

Report on the Initial Consultation to amend the *Code of Standards and Commissioner's Rules*

November 2013



Report on the initial Consultation to amend the *Code of Standards and Commissioner's Rules*

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Introduction

Good practice requires that the Commissioner's *Code of Standards* (the *Code*) and *Commissioner's Rules* (the *Rules*) be reviewed approximately every five years. The *Code* was last fundamentally reviewed in July 2007. Considering the many changes that have taken place in the immigration advice sector, such as the greater use being made of the internet by immigration advisers to attract clients and give advice, the Commissioner believed it an appropriate time to review these documents.

The consultation was designed to seek views on matters of style, structure and content.

Part V of the Immigration and Asylum Act 1999 (the Act) makes provision for a scheme to regulate immigration advisers and service providers. Paragraph 3 of Schedule 5 requires:

- (5) If the Commissioner alters the Code, he must re-issue it.
- (6) Before issuing the Code or altering it, the Commissioner must consult:
 - (a) each of the designated professional bodies;
 - (b) the designated judges;
 - (c) the Lord President of the Court of Session;
 - (d) the Lord Chief Justice of Northern Ireland; and
 - (e) such other persons appearing to him to represent the views of persons engaged in the provision of immigration advice or immigration services as he considers appropriate.

Paragraph 1 of Schedule 5, with reference to the Commissioner's *Rules*, requires:

- (2) Before making or altering any rules, the Commissioner must consult such persons appearing to him to represent the views of persons engaged in the provision of immigration advice or immigration services as he considers appropriate.

The consultation was conducted in accordance with the Act's requirements.

This was the first of two consultations. The second consultation, which will be informed by the responses to this initial consultation, will be on the proposed new versions of the *Code* and *Rules*, and is expected to be published during 2014/15. Following on from that consultation, the Commissioner proposes to issue new versions of the *Code* and *Rules* to be implemented no later than September 2015.

As no changes will be introduced to either document as a direct result of this exercise, an Impact Assessment was not issued.

The consultation was launched on 3 June 2013 and remained open until 30 August 2013.

94 responses were received. Not all respondents answered every question. A list of respondents is enclosed, with full responses contained in Annexes A-C. The Commissioner is grateful for the responses received.

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For the OISC to remain an effective regulator the *Code* and *Rules* must be fit for purpose – current, effective and usable – for the OISC, advisers and the OISC's other stakeholders. Further, as enforcement of the *Code* and *Rules* may lead to legal proceedings with cases coming before the First-tier Tribunal (Immigration Services), the Tribunal's need to interpret these documents must also be recognised.

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Executive Summary

A summary of the findings of this report are presented below. The options available to the Commissioner as a result of this consultation are:

- i. Do nothing;
- ii. Adopt some of the proposals contained in the consultation document;
- iii. Adopt all of the proposals contained in the consultation document; or

- iv. In light of the comments received, abandon or revise the proposals contained in the consultation document

The Commissioner has decided Option (ii) is the most appropriate. The new *Code* will take a more principle-based approach with a greater use of guidance notes, but continue to use prescriptive rules as appropriate.

The Commissioner has also decided that steps should be taken for the *Code* and the *Rules* to be consolidated into one document. She feels that such a concise document is preferable and will assist advisers by the regulations being in one document.

Of the possible new subjects suggested in the consultation for consideration for inclusion in the new *Code*, the Commissioner will give further consideration to the following:

- Introducing specific codes for advice given via social media and television/radio; and
- The most appropriate method and approach to permit the outsourcing of work between regulated advisers.

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General Issues and Summary of Responses

In reviewing the consultation responses we concluded that we should not just look at the numbers for or against any specific proposal, but also consider arguments presented.

Section A - Do you think the next version of the *Code* and *Rules* should generally take a principle-based approach or a prescriptive approach?

	Total
Exclusively Prescriptive	20
Exclusively Principle-based	25
Combination	46

Responses received on this subject were mixed. Those who favoured a prescriptive approach pointed out that this would provide certainty and protection for consumers.

“In our experience, a prescriptive system of regulation makes it easier to explain to people what their obligations are and to help them understand when a particular course of action is unacceptable. ILPA has found that the Solicitors Regulation Authority’s move to “outcomes based regulation” makes it harder to have discussions about the proper course of action to take in particular situation and that very frequently all involved fall back on discussion in the terms of the previous code.” **ILPA**

“Prescriptive approach is preferable as advisors will be able to draw inference from a detailed description” **Uganda Community Relief Association**

Others, like the **British Red Cross**, favoured a principle-based approach while also recognising that some codes and rules might need to be more prescriptive.

