

Report and responses on the Consultation on the Commissioner's Code of Standards

September 2015



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Introduction

Consultation on the Code of Standards

1. For the OISC to remain an effective regulator, the Commissioner's *Code of Standards* (the *Code*) must be fit for purpose – current, effective and usable – for regulated organisations and advisers, the OISC's stakeholders and for the OISC.
2. In June 2013 the Immigration Services Commissioner began the process of fundamentally reviewing two of the OISC's framework documents - the *Code* and the *Commissioner's Rules*. That consultation sought views on matters of style, structure and content. In particular, comments were sought on:
 - whether those documents should essentially remain as written or take a more principle-based or a more prescriptive approach;
 - whether the documents should be consolidated; and
 - some suggested new codes.
3. As a result of the responses received and internal discussions, a second consultation was issued in November 2014 to which the proposed *Code* was attached. That consultation also acknowledged that guidance was a very useful accompaniment to a more principle-based *Code*, and it was indicated within the draft *Code* consulted on where we expected a Guidance Note would accompany a particular code or codes. Respondents were asked to comment on whether they thought such guidance would be useful and, if possible, specifically on what aspect or aspects of the *Code*.
4. **The Faculty of Advocates** noted that we intended to issue guidance, but stated that, in their view, any mandatory requirements needed to be included in the body of the *Code*. We agree with this. Guidance has been drafted to assist organisations and advisers in understanding what the *Code's* provisions require.
5. As there was a virtually unanimous "yes" response to the question asked in the first consultation on whether the *Rules* should be incorporated into the *Code*, the draft version of the *Code* circulated with the consultation included within it provisions contained in the current *Rules*. The *Rules* will no longer be a separate document once the new *Code* is implemented, although it will remain relevant in respect of matters which preceded that date.
6. The OISC conducted this consultation in accordance with the requirements of the Immigration and Asylum Act 1999, as amended. An initial assessment of the consultation's proposals indicated that they would have minimal impact and therefore no Impact Assessment was produced. We accept that there may be some impacts on immigration advisers in understanding the changes, but these are expected to be small. The OISC asked consultation respondents to include in their responses any feedback, together with evidence, if possible, on the potential range and scale of

costs, benefits and risks that they believed may be associated with any of the proposals contained in the consultation.

7. The consultation was launched on 3 November 2014 and remained open until 30 January 2015. Respondents were asked to consider the following question in respect of each section of the draft *Code*:

“Please provide any comments with respect to each of the sections of the Code. These are listed below in the order in which they appear in the document. You can give general comments and/or specific comments on the codes or parts of a code that appear in that section and also advise if you think anything requires amendment, deletion, and addition or would benefit from an accompanying Guidance Note. Please also include any comments on any range and scale of costs, benefits and risks associated with any specific section or generally. If the latter, please include these in the separate box located at the end of the response form

We would find it very helpful if respondents would give the reasons for their comments and suggestions for improvement and/or clarification. If you think a code requires amendment or a new code is required, it would be helpful if you would include in your response suggested drafting or alternative wording. A separate box is provided at the end of the response form which may be used for any other comments you may wish to make.”

8. Thirteen responses were received. Not all respondents answered the consultation question in respect of every section of the *Code*. This report does not mention all the comments that were received. A list of respondents and the substantive responses received are at Annexes A and B respectively. The Commissioner is grateful for all the responses received.

Summary of Responses

This section reflects sub-headings in the draft *Code*. Where a particular code has been moved in the final version or the sub-heading has changed, this has been indicated in the text below.

Introduction

Both the **Immigration Law Practitioners' Association (ILPA)** and the **Faculty of Advocates** raised the issue of including “adviser” in addition to “organisation” in various codes. We have considered this comment particularly in relation to codes 1 to 16, and have changed several of those codes and certain others to include reference to both organisations and advisers (codes 1, 3, 4, 5, 10 to 15, 27- 30 and 34 in the final version).

