an induction programme for all new staff, which must cover, among other matters, the client information requirements as detailed in Codes 32 and 33.

All policies and structures must reflect equality of opportunity and impartiality.

53. All advice organisations must have an annual business plan with a cash flow/funding projection. Exempt organisations must explain how their service will be adequately funded.
54. A regulated adviser must notify the Commissioner of the address(es) of all the premises from which their business is carried out, and must notify clients and the Commissioner of any change to those addresses within ten working days.

## People management

55. Advisers must notify the Commissioner of changes in their organisation's immigration advice-giving staff within ten working days of such staff joining or leaving.

## Management of staff

56. In organisations where staff are employed to provide immigration advice and/or services, there must be adequate management and oversight of such staff, including:

- a. Organisations must identify and nominate a person to act as manager of immigration advice staff. Operational management arrangements, and any significant changes thereto, must be notified to the Commissioner.
- b. Where there is more than one staff manager within an organisation, one person should be identified as having responsibility for overseeing supervision.

57. In all organisations where staff are employed to provide immigration advice and/or services, there must be the following written procedures, statements and documents, detailing:

- a. a system for managing and overseeing staff to ensure their continued competence and fitness, including how such staff's work will be monitored or audited;
- b. details of the respective skills, knowledge and competencies of those assisting advisers, their performance reviews and associated feedback;
- c. how training needs are identified, and training plans recorded and delivered;
- d. the organisation's internal disciplinary procedures; and
- e. an induction plan as detailed in Code 52(e).

58. Advisers must maintain records that demonstrate that the processes outlined in Codes 56 and 57 are adhered to and must ensure the provision of competent immigration advice or services.

## Allocation of cases

59. Advisers must maintain a system for the allocation of cases to staff, according to their authorised levels of competence.

## Fees and accounts

60. No exempt adviser should charge for the provision of immigration advice or immigration services.

61. An adviser who charges for their advice or services must only charge a fee for which they are legally entitled.

62. Where monies or fees are taken, an adviser must keep accounts, including a distinct written record of the transactions undertaken for each client.

63. Wherever possible, payment of fees to government departments, tribunals, local authorities and similar bodies should be made by the client direct to the authorities. Where it is necessary to hold client money, either in respect of future payments to be made on behalf of the client or in respect of fees paid for work not yet done, or for any other purpose, the money:

- a. must be held in a client account distinct and separate from their business bank account; and
- b. it must be made clear that the funds remain the client's.

64. With respect to the client account:

- a. transfers into and out of a client account must have supporting documentation;
- b. clients must be given a financial statement showing their account balance, if they so request; and
- c. there must be a direct co-relation between work done and monies charged.

65. An adviser must have audited or certified and otherwise verified business accounts to which the following apply:

- a. Accounts and records must comply with current legislation.
- b. The Commissioner's Rules and Code of Standards do not replace any obligations/ requirements of any UK law or institution (e.g. VAT, HM Revenue and Customs, the Companies Act, the Charities Commission, Companies House).
- c. Advisers must give access of historic and day-to-day records to the Commissioner upon request.

66. Upon request, an adviser must produce to the Commissioner their latest set of accounts.

## Indemnity insurance

67. All advisers must have current and adequate professional indemnity insurance cover in respect of any civil liability that may be incurred in relation to their work and advice services. The OISC will not grant authorisation to practise to any adviser without such insurance being in place.

68. If such insurance cover lapses, an adviser must inform the OISC within five working days of becoming aware of the lapse. They must also indicate what immediate action they are taking to remedy the situation. While there is no cover, the Commissioner will seek to suspend the adviser's authority to provide immigration advice or immigration services with immediate effect, until such time as cover is restored.

69. The lapse of professional indemnity insurance cover is sufficient to cause the withdrawal by the OISC of authority to provide immigration advice or immigration services.

## Use of the OISC reference number and the OISC logo

70. All directly regulated organisations must display their unique OISC reference number on all printed and electronic publications, including websites, advertisements, publicity material, letterheads and business cards.

71. The OISC logo must be used in accordance with guidance contained in the adviser's approval letter.

## Promotional material and general information provided by the adviser

72. Description of the advice and services offered, as well as the qualifications and competence levels of those providing advice and services, must not be misleading. It is a criminal offence for an adviser in their promotional material or by other means to offer to provide immigration advice and/or services at a level or in an area for which they are not authorised by the Commissioner.<sup>6</sup>

73. Advisers in their literature, website and other promotional materials must not criticise other advisers either directly or indirectly or make statements about success rates.

74. All information published by an adviser, whether in printed or electronic format, such as websites, must accurately reflect the adviser's authorised OISC level. The requirement to ensure that advertising and promotional material comply with the Code of Standards is the personal responsibility of the adviser, and this cannot be delegated.

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<sup>6</sup> Section 39, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

75. The name of any advice organisation must not suggest connection with, or approval by, government.
76. The advice organisation's name must not have the potential to confuse or mislead clients.
77. In either instance mentioned in Codes 74 or 75, the OISC may require that the advice organisation change its name.
78. No adviser must claim they have a qualification to which they are not entitled.