Other regulators and those regulated advisers that deal mainly with business immigration matters tended to favour a principle-based approach citing flexibility and removal of unnecessary restrictions as key advantages.

“I would favour a principle-based approach rather than a prescriptive one, because there are more ways than one to skin a cat! There may be a number of perfectly acceptable ways of achieving an

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objective, and it would be restrictive and de-motivating to take away the freedom of individual practitioners to choose the method that works best for them.” ***Global Immigration Services***

The consultation document explained that in the legal services sector there is now a preference for regulating mostly by principles. The document went on to say that there is no single ideal approach, and that regulators in determining their own positions needed to consider a number of factors including their particular statutory obligations, the nature of the sector they regulate and their regulatory experience to date.

Thus, in deciding what approach to favour the OISC must take many factors into consideration. This includes the nature of the regulated sector – its maturity and complexity both in its makeup and what it does. It is recognised that the organisations and persons that the OISC regulates are not homogeneous and have widely different business models ranging from well-established, business-oriented, for-profit organisations to small, not-for-profit bodies rooted in specific communities. It is not surprising then that a mixed approach to regulation was favoured by many who responded.

“I like the ideas proposed in the consultation, of a generally principle-based approach but prescriptive where needed. I found the prescriptive items such as the client care letter, client account etc. very helpful when setting up my business, as I would not have thought of all the detail myself had it not been prescribed.” ***de Prey Consulting***

“There should be a mixture of both. The core aspects of the codes eg: only registered advisors can provide advice and what constitutes advice should be prescriptive whilst other areas of the code should be principle based so that they can be applied to cover different types of organisations.”
KPMG

The consultation document gave examples of how both approaches could be employed in the new *Code* and *Rules* supplemented by guidance such as on management structure, policies and staff management, the keeping of records and case management and using experts and interpreters.

Respondents were asked to explain what approach (principle-based or prescriptive) they thought the Commissioner should take with respect to the specific Codes listed below:

- A) Codes 19, 21 to 23 (having relevant and up-to-date competence and experience);
- B) Codes 27, 28, 29, 30, 33, 48, 64 and 86 (supervisor’s duties; equality and anti-discrimination policies; client care letter; complaints procedure; client account; retention of client records);
- C) Codes 52 to 59, 81 to 86 and 91 to 95 (running an organisation; records and case management; engaging experts and interpreters).

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	A	B	C
Prescriptive	26	36	24
Principle-based	43	31	41

In answering the majority of respondents (60 of the 90 who replied) merely stated their preferred approach without any further comment. Of those that commented on A) **ASG Immigration Limited** remarks were typical, "We feel that these sections can largely be replaced by a single principle-based section regarding the need for up-to-date knowledge and training, although the CPD requirement should clearly remain prescriptive."

However, the greatest division among respondents was with respect to the Codes in group B where there was almost an equal split on which approach to take.

Most that favoured either a prescriptive or principle-based approach did not say why. Among those that preferred the prescriptive approach, the **Islington Law Centre's** response was typical:

I think that a prescriptive approach is needed with regard to setting out clearly the Code as to what role a supervisor should have. This should detail rules by which all supervisors should be adhering to. The details of the Code obviously needs to be up to date and the role of the supervisor to the standard of that those regulated by SRA.

Those that favoured the principle-based approach gave views similar to those expressed by **Immigration Consultancy & Training Bureau**

The code states the principle namely that complaints must be dealt with, promptly, fairly within a specific time frame. Each practitioner must then devise a means of compliance. Under people management, staff supervision, peer/casework review, and allocation of cases according to ability is all aimed at assuring and improving the standard of advice given to clients. That is the basic principle, and it is important that practitioners are given the flexibility to develop systems which secures that result. A prescriptive approach will stifle creativity. Case file management, client care and equality are issues best suited to a principles approach. This leaves room for interpretation and improvement going forward. A prescriptive approach is reductionist in the sense that people are encouraged to do the minimum.

While the responses to the Codes grouped in C were mixed, the majority favoured a principle-based approach. Very few opinions were expressed as to whether what is currently in those Codes could be put into guidance. **UKCISA** did, however, discuss this issue:

“(c) It is particularly important that requirements for the management of staff remain very clear within the Code in order to ensure that an organisation takes responsibility for the provision of immigration advice.....Codes 52- 53 we agree the principle of the Codes must remain, but the specifics could be transferred to guidance, although we note that these are policies and

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procedures all advice providers should have in place. Codes 56- we believe that an advice service requires clarity of roles, therefore the specifics of this Code regarding identifying a manager and overall supervisor should remain in order to ensure that there is a robust management structure supporting the adviser(s). Codes 57-59- as these procedures relate staff competency, they should remain prescriptive..... Codes 81-86- on the whole should remain prescriptive as all these actions are necessary in order to provide a high quality advice service. The specifics in Codes 83 and 84 could be moved to guidance, as different institutions will have varied systems and procedures.”