General Codes 1 to 15 (new Code 1 to 19 with sub-heading changed to “General” in the final version)

Sub-heading The Bar Standards Board (BSB) observed that the OISC was taking an approach similar to that contained in their 2014 Handbook. We have renamed the sub-heading as “General” so as not to confuse readers into thinking that Codes 1 to 16 (now codes 1 to 19 in the final version) had a primacy.

Code 7 (code 7 in the final version) The **UK Council for International Student Affairs (UKCISA)** asked what the Guidance accompanying this code, which requires advisers clearly to identify themselves when giving immigration advice or services, would contain. This guidance explains what “identify” means in this context and particularly the requirement for advisers to give their name, role and for whom they work and when such information must be given to the client.

Code 8 (code 8 in the final version) We have taken note of **Bail for Immigration Detainees' (BID)** concern that we should make clear the meaning of the term “unauthorised person(s)” and explain what is regulated and what is unregulated work and who can carry out what. The Guidance accompanying this code covers these matters.

Code 12 (code 13 in the final version) - Several respondents (**Dynamic Immigration Consultants, Faculty of Advocates, St James's Church Legal Advice Centre, ILPA**) commented about Code 12, which requires organisations and advisers, as far as reasonably practicable, to satisfy themselves that documents supplied to them are genuine. The question was raised as to the extent they would have to go to be so satisfied and it was argued that the requirements imposed by code 13 (d) (organisations and advisers must not knowingly permit themselves to be used in any deception) was sufficient.

The issue of retaining code 12 at all and, if so, it's drafting, was carefully considered by the OISC in light of these comments. The decision reached was that the code

should remain as drafted. Regulated organisations and advisers need to take responsibility for assuring themselves of the genuineness of the documents on which the advice they give and the applications they make are based. We felt that the words “so far as reasonably practicable” made it clear that the obligation was not absolute.

Code 14 (code 16 in the final version) The **Faculty of Advocates** questioned whether it was reasonable for small organisations and sole traders to be required to have a written equality and diversity policy. This requirement was contained in a previous version of the *Code* and we felt it right that this obligation should remain for all regulated organisations of whatever size and type.

Provision of immigration advice and services online (now covered in the General section of the final version)

Codes 16 and 17 (codes 18 and 19 in the final version) **ILPA** and the **BSB** noted the increasing number of business models that are emerging which provide legal services online. It was suggested that the *Code* might benefit from the inclusion of a general provision that makes clear that the same ethical obligations apply to the online environment as they do to the more traditional office, face-to-face situation. The Guidance accompanying these codes makes this clear. All OISC regulated organisations, however or wherever they operate, must comply with all of the *Code*'s requirements.

Code 16 (code 18 in the final version) The **Legal Ombudsman** supported the inclusion of the phrase “the generally expected timeframes for delivery of such work”, which we have retained.

Code 17 (code 19 in the final version) **BID** and **ILPA** both suggested that guidance should accompany this code and give information on cooling-off periods. The Guidance accompanying this code covers these matters.

Conflicts of interest

Code 18 (code 20 in the final version) We agree with the **BSB**'s suggestion that Guidance should accompany this code.

Client care letter

Code 19 (code 23 in the final version) **BID** also commented that, in light of their comment in respect of code 20, code 19 should also be amended by adding the words “at the outset of their case” at the end of that code. While we have not accepted this suggestion, we have included the point in the Guidance which accompanies this code.

In relation to **Code 19 (code 23 in the final version)** **Smith Stone Walters Ltd** said they have corporate clients who seek immigration advice on behalf of their

employees. As such, they questioned the requirement to issue each of these individuals with a personal client care letter. The OISC accepts that this Code may be satisfied where the existing contract with the corporate client meets the various requirements of a client care letter appropriate to the employee on whose behalf immigration advice is being sought.