## Business promotion

79. An adviser must not promote their business directly or indirectly by unsolicited approaches to prospective clients either in person, by means of telephone calls or in writing. This provision does not include approaches to a current or former client of the adviser acting without inducement, referrals made in accordance with the Code or approaches to a commercial organisation or public body.
80. Advisers must not tout for clients at ports or detention or accommodation centres.

## Records and case management

81. An adviser must keep clear, orderly and accurate records of contacts, dealings with clients and dealings with third parties such as government departments.
82. An adviser's record-keeping and information systems must be appropriate to the levels of service they provide. An adviser must use systems that enable information to be organised and accessible, with each client's records kept separate.
83. When an adviser asks to retain possession of a client's documents for whatever reason, they must immediately provide that client with a photocopy of all such retained documents.
84. In respect of each client, advisers must identify and record key information and dates and enter these in a file management system. This is to ensure that actions are taken at the correct time. These records must detail the background of the client's case, records of meetings, action taken and by whom, advice given and by whom and any other relevant matters.



85. Client records must be maintained in an orderly manner with the progress of each case clearly recorded. Such records must be accessible to, and be capable of being easily understood by, colleagues and others.

86. Client records must be retained for at least six years.

## The client's documents and file

87. A client's records must be made accessible to the client upon their request.

88. An adviser must, without delay, having regard to the urgency of the client's business and to ensure that the client's affairs are not prejudiced, give or send the client's documents to the client or such other third party as they may request in writing.

89. If a matter is referred on and a properly authorised request for the file is made, the client's file must be transferred as soon as possible and, in the case of a client who is in detention or where their removal is imminent, the relevant documents must be forwarded no later than three working days after receipt of the request.

90. An adviser must not give or send a client's documents to any person other than the client unless the client has given written authorisation. This does not apply where there is a legal requirement.

## Engaging experts

91. An adviser must have a written procedure for selecting experts such as interpreters or doctors. The procedure must use relevant objective criteria such as membership of a recognised accreditation body.

## Interpreters and country experts

92. An adviser must use an interpreter if there are language difficulties. An adviser must explain to an interpreter their precise role and responsibilities, and, in particular, that they should act impartially, respect client confidentiality and not distort information stated by the client.

93. An adviser must have regard to the fact that clients may not be best served by choosing a family member to act as an interpreter, as there may be instances where the client is

required to disclose matters of a sensitive or personal nature or may require objectivity.

94. An adviser must be mindful of the fact that, while clients and interpreters or country experts may share a common language, they may have significantly different cultural, political or religious beliefs.

95. Advisers must be vigilant in observing any unease on the part of their client regarding the interpreter employed.

# The Commissioner's Rules



# Foreword



The Immigration and Asylum Act 1999 (the Act) made it unlawful for anyone to provide unregulated immigration advice or immigration services.

Immigration advisers must be fit and competent. The Act gives me the power to make rules concerning the professional practice, conduct and discipline of 'registered persons'. Registered advisers must comply with both the Code of Standards and the Commissioner's Rules. All advisers must comply with the Code. The Rules and the Code together form the basis of the OISC's (Office of the

Immigration Services Commissioner's) scheme of regulation, which sets the standards and principles to which immigration advisers are expected to comply.

This second edition of the Rules places increased emphasis on financial accountability, management and professionalism. The other aspects of providing immigration advice and immigration services are contained in the Code.

This edition of the Rules came into effect from 2 July 2007.

A handwritten signature in black ink, which appears to read 'Suzanne McCarthy'. The signature is fluid and cursive.

Suzanne McCarthy  
Immigration Services Commissioner  
December 2012



# Contents

**Introduction to the Commissioner's Rules**

<b>The Commissioner's Rules</b>	<b>1</b>
<b>Registration</b>	<b>3</b>
<b>Fees</b>	<b>3</b>
<b>Accounts and records</b>	<b>4</b>
<b>Management and professionalism</b>	<b>5</b>





# Introduction to the Commissioner's Rules

The Immigration Services Commissioner's Rules (the Rules) are made in accordance with paragraph 1(1) of Schedule 5 to the Immigration and Asylum Act 1999 (the Act), as amended.

The Rules regulate aspects of professional practice, conduct and discipline of those persons who are registered with the Commissioner under Part V of the Act and those employed by, or working under the supervision of, such persons.

As defined by the Act<sup>1</sup> 'immigration advice' means advice which:

- relates to a particular individual;
- is given in connection with one or more relevant matters;
- is given by a person who knows that he is giving it in relation to a particular individual and in connection with one or more relevant matters; and
- is not given in connection with representing an individual before a court in criminal proceedings or matters ancillary to criminal proceedings.

As defined by the Act<sup>2</sup> 'immigration services' means the making of representations on behalf of a particular individual:

1. in civil proceedings before a court, tribunal or adjudicator in the United Kingdom; or
2. in correspondence with a Minister of the Crown or government department; or
3. in connection with one or more relevant matters.