Some respondents, among them **Brent Women's Advisory Resource Centre, ILPA and Slough Immigration Aid Unit**, believed that all of the Codes grouped in C should be prescriptive. **Islington Law Centre's** rationale for this was that, “a prescriptive approach would be best as it would mean that the best possible standards would be maintained for a range of different organisations with different level of experience and expertise”. Others, **Dearson Winyard International, Hackney Marsh Partnership and Skills4Communities**, favoured a principle-based approach across the board. In their response the **Dover Detainee Visitor Group** said, “Not every organisation is the same - small and medium and large sized businesses will have very different requirements in terms of policies and supervision. A 'one size fits all policy' is unrealistic and tends to reflect the lowest common denominator rather than encouraging excellence.”

The consultation document went on to ask whether there were any specific *Codes* or *Rules* where a principle-based or prescriptive approach would be particularly appropriate. The answers received were varied, with a number of respondents saying that they were satisfied with the Code and Rules as they were.

Of those that expressed an opinion, it was thought that Codes that relate to supervisor's duties, the client care letter, client money and complaints should remain prescriptive. However, there were respondents who stressed the practicalities of running an immigration advice service and the need for flexibility. As **WM Immigration Ltd** put it, “Rules relating to how a business is run should be principle. Although it makes for good business practice to follow prescriptive rules, sometimes in the real world this is not always possible with continued time and financial constraints on smaller businesses.”

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Section B - Please explain if you think that the *Code* and *Rules* should be consolidated into one document or if they should remain as two separate documents.

The consultation made clear that the *Rules* specifically focus on financial management and control and financial transparency and probity, and apply only to registered organisations. The *Code* covers a much wider area of regulatory requirements and applies to all regulated organisations, registered and exempt. It was further explained, that while the *Code* and *Rules* are separate documents, the *Code*, with some exceptions, covers the same ground as the *Rules*. If the two were consolidated it would still be possible by, for example, the use of typeface or colour to indicate a specific *Rule* within the text.

Respondents were asked to explain if they thought that the *Code* and *Rules* should be consolidated into one document or should remain as two separate documents.

	Yes	No	Undecided
Should the Code and Rules be consolidated?	62	15	8

There was a clear preference for the documents to be consolidated. Those that expressed this preference included the **Bar Standards Board**, **British Red Cross**, **Permits2Work** and the **Scottish Refugee Council**. As the **Faculty of Advocates** put it, "We suggest that the Code contains all rules in one document, irrespective of whether they are prescriptive or principle based. At present, there is much duplication between the Code and Rules which is confusing."

Of those that preferred that the documents remain separate there was a mixture of voluntary and community sector organisations (e.g. **Islington Law Centre**) and smaller registered organisations (e.g. **Visa Link Ltd**). Most did not give reasons why they preferred this approach. **Visa & Immigration Solutions for example** simply stated, "They should remain as 2 separate documents because they are easy to understand that way". Many of those that expressed an opinion made it clear that they were not particularly concerned whether the documents remained separate or were consolidated. A sizable minority expressed a neutral stance on the subject. As **Levetron Limited** said in their response, "The Commissioner's Codes and Rules are meant to maintain best practices amongst Immigration Advisers and to maintain adequate supervision and regulation of the ditto. In my opinion, being separate or combined is not the concern, rather, how best they fit to the purpose."

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The consultation document also asked respondents to explain what Rule(s), if any, they felt should remain identified as specific Rule(s) if the two documents were consolidated. Rules 1 (registration), 6, 8, 10, 11 (fees) and 15 (accounts) were identified as current rules that the OISC considered should remain specifically as Rules.

Only eight respondents answered this question, four of which stated that they had no preference and another saying that they supported the idea of the OISC's requirements remaining prescriptive. One respondent queried the terms of Rules 6 and 8, another questioned the terms of Rules 10, while two others supported the OISC's view that Rules 1, 6, 8, 10, 11 and 15 should remain as Rules.

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Section C - Possible subjects for inclusion in the new Code

This section of the consultation focussed on new issues for possible inclusion in the next version of the Code and Rules. Many of these are listed together and the conclusions that the OISC has reached are in the next section, "OISC Conclusions".