Code 20 (code 24 in the final version) The Legal Ombudsman raised the issue of the requirement that no work, other than in exceptional circumstances, should be carried out until the client has agreed their client care letter. They wondered if the OISC had considered that the nature of immigration work may give rise to situations that required advisers to begin work before a client care letter is issued. They feared that there was a risk that the potential need for urgent action might be hampered by process. Further, **ILPA** commented that the phrase “other than in exceptional circumstances” was vague. In respect to the latter point, we have produced Guidance that contains advice on what is an “exceptional circumstance”.

BID commented that the code required regulated organisations to obtain confirmation from clients that they agreed to the contents of their client care letter before carrying out work on their behalf. They pointed out that the creation of the client care letter was itself work and was likely to be carried out after attendance with the client. They therefore suggested that the word “further” should be inserted before the word “work” in the penultimate sentence of the code. Code 24 now includes the word “further” as suggested.

Code 22 (code 26 in the final version) The code listing the contents of the client care letter received a substantial amount of comment. The **BSB** commented that this code’s style was not completely in step with the *Code*’s more general principle-based approach. **ILPA** also felt that this code was unsympathetic to non-paying clients as did the **St James’s Church Legal Advice Centre** who considered that it imposed a long bureaucratic procedure particularly on not-for-profit organisations. We feel strongly that this code’s prescriptive style is necessary in order to protect clients as they need to understand and fully appreciate the agreement they are making with the organisation. However the Guidance note accompanying this code now sets out what constitutes a client and that this excludes drop in centres providing one off advice, from the requirement to issue to ‘clients’ a client care letter.

T & S Immigration Services Ltd raised several issues in respect of the client care letter based on the kind of matters their organisation deals with – Tier 5 Certificates of Sponsorship for entertainers and racing drivers etc – which, they explained, are often requested by repeat clients such as record companies, booking agencies, concert promoters or overseas entertainers or their management companies. Further, they explained that often the information required in the client care letter is contained in a number of emails sent by them rather than in one document.

We noted the points made by **T & S Immigration Services Ltd**, but felt that their concerns could adequately be dealt with under code 83 (code 85 in the final version) for an exemption from some, or all, of this code's requirements.

Smith Stone Walters Ltd noted that the point's (b)-(c) in the client care letter (client's position, option's proposed and full details of the client's position) might be best placed in a separate, referred to, advice note to help reduce the length of the client care letter. They noted that the OISC had raised no concerns previously in their meeting these requirements in this way. This remains the case.

Smith Stone Walters Ltd also queried the necessity, under code 22h (Code 26h in the final version), of providing clients with copies of documents passed to the regulated organisation, as clients may already have copies of such documents. This Code has been amended to reflect this point.

Confidentiality

Codes 23 and 24 (codes 27 and 28 in the final version) The **BSB** and **UKCISA** supported the production of Guidance to accompany these codes. The latter also recommended that there should be an acknowledgement that regulated organisations may be compelled to disclose information by reason of a legal or regulatory obligation. We have amended code 27 accordingly. **BID** also suggested that the accompanying Guidance should cover the holding of electronic data and deletion of such data. This has been included in the Guidance.

Keeping clients informed

Code 26 (code 29 in the final version) The **Legal Ombudsman** suggested that, considering that a household may have multiple applications, the statement "each of their clients is kept regularly informed in writing" should be clarified and that the words "in proportion to the circumstances of the case" be added. While we carefully considered this point, we felt that no change should be made to this code, as we believe any attempt to do so is likely to introduce an element of uncertainty to this code.

Interpreters and translators (sub-heading removed; code 30 has been moved to the section, "Obtaining additional advice, opinions and other professional services", and is now code 35 in the final version) Both **UKCISA** and **ILPA** supported Guidance being produced on this code. We have incorporated in the accompanying guidance **ILPA's** suggestion that it should explain what constitutes "suitable" in the context of interpreters or translators.