As defined by the Act<sup>3</sup> 'relevant matters' means any of the following:

1. a claim for asylum;
2. an application for, or for the variation of, entry clearance or leave to enter or remain in the United Kingdom;
3. an immigration employment document;
4. unlawful entry into the United Kingdom;
5. nationality and citizenship under the law of the United Kingdom;
6. citizenship of the European Union;
7. admission to Member States under Community law;
8. residence in a Member State in accordance with rights conferred by or under Community law;
9. removal or deportation from the United Kingdom;

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<sup>1</sup> Section 82, the Act 2

<sup>2</sup> Section 82, the Act 2

<sup>3</sup> Section 82, the Act and section 123 of the Nationality Immigration and Asylum Act 2002

10. an application for bail under the Immigration Acts or under the Special Immigration Appeals Commission Act 1997; or
11. an appeal against, or an application for judicial review in relation to, any decision taken in connection with a matter referred to in paragraphs (a) to (j).

# The Commissioner's Rules

These Rules should be read in conjunction with the Commissioner's Code of Standards. A registered adviser must fully comply with the requirements of both documents.

## REGISTRATION

1. A person wishing to apply for registration or continued registration under these Rules must submit an application form obtained from the Office of the Immigration Services Commissioner (OISC) and accompanied by the appropriate fee.
2. The Commissioner may require a person applying for registration or continued registration to provide further information or evidence in support of their application.
3. The Commissioner may, in registering an applicant, provide that the registration is to have effect only:
  - a. in relation to a specified field of advice or services;
  - b. in relation to the provision of advice or services to a specified category of person;
  - c. in relation to the provision of advice or services to a member of a specified category of person; and/or
  - d. in specified circumstances.
4. The Commissioner will set an adviser's period of registration, at the expiry of which the adviser must apply for registration to be continued.

## Fees

5. Clients must be made aware that they may be able to obtain the same advice and assistance for free. Registered advisers must not make derogatory assertions about the quality of free advice.
6. Registered advisers must have a proper written fee scale. Clients must be given a copy of the adviser's fee scale on initial contact, and the relevant fee details must also be included in the client care letter.
7. The registered adviser's fee scale must be produced to the Commissioner on his/her request. The scale of fees must clearly reflect the type of work to be done, the ability and experience

of the registered person, the time taken and any expenses that may be incurred.

8. The Commissioner must be informed in writing if the registered adviser proposes to change their fee scale at least ten working days before such changes are put into effect.
9. A registered adviser must detail in writing to the client how the fee for their work for that client is to be calculated, including whether it is a fixed fee and whether it includes VAT or other expenses.
10. A registered adviser must not charge for work that has not been undertaken or has been undertaken unnecessarily.
11. A registered adviser must not take unfair advantage of the client by overcharging for work done or to be done for them. They must not charge a fee that is unreasonable given the circumstances of the case.
12. A registered adviser must make clear to the client the costs of any work to be done before it is carried out or the advice is given.
13. A registered adviser must advise the client in writing of any additional work that needs to be undertaken and any additional costs that may be incurred or for which that client may become liable, including professional fees, before the work is undertaken.
14. A registered adviser must notify the client in writing as soon as they become aware that the initial estimate of costs is likely to be exceeded and obtain further authority for this greater expenditure. Agreement to this further expense should be reflected in the client's case notes.

## Accounts and records

15. A registered adviser must keep accounts, including a distinct written record of the transactions undertaken for each client.
16. A registered adviser must keep clear written records of all advice given, all work done, all transactions made on behalf of each of their clients and all fees paid by each client. There must be a direct co-relation between work done and monies charged. Such records must be available for inspection by the Commissioner.

17. Wherever possible, the payment of fees to government departments, tribunals or other third parties should be made by the client direct to them.
18. Where it is necessary for a registered adviser to hold client money either in respect of future payments to be made on behalf of the client or in respect of fees paid for work not yet done or for any other purpose, that money:
  - a. must be held in a client account; and
  - b. it must be clearly shown that these funds remain the client's.
19. Registered advisers must keep a client bank account separate from their own business bank accounts. With respect to the client account:
  - a. transfers into and out of the client account must have supporting documentation; and
  - b. clients must be able to receive a financial statement showing their account balance, if they so request.
20. A registered person should have audited or certified and otherwise verified business accounts to which the following apply:
  - a. Accounts and records must comply with current legislation;
  - b. The Commissioner's Rules and Code of Standards do not replace any obligations/requirements of any UK law or institution (e.g. VAT, HM Revenue and Customs, the Companies Act, the Charities Commission, Companies House).
  - c. Registered advisers must give access to historic and day-to-day financial records to the Commissioner upon request.
21. Upon request, registered advisers must produce to the Commissioner their latest set of accounts.

## Management and professionalism

22. A registered adviser must have an annual business plan.
23. A registered adviser must have a system for financial and management control.

24. In addition, the person having overall authority of a registered advice organisation is deemed by the Commissioner to have overall responsibility for financial control and accountability. This person may be, but does not have to be, any of the organisation's registered advisers.









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