	Yes	No	No opinion stated
Do you agree that a Code should be introduced that requires regulated organisations which wish to change their legal status before doing so to submit an Application for Regulation of a New Legal Entity?	62	18	2

Most of the voluntary and community sector organisations agreed with the proposals as did **ILPA** citing the need for consumer protection and reputational protection of the advice sector. **WM Immigration Ltd** put it this way "This rule stops companies operating in a phoenix style platform - i.e. a company runs up a lot of debt and owes clients money- They get struck off relieving them of the debt and they then restart under a new name. This continues the cycle and harms clients, creditors and the reputation of immigration advisers in general."

Those that disagreed felt that such a requirement would be cumbersome or that the current *Code 5* (notifying the Commissioner of significant changes) was sufficient for this purpose "No. I am of the view that the current provisions are sufficient and what is just needed is adequate enforcement." **Mutebuka & Co.** The general tone of those that disagreed indicated that they felt that minor changes did not need to be notified while changes in structure and identity should be. The difficulty was that no one seemed able to define where the line should be drawn.

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Respondents were then asked about internet-based advice services.

	Yes	No	No opinion stated
a) Do you agree that it is necessary for the Code to include specific regulation in respect of organisations which work via the internet?	63	15	4

b) Are there any other matters that you think the Commissioner should include in the Code with respect to the provision of immigration advice or services via the internet?

c) If specific codes were introduced, do you think that these should be more principle-based or prescriptive?

There was general recognition that the use of the internet is a growing factor in the immigration advice market. Those that agreed with the proposal again cited client protection, "I agree that a new code should be developed for matters mentioned in consultation code 41 relating to work over the internet. For client protection it is my opinion that files, record keeping and attendance should be maintained as per normal. PDF of communications should be maintained for audit purposes and relevant attendance notes of actions taken and agreed." **Lawson Hunte Immigration Services Ltd.**

Of those that disagreed with the proposal or were neutral, many thought that the principles relating to client protection and the use of the internet were sufficiently covered by the current *Code of Standards*. They also pointed out that best practice would mean that such a Code would be unnecessary "It would seem most appropriate to adapt existing codes to take account of internet based advice throughout the document. It would also make sense to have a principle-based code which covers this topic in general." **UK Work Permits Ltd.**

Many simply answered Yes or No. Some of those that expressed an opinion thought that the proposals did not go far enough and should take in video and telephone conferencing. **Peer & Co** advised that: "...the Commissioner should make it clear that those identifying themselves as Immigration advisers or

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solicitors on online forums should be covered under the new regulations to be introduced for online advice. There are a lot of immigration online forums being run and people are registering as advisers to advice those logging onto these forums for help on their immigration cases.” **UK Immigration Online** stated: “I feel that the Commissioner should consider the idea of making any advisers proposing to provide immigration advice on the internet, to apply to the OISC. This way only regulated and professional bodies can provide services over the internet. It provides a way of monitoring and regulating internet activity this way.”

There were concerns expressed about security and confidentiality. All that expressed an opinion supported principles of best practice in terms of attendance notes.

Respondents were asked with reference to internet advice whether any codes should be principle-based or prescriptive. There was again a mix response, with the voluntary and community sector again supporting a prescriptive approach. The **Islington Law Centre’s** approach was: “The Codes should be prescriptive. In this way the same principle can apply to all giving advice whether in person or via the internet.”

However, **HOONA**, an organisation that does much of its work online, stated: “If anything to be imposed in this area, principle based approach should be taken as internet advising is a very broad area with unlimited number of possible situations and scenarios. This becomes more important when considering the fast changing environment in the field of IT and internet.”

The **Bar Standards Board** was of the view that: “A high-level code could be introduced with the majority of information about providing advice via the internet contained in guidance.”

Respondents were then asked about the outsourcing of work:

	Yes	No	No opinion stated
a) Do you think that organisations should be allowed to outsource their work to other regulated organisations?	55	28	4

b) If you think that the outsourcing of work should be allowed between organisations, all or in part, please explain what restrictions or controls, if any, you think should be imposed.

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The majority of respondents supported the proposal. Those who did support the proposal pointed to greater flexibility and facilitating the way business is now undertaken:

“Yes - it should be for an organisation to decide how it runs its business, and this would benefit both the organisation that outsources, and keeps a client, and the one that picks up work it wouldn't otherwise have.” **Global Immigration Solutions**

A significant number of “for profit” organisations, however, were opposed. They pointed to organisations having effective referral systems and the clarity of case ownership:

“No. If the matter is passed on/referred to another organisation then the client should become a client of that organisation. The original adviser might wish and only with client consent to be kept aware of the progress of the case but should only do so without charging and making clear the relationship is with the actual adviser.” **First Permit Ltd**

Those in the voluntary and community sector mentioned client protection as a major concern.