Obtaining additional advice, opinions and other professional services

Codes 31 to 33 (codes 34 to 37 in the final version) Smith Stone Walters Ltd commented in relation to **Code 32 (code 36 in the final version)** that an e-mail confirming client consent would satisfactorily meet the need for written confirmation. Guidance related to new Code 29 (Keeping clients informed) explains that written communications can include e-mail.

Outsourcing work

Codes 34 and 35 (codes 38 and 39) BID was “concerned” by the OISC’s decision to allow organisations to outsource aspects of a client’s case while the instructing organisation retained overall responsibility. They preferred to see cases referred to another organisation when the referring organisation is unable to carry out the necessary work. **ILPA** and the **Faculty of Advocates** were also of this opinion stating that each piece of work should be undertaken by the relevant adviser as otherwise they warned that unclear lines of responsibility could arise. While we carefully considered these points, we felt that no change should be made to the codes believing that the lines of responsibility were clear.

ILPA was of the view that, should the code allow outsourcing, this should be made more specific in addition to Guidance being provided. **BID** also commented on code 35 saying that, if code 34 was adopted, code 35 would benefit from further clarification by adding the words “or outside” [or beyond the remit of] after the word “above” in the code. Code 39 has been changed in a way that we believe captures their concerns. **ILPA** also suggested that it should be made specifically clear and explicit that outsourcing work could include instructing a barrister. We considered this to be unnecessary and have rejected this suggestion.

Temporary inability to work

Code 36 (code 40 in the final version) Comments received from **Citizen Advice** asked that the Guidance provide an indication of what constitutes a ‘temporary period’. This is now explained in the Guidance that accompanies the Code.

Termination of instructions by the client

Code 37 (code 41 in the final version) BID commented that this code required further clarification and suggested that it should be stated that a copy of the client’s file needs to be retained by the organisation. The code has been so amended.

Withdrawing from a case (now headed as withdrawing from a case by the organisation)

Codes 38 to 40 (codes 43 to 45 in the final version) The **BSB** felt that more detail was needed particularly as to the meaning of the phrase “without good reason” at the

end of code 38. We have considered the content of the BSB's own guidance in preparing ours on this subject.

Code 39 (code 44 in the final version) T & S Immigration Services Ltd, considering the type of business it does, felt that the requirement in code 39 to give at least three working days' notice of the intention by an organisation to withdraw from a case was excessive. While we noted their comments, we considered that the notice requirement in this code should remain unchanged and that those wishing to be exempted from this requirement could apply to the Commissioner under code 85.

Transferring the client's file

Code 41 (code 48 in the final version) The Legal Ombudsman commented on this code requiring a case to be transferred even if payment remained outstanding pointing out that this was not in line with the position of other legal service providers. **ILPA** also noted that there was no provision included for lien to be exercised in respect of unpaid costs. This code makes clear that the obligation on OISC regulated advisers is to transfer the client's file and we have decided not to change our policy position on this matter.

Ending of a client's case

Codes 42 and 43 (codes 46 to 47 in the final version) St James's Church Legal Advice Centre commented that this code did not seem appropriate for drop-in centres where clients received only summary advice. This point has been addressed in the Guidance related to the issuing of Client Care letters which explains that one-off advice does not require a client care letter to be issued. Guidance related to Codes 42 explains that where a client care letter has not been issued a closing letter is also not required. Smith Stone Walters Ltd has suggested that code 42c and 43c should be amended to when such financial statements are appropriate. These codes have been amended to reflect this.

Referral Fees (now headed referrals for gain)

Codes 44 and 45 (codes 21 and 22 in the final version) We decided that these codes were better placed earlier in the *Code* near to the code on conflicts of interest. We agree with the **BSB's** comment that this subject required accompanying Guidance and in preparing this guidance we have taken specific note of the guidance produced by the **BSB**.