BID's view was:

“The concern that BID has with the outsourcing of work is the possibility that this could result in clients incurring additional and sometimes unnecessary fees for a referral being made. Given the vulnerable circumstances that many people with immigration problems face, the risk of abuse is increased.”

Some respondents pointed out that the proposal may allow an opportunity for those at a lower level of regulation to outsource to those at a higher level yet still keep control of the matter:

“Yes, but only to the extent that the relevant competence is satisfied, but not where a level 2 adviser retains the client but, outsources part of client's work to a Level 3.” **Mugo & Co Legal Consultants (UK)**

“It seems to us that provided it is regulated correctly, and that it is transparent to the client, outsourcing should be allowed where this is of clear benefit to the client, i.e. one point of contact, one set of fees. For example, it would make sense for a level 1 advisor to be able to outsource an appeal application to an advisor registered at a higher level, where this is of benefit to the client.” **UK Work Permits Ltd**

The **Bar Standards Board's** view was that: “As the legal services market continues to evolve, outsourcing is becoming a more common feature. In order that innovation and competition within the market is not stifled the BSB believes that outsourcing should be allowed, subject to the appropriate controls and restrictions being in place. To this end the BSB has introduced specific outsourcing provisions in the new Handbook.”

The responses to the question on possible restrictions and controls, focused on client knowledge and obtaining consent for a matter to be outsourced. As **IEP Management Ltd** put it:

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“The client needs to be made aware and agree to the outsourcing before the case proceeds. The original organisation instructed should make it clear as to whether they were retaining instruction or whether they were signposting. If retaining responsibility for the case they should formally instruct the outsourced organisation and continue to hold all correspondence and case notes on the client file, but the organisation which undertakes the work also retains responsibility for the standard of work and advice provided.”

This view, about the need for retention of ownership and case responsibility, was echoed by many, including **BID, Dearson Winyard International** and **Global Immigration Solutions**.

We then asked about changing the emphasis of the wording in the Code to reflect the OISC’s primary regulation of organisations.

	Yes	No	No opinion stated
The Commissioner proposes that references to “adviser” in the Code should be replaced with the word “organisation” except where the obligation is clearly an individual one. Do you agree with the proposal?	57	22	3

There was again a divergence of views across both the Registered and Exempt sectors. Those in favour included:

“Yes, if one works for an organisation, it assumes responsibility for that adviser, except where the obligation is specifically individual. So it is good to replace "adviser" with "organisation".” **Mugo & Co Legal consultants (UK)**

“Yes. This would clarify the code and reduce unnecessary confusion between the responsibilities of individual advisors and organizations.” **Scottish Refugee Council**

Those opposed included, **Brent Women’s Advisory Resource Centre, CORECOG, Equalisers Ltd, ILPA and UK Visa Partners Ltd**. Typical of the views expressed by this group were:

No. When trainee advisers begin the process of OISC regulation, we stress to them the importance of complying with the Codes & Rules as individuals. If the terminology is changed to “organisation” throughout with a few exceptions, this would reduce the strength of this message and could possibly give rise to individual advisers taking a less responsible approach towards their compliance with OISC Codes & Rules. Although the “organisation” must be compliant, it can only achieve this through the combined actions and best practice behaviour of its employees. –**Smith Stone Walters Ltd**

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No- reference to 'organisation' will not always be appropriate, for example, a code not listed at paragraph 44, 'an adviser must explain to the client in a client care letter.'(Code 33), still requires reference to 'adviser', otherwise it is unclear who is responsible for the legal content of the letter. Removing references to 'adviser' may lead to confusion about responsibility for adherence to the Codes. **UKCISA**

The **Faculty of Advocates** considered that the term "advisor is unambiguous and properly represents the person who should be regulated." The **Bar Standards Board**, however, agreed with the proposal while stressing that the Code should make clear where there are obligations on the individual rather than the organisation.

We then asked about the identification of individual advisers:

	Yes	No	No opinion stated
Do you agree that organisations should be required to ensure that the individual within their organisation who actually undertakes a specific piece of work is clearly identified on any material contained in the client's file and specifically in any communication sent to the client or to a third party?	69	8	4

The vast majority of respondents agreed with the proposal. Many of those that responded positively said that they were already doing this as a matter of good practice. **Slough Refugee Support** got to the nub of the issue in stating, "Yes, this is important particularly for supervisors in monitoring individual advisers' performance and for making individualised training plans."