Running the organisation

Codes 46 to 49 (codes 49 to 52 in the final version) In their response the **BSB** referred to its rules and guidance on the administration of chambers. This was taken into account.

Supervision of a person operating above their Level or Category

Code 50 (code 9 in the final version) ILPA commented that they did not understand code 50 as drafted. We have reviewed this code and believe that the final drafting of code 9 has made the code clearer.

Records and case management

Codes 51 to 54 (codes 53 to 57 in the final version) We received comments on these codes from **St James’s Church Legal Advice Centre, ILPA, BSB and Smith Stone Walters Ltd.** The former was concerned with the requirements these codes imposed on not-for-profit organisations. However, while we noted their concerns, protection of clients, which these provisions provide, must come first.

ILPA mentioned its continual concern about the lack of OISC legislative power in respect of enforcement of storage of files once an organisation ceases to be within the OISC regulatory scheme. However, as they acknowledge, this remains the position.

The **BSB** commented that this section might make specific reference to confidentiality. As that subject is specifically covered by codes 27 and 28, we did not feel it necessary to mention that subject also in these codes. The Guidance accompanying these codes includes reference to the Data Protection Act which is mentioned in the **BSB’s** own guidance.

In accordance with earlier comments from **Smith Stone Walters Ltd** regarding the photocopying of clients documents and similar comments made in relation to **Code 53 (code 56 in the final version)**, this Code has been amended.

Fees and accounts

Codes 55 to 66 (codes 58 to 69 in the final version) ILPA questioned the reference in code 56 to “fee scale”. The OISC has always approved the fee scales of the organisations it regulates, and has decided that reference to organisations that charge having a fee scale agreed by the Commissioner should be retained. The Guidance that accompanies this section comments on this subject. We have also changed the wording in code 62 to read “client account” as they suggested. They also raised in connection with code 66 the reference to “otherwise verified business accounts”. This wording has been retained

We took into account **Smith Stone Walters Ltd** comments on **code 57 (code 60 in the final version)** as being too prescriptive and this code has been amended.

Display and use of the OISC registration number, OISC logo and OISC certificate of registration

Code 67 (code 70 in the final version) ILPA wondered about the reference to “publications” as opposed to “communications”. **Smith Stone Walters Ltd** suggested that **Code 67 (code 70 in the final version)** should reflect the wording by

the Solicitors Regulatory Authority on similar matters and the code has been amended accordingly.

Code 69 (code 72 in the final version) ILPA asked whether provision could be made for a certified copy of the OISC certificate to be displayed at branch offices or for the information contained within it to be displayed alongside the information as to where the original can be viewed. While we have noted the suggestion, we have not changed the requirement. We will, however, keep this requirement under review.

Smith Stone Walters Ltd suggested that **Code 67 (code 70 in the final version)** should reflect the wording by the Solicitors Regulatory Authority on similar matters and the code has been amended accordingly.

Business Promotion

Code 73 (code 76 in the final version) BID was concerned that by prohibiting organisations from making promotional statements about their organisation's success rate this could conflict with a charitable aim. It asked that we consider amending the code to allow promotional statements to be made that are aimed at furthering a charitable cause. While we have not accepted their suggestion, OISC regulated charities can request an exemption from this requirement under code 85.

The **BSB** in their comments referred to their guidance which supplements their general rules on not misleading clients and potential clients. We have looked carefully at the **BSB** guidance. **ILPA** also referred to the use of the word "legal" or "law" in an organisation name.

Complaints code 77 (sub-heading changed to "procedure for handling complaints"; code 79 in the final version)

Code 77 (code 79 in the final version) ILPA expressed concern that this code required the written procedure for the handling of complaints by a regulated organisation to be approved by the Commissioner as it felt this would lead to delays. They also recommended that organisations should be required to keep complaint logs. Regarding their first point, it is important that regulated organisations have a procedure in place for dealing with complaints and an example of an appropriate complaints scheme is on our website. We approve the organisation's complaints procedure at the time the organisation applies to join the regulatory scheme. The OISC has introduced re-direction for complaints back to the organisation against which the complaint was made, where this is appropriate, and we expect those complaints to be dealt with in accordance with the organisation's approved complaints procedure.