There were some, however, including **Keystones Consulting** and the **Manuel Bravo Project** that pointed to the administrative burden and possible harassment of volunteers as a reason for rejecting the proposal. Others pointed to an organisation's vicarious liability:

"It is not necessary. I worked in Solicitors firms prior to the OISC, and I have never made a representation with my name identified. Besides, the principle of vicarious liability applies to any organisation therefore liability is imputed to the principal. Whether the author includes his name or not does not vitiate the responsibility if any." **Almond Legal's**

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The last question was about client approval before taking credit/debit card payments

	Yes	No	No opinion stated
Do you agree that a code should be introduced that prohibits payments being taken from a client account or from a client's credit/debit card without the client having been given at least five clear working days' notification of the intention to do so and to have authorised the payment?	40	22	9

Those that agreed with this proposal appeared to suggest that it offered protection, but were not forthcoming as to why they would opt for it. Of those that were against, nearly all gave a reason with most pointing to inconvenience, the lack of time available to make applications to the Home Office and to pay the required fees and cash flow difficulties:

"No, this is impractical, especially where time limits apply for submitting applications and/or appeals, and the client has also paid Home Office and/or Tribunal fees and are already in the client account and need to be used quickly to pay these, and the advisors fees where he/she has already done the work. This would therefore be unworkable, and advisors could be subjected to, and victims of, unscrupulous/vexatious clients, and could also have an adverse effect n the business cash flow." *Equalisers Ltd*

"When an application is made to the Home Office, the fee must be paid for the application to be valid. If a five day notice period meant that the application was late, this would seriously prejudice the client. Therefore any general rule must be subject to exceptions, even if these require specific authorisation." *ILPA*

"No - mainly because in corporate immigration, frequently we have less than 5 days notice of a move and so a case is completed within 5 days" *KPMG*

At the end of the consultation we asked respondents to make suggestions for other matters that they thought should be considered for inclusion in the new Code. There were a number of ideas received, which are contained in Annex C.

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Conclusions

Section A - What approach should the OISC take in writing the new Code and Rules a principle-based or prescriptive approach?

As explained in the consultation, the Commissioner believes that in developing the new Code and Rules it is not an 'all or nothing' decision. Similar documents issued by other regulators often include, as the current Code and Rules do now, a mixture of both approaches.

Examples were given in the consultation of areas where either a principle-based or prescriptive approach under the current Code could be taken. We are aware that Codes 27, 28, 29, 30, 33, 48, 64 and 86 (supervisor's duties; equality and anti-discrimination policies; the client care letter; complaints procedure; client account; retention of client records) created an almost equal split between those who favoured a prescriptive or a principle-based approach. The Commissioner will further consider this and to what extent the role of guidance should be expanded.

In reviewing the Code and Rules we will bear in mind which approach is more appropriate to afford clients the greatest protection and certainty while not standing in the way of business.

Section B - Should the Code and Rules be consolidated into one document?

Considering the overwhelming support shown for this proposal, we will work to consolidate these documents while ensuring clarity for regulated advisers and others about what is required of them regarding financial probity.

Section C—Possible subjects for inclusion in the new Code

a) New legal entity

As explained in the consultation document, when a regulated organisation changes its legal status, such as from sole trader to partnership or becomes a company, the new legal entity created is not automatically within the regulated scheme. Before the change is made it is necessary for the organisation to apply to the OISC for regulation of the new entity using the specific application form "Application for Regulation of a New Legal Entity".

Unfortunately we have found that organisations are not always submitting such applications. Not doing so places an organisation at risk as their new legal entity will be acting outside of the regulatory scheme and thus illegally giving immigration advice.

In view of the support shown for this proposal and the consequences for organisations which change their legal status without informing the OISC prior to the change, the Commissioner will be introducing a new prescriptive Code on this subject.

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b) Immigration advice and services provided via the internet

The OISC is aware of the growing influence and use of the internet by advisers to conduct business. It is recognised that more clients are finding immigration advisers via the internet, and that an increasing number of advisers are giving advice on line. While there is a strong argument that the existing *Code of Standards* covers the provision of such advice such as *Code 7*, the Commissioner feels that special provision needs to be introduced to cover the specific situation of advice being provided via the internet.