We have included their suggestion of organisations having complaint logs in the accompanying Guidance.

Notifications to the Commissioner by organisations and advisers (codes 78 to 81; codes 80 to 83 in the final version)

The **BSB** suggested that this section might benefit from the inclusion of a general obligation being placed on regulated organisations to co-operate with the OISC. The **BSB** has enshrined this as a core duty. Entry into the OISC scheme and thereafter remaining in it is conditional on compliance with the *Code*. Considering this, we did not feel it was necessary for a general obligation to be specifically included in the *Code*.

Code 78 (code 80 in the final version) ILPA commented that they thought that code 80 was “infelicitously” worded as it was not for the OISC to determine whether an organisation can change its legal status, but to determine whether the organisation can continue to be authorised to provide immigration advice and services if it does so change. After reflecting on their comment, the code has been amended.

Code 80 (code 83 in the final version) ILPA objected to this code as they said that they had “no idea” what was envisaged by the code’s requirement for advisers and any persons who own and/or are involved in the running of an organisation to notify the OISC of any significant changes to their personal circumstances. The code’s Guidance gives examples of changes of which we would expect advisers to notify us.

Request for exemption from the Code’s provisions

Code 83 (code 85 in the final version) ILPA did not comment specifically on the wording of this code or the obligation it imposes on regulated organisations to obtain the Commissioner’s written agreement for them to be exempted from some requirement of the *Code*. Rather their concern was how clients and third parties would know that a particular organisation has been so exempted. We consider that the obligation is on the particular organisation to make this known to their clients, as necessary.

Other Comments

Respondents were also invited to make further, general comments about the *Code*. A number of respondents took the opportunity to do so.

ILPA commented that they could not find in the *Code* a reference to the co-location of supervisor and supervisee. They specifically referred to their comment on this subject in their response to our first consultation. We note **ILPA’s** concerns, but after due consideration have concluded that physical co-location is not necessary for adequate supervision to be provided. **ILPA** also referred to other comments they made to the previous consultation on splitting Advice Level 1 into two divisions. While these comments are not directly on the subject of this consultation, we

considered them again but have decided that our original position on this issue should stand.

The Legal Ombudsman commented that, in comparison with other regulatory codes, the OISC's *Code* seemed more prescriptive. This may be so, but the new *Code* has taken a decidedly more principle-based approach than was found in previous Codes and we believe that there are good reasons for the *Code* retaining a prescriptive approach in some areas, such as the client care letter.

The Legal Ombudsman also suggested that a new code be inserted regarding the Commissioner's handling of complaints. We feel that the complaint scheme, which has recently been revised, adequately explains the Commissioner's role with regard to complaints and the way in which the OISC handles complaints it receives.

List of Consultation Respondents

Code of Standards	
Alpesh Patel	Aaryas Career Ltd
Pierre Makhoulf	Bail for Immigration Detainees (BID)
Kuljeet Chung	Bar Standards Board
Ann Booth	Citizens Advice
Samuel Funsho-Ajayi	Dynamic Immigration Consultants
Gaynor Adams	Faculty of Advocates
Elizabeth White	Immigration Law Practitioners' Association (ILPA)
Rosie Favelle	Smith Stone Walters Ltd`
Peter Thompson`	ST. James's Church Legal Advice Services
Steve Richard	T & S Immigration Services Ltd
Katherine Wilson	The Legal Ombudsman
Duncan Lane	UK Council for International Student Affairs (UKCISA)
Mathew Daley	University of Reading

Substantive responses to the consultation

ANNEX B

General Codes (Codes 1 to 15)	Response/Comments
Aaryas Career Ltd	Code 1-16 are very important for all those who provide immigration advice and services within the UK whether profit or non profit base. Very helpful and compulsory Code of Standard.
Bail for Immigration Detainees (BID)	<p>BID has no comments to make with regards to Codes 1-7.</p> <p>Code 8</p> <p>BID will welcome the opportunity to review and to comment upon the proposed guidance to Code 8. This is particularly important in view of various generic and non-generic advice services that BID provides with the help of volunteers and trainee advisors.</p> <p>BID is also concerned by the reported increase in the provision of advice services by unregulated organisations acting as Litigation Friends or Mackenzie Friends, and who fall outside any regulatory framework. BID is aware that such service providers advise on various areas of Immigration Law including advice on preparing witness statements, completing application forms and grounds for bail or appeal, and assisting witnesses in making submissions. Some of this work includes work regulated by the OISC (at Levels 2 and 3 only).</p> <p>BID believes therefore that any proposed guidance should refer to the statutory definition of immigration advisers and service providers provided by section 82 of the Immigration and Asylum Act 1999 and the OISC's definitions of levels of competence, and explain:</p> <ol style="list-style-type: none"> 1. What is regulated work that can only be carried out by a regulated advisor. 2. What is unregulated work that can therefore be carried out by <i>either</i> a regulated <i>or</i> an unregulated person such as a Mackenzie Friend or a Litigation Friend. <p>The regulatory framework should ensure that regulated advisors operating within a regulated organisation should not be disadvantaged if similar work can be carried out by unregulated Litigation Friends or Mackenzie Friends.</p> <p>Codes 9-16</p> <p>BID has no comments to make with regards to Codes 9 - 16</p>
Bar Standards Board	The BSB introduced a new Handbook in 2014 that set out 10 high level 'core duties.' The OISC seem to have adopted a similar approach with the 'general codes' but the status of these codes is unclear. For example the BSB's handbook provides guidance on the status of the core duties and specifically sets out that they are not presented in any order of importance. The

	<p>guidance also highlights where some core duties might take precedence over others. The OISC may wish to consider whether it would be useful to provide something similar in their Code.</p> <p>Some aspects of the general Code also appear to be quite detailed and mirror other provisions. For example code 13 is very prescriptive and also contains what is already set out in the other general codes i.e. the requirement for an organisation to provide a member of the tribunal staff, immigration judge and others confirmation of their authorisation to provide immigration advice or services would already be covered by code 8 – that an organisation must ensure that no unauthorised person provides immigration advice or services. Similarly the requirement in Code 13 for organisations not to mislead the Commissioner, government departments or any other statutory body could be covered by the general obligation for an organisation not to mislead under code 11.</p>
Dynamic Immigration Consultants	There is nothing abnormal about this. This will allow the advisers to know whom they owe duties. But I think more explanation could be to know the extent an adviser or organisation will go to check for the genuity of any supporting documents supplied by a client under Code 12.
Faculty of Advocates	<p>1. The obligations imposed by paragraph 9 are difficult to be clear on;</p> <p>2. Does the obligation in paragraph 11 extend to an innocent misleading?</p> <p>12 and 13(d)</p> <p>5. There is a tension between these two paragraphs. We think that the latter is to be preferred when it says that advisers must not knowingly permit themselves to be used in any deception. Paragraph 12 is much more demanding and it is not clear how it could be satisfied.</p> <p>14</p> <p>6. We wonder whether the obligation to have a written equality and diversity policy is a reasonable imposition on small organisations and sole traders? We suggest that the code should include what the Commissioner wants advisers to sign up to.</p>
Immigration Law Practitioners' Association (ILPA)	<p>Numbering is wrong. In what follows we have followed subject headings rather than paragraph numbers which are wrong throughout.</p> <p>In its 5 September 2012 response to the consultation on the Code of Standards (available at http://www.ilpa.org.uk/pages/non-parliamentarybriefings-submissions-and-responses.html) ILPA set out its opposition to</p>