The Commissioner will also consider whether it is appropriate to introduce *Codes* covering advice given in other ways such as via the mediums of social media and television/radio.

c) Outsourcing work

This topic arose because the OISC had evidence that OISC regulated advisers were outsourcing work to other regulated advisers contrary to the *Guidance on Competence*. This created confusion both for the client in controlling their matter and for the OISC in regulating. In some cases advisers were being found to be circumventing *The Guidance* with, for example, Level 2 advisers using Level 3 advisers to undertake advocacy work instead of referring the matter on as required.

In response to the question as to whether regulated advisers should be allowed to outsource work to other regulated advisers, a significant majority thought that they should be allowed. Given that confusion can occur because of passing work on to others, the Commissioner will give further thought to introduce a code that specifically deals with the outsourcing of work between advice organisations.

d) Organisation or individual adviser

As pointed out in the consultation, the Commissioner believes that the *Code* should better reflect the reality of OISC regulation replacing references to "adviser" with the word "organisation" except where the obligation is clearly on the individual.

The Commissioner has noted the views of those that were against this proposal and she will ensure that personal obligations were still be included in the new *Code* as they are now in the following codes:

- Code 6 – advisers operating beyond their level of competence;
- Code 9 – acting in the client's best interest;
- Code 12 – advisers abusing their position of trust;
- Code 15 – conflicts of interest.

e) Identifying the actions of specific advisers

The Commissioner sees this as a making specific a matter of good practice. Not only is it sometimes difficult to tell from client files which specific adviser in a multi-person organisation has actually provided the immigration advice, in whole or in part, often documents are simply signed in the organisation's name. This particularly creates a problem when advisers in an organisation are approved at different levels.

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Moreover, introducing such a code will assist in identifying when an adviser is working under supervision and if individual supervision plans are working effectively. The Commissioner will be introducing this into the new *Code* although she has not yet decided whether this will be by using a principle-based or prescriptive approach complemented by guidance.

f) Client notification of and approval of payment

The OISC is aware that on occasion funds have been withdrawn from client accounts or from their credit/debit cards for work done without them first being notified and given adequate time to authorise the withdrawal. This can result in clients becoming dissatisfied, believing that they have been charged prematurely for advice and services. Further, there is the risk that the client will not have the opportunity to ensure that they have sufficient funds in their account to meet the withdrawal. The Commissioner questioned how best to deal with this offering, on the one hand the greatest protection to clients, while, on the other hand, being aware of the need for commercial flexibility and the requirement to pay Home Office fees immediately.

The Commissioner does not see these needs as mutually exclusive and intends to include this in the new *Code*. If, as was suggested by many respondents, the rules concerning the client care letter and use of the client account are either made more prescriptive or further guidance is given (see Section A above), then this proposal is remains valid as it seeks to prevent the totally unexpected withdrawal from an account. It is up to advisers to ensure that their clients are fully informed about when and under what circumstances withdrawals will be made from their accounts. If unexpected withdrawals are made, then, if the client complains, the organisation must be able to show that there was a form of pre-agreement with the client or that client's permission was sought and obtained.

g) Other suggestions for inclusion in the new Code

The Commissioner will consider the suggestions made and decide whether to incorporate them into the new *Code*.

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CONSULTATION QUESTIONS

Section A

What approach should the OISC take in writing the new *Code* and *Rules*?

- A1. Do you think the next version of the *Code* and *Rules* should generally take a principle-based approach or prescriptive approach? Please explain which of these approaches you favour giving your reasons.
- A2. Please explain what approach (principle-based or prescriptive) you think the Commissioner should take with respect to the following Codes:
- a) Codes 19, 21 to 23
 - b) Codes 27, 28, 29, 30, 33, 48, 64 and 86
 - c) Codes 52 to 59, 81 to 86 and 91 to 95
- A3. Please explain if you think there are any specific Codes or Rules where a principle-based or prescriptive approach would be particularly appropriate.

Section B

Should the *Code* and *Rules* be consolidated into one document?

- B1. Please explain if you think that the *Code* and *Rules* should be consolidated into one document or if they should remain as two separate documents.
- B2. Please explain what Rule(s), if any, you feel should remain identified as specific rule(s) if the two documents were consolidated. In considering your answer you may wish to take into account the contents of paragraph 37 of the consultation document.

Section C

Possible subjects for inclusion in the new *Code*

- h) New legal entity
- C1. Do you agree that a Code should be introduced that requires regulated organisations which wish to change their legal status before doing so to submit an Application for Regulation of a New Legal Entity?
- i) Immigration advice and services provided via the internet

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- C2. Do you agree that it is necessary for the *Code* to include specific regulation on the matters mentioned at paragraph 41 of the consultation document in respect of organisations which work via the internet?
- C3. In addition to the matters mentioned at paragraph 41 of the consultation document, are there any other matters that you think the Commissioner should include in the *Code* with respect to the provision of immigration advice or services via the internet?
- C4. If specific codes were introduced, do you think that these should be more principle-based or prescriptive?
- j) Outsourcing work
- C5. Do you think that organisations should be allowed to outsource their work to other regulated organisations?
- C6. If you think that the outsourcing of work should be allowed between organisations, all or in part, please explain what restrictions or controls, if any, you think should be imposed.
- k) Organisation or individual adviser
- C7. The Commissioner proposes that references to “adviser” in the *Code* should be replaced with the word “organisation” except where the obligation is clearly an individual one. Do you agree with the proposal?
- l) Identifying the actions of specific advisers
- C8. Do you agree with the proposal contained in paragraph 47 of the consultation document which states that organisations should be required to ensure that the individual within their organisation who actually undertakes a specific piece of work is clearly identified on any material contained in the client’s file and specifically in any communication sent to the client or to a third party?
- m) Client notification of and approval of payment
- C9. Do you agree with the proposal contained in paragraph 49 of the consultation document that a code should be introduced that prohibits payments being taken from a client account or from a client’s credit/debit card without the client having been given at least five clear working days’ notification of the intention to do so and to have authorised the payment?
- n) Other suggestions for inclusion in the new Code
- C10. Please make any suggestions for other matters which you think should be considered for inclusion in the new *Code*.

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List of Consultation Respondents

Designated Regulator

Bar Standards Board

Faculty of Advocates

OISC Exempt Organisation

Bail for Immigration Detainees (BID)

Brent Women's Advisory Resource Centre

British Red Cross

Community of Congolese Refugees in Great-Britain (CORECOG)

Dover Detainee Visitor Group

Hackney Marsh Partnership

Islington Law Centre

Lifeline Options Community Interest Company

Manuel Bravo Project

Migrants Resource Centre

Scottish Refugee Council

SKILLS4COMMUNITIES

Slough Immigration Aid Unit

Slough Refugee Support

Uganda Community Relief Association

UK Council of International Student Affairs (UKISA)

OISC Registered Organisation

1st Call Immigration Services

51Visa

A&B Immigration Ltd

Adhikary Legal Consultancy

Almond Legals

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Arde Leigh LLP
ASG Immigration Limited
ASJ Immigration Advisors
AYDIN Visa & Translation Ltd
China Resolved International
City Law Immigration Ltd
de Prey Consulting
Dearson Winyard International (DWI)
Equalisers Ltd
Exegesis Limited
First Permit Limited
Global Immigration Solutions
GOK Immigration Service
H&P Associates Limited
Dreamland Consultants & Immigration Law Services
HOONA
IEP Management Ltd.
Immigration and Work Permits Consultancy
Immigration Consultancy & Training Bureau
Immigration Nationality Education Employment Consultancy Services (INEECS)
Instant Immigration Service
Jackson Immigration Advisory Service Ltd
J'Leon Owen & co
Johnson Mackenzie Ltd
Just Immigration Services
Kamp Consultancy Ltd
Keystones Consulting

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KPMG

Lawson Hunte Immigration Services Ltd

League for Human Rights

Leone Consultancy

Levetron Limited

London By Heart

M B Law Practice

Mac's Immigration Services

MAR Immigration Advisory Services

Mugo & Co Legal Consultants (UK)

Mutebuka & Co

Nova Legal Services Ltd.

Onnuri Planning Ltd

Osewuska Immigration Advice Service

Pasha Immigration

Peer & Co.

Permits2Work

Purple Star Consultant Ltd

QC Immigration

Rozijo

S Gardner & Co

Sincere Consulting UK Ltd

Smith Stone Walters Ltd

Softlink Consultants Limited

Solent Immigration Services

SSL Immigration Services

Sterling & Law Associates LLP

Supreme Advisory Networks Ltd

Suma Law Associates

Thakerar Consultancy Services

Topadar Law Chamber

U. L. Consultants Ltd

UK Immigration and Business Advisors Ltd

UK Immigration Law Chambers & UK Immigration Online Ltd

UK Visa Partners Ltd

UK Work Permits Ltd

VC Legal UK

Victory Legal Services

Visa & Immigration Solutions Ltd

Visa Link Ltd.

WM Immigration Ltd

Professional Association

Immigration Law Practitioners Association (ILPA)

Public Sector

Home Office