	<p>replacing reference to individuals with reference to organisations. We reiterated this in our June 2013 response to the consultation on amending the Code where we said.</p> <p>Anyone giving advice or providing representation in immigration cases should retain responsibility to ensure that he or she is acting to the appropriate professional standards, ethically and legally, and is keeping his or her knowledge up-to-date.</p> <p>We do agree however, that organisations should also be responsible and should not be able to evade responsibility by scapegoating individual advisors.</p> <p>Regulatory activity takes place in relation to the organisation as well as individuals. Individuals should retain responsibility but the organisation should have vicarious liability as well. Employment law offers a precedent. The employer is responsible if the employee was acting in the course of their employment, and regardless of whether the employee has now left the organisation. To avoid liability employers must ensure that they have taken all reasonable steps to prevent the prohibited acts or omissions from occurring.</p> <p>We consider that the current draft code illustrates the problems with trying to replace references to individuals with references to organisation. Take Code 3 “No organisation must operate beyond their level”. Different advisors will have different levels. Even more problematic, Code 4 “When giving immigration advice or immigration services, organisations must act competently”. It is individuals who act or fail to act. It is individuals who give advice. The approach taken does not work. The OISC said in its 2012 consultation, in the preamble to question 1, “It remains important, however, for advisors to appreciate that, whether operating within a large company or alone, the code refers to them and applies in its entirety.” That clarity is lost in the current draft.</p> <p>References to organisations also mean that the issue of what to do when there is a conflict of interest cannot be covered.</p> <p>Code 2 “Under the OISC regulatory scheme an advisor is only authorised by the Commissioner to work for a specific organisation or organisations”.</p> <p>We are unsure what mischief is aimed at. The individual must be authorised to give advice and provide services at a particular level. The OISC must be satisfied that the organisation meets the standards it has set. But why should not an individual authorised to practice at Level 2, for example, work for any organisation regulated for advice and services to that level? If the individual went to an organisation only authorised to Level 1 they could be confined to that level unless and until the organisation applied to be permitted to undertake work to level 2. As we understand the position from correspondence with the OISC of which we hold copies an OISC advisor can transfer</p>
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	<p>their registration to permit them to work at another organisation if the Commissioner gives them prior authorisation to do so. We assume that this will continue and should welcome confirmation that it will.</p> <p>Code 3 “No organisation must operate beyond their level or in categories for which they have not been authorised.”</p> <p>See comments on individual v organisation above and see our general comments on the changing landscape at the end. We consider that work needs to be done to identify whether there are circumstances in which an organisation can be authorised to undertake a narrower spectrum of work at a particular level than is currently permitted, for example to undertake refugee family reunion work or applications where questions of immigration status are being dealt with in the context of, for example, applications under the destitute domestic violence provisions. We recognise that there would need to be triaging by those more generally competent before work were passed to persons with such a narrow specialism, but consider that such an approach has the potential to help to address some of the gaps in advice that are ever widening. The best protection against bad advice is the availability of good advice and it must be supported to flourish.</p> <p>We have come across considerable confusion as to whether a solicitor or barrister may work in an OISC-regulated organisation under their current practising certificate and Law Society Immigration and Asylum Scheme accreditation, as to what if any supervision they can do and as to whether they can work both for the OISC regulated organisation and elsewhere. We should welcome a clear statement of the position. To avoid contributing to confusion we have not set out our own understanding here, but should be happy to discuss it with the OISC.</p> <p>We have also come across confusion as to the position of volunteers. If an organisation is regulated, a volunteer with that organisation has passed the requirements for work at a particular level and the arrangements for the supervision of the volunteer meet the requisite standards, can that volunteer provide immigration advice and services or not? Volunteering should be supported at a time when there are so many problems with obtaining free immigration advice and services.</p> <p>Code 8. An organisation must ensure that no unauthorised person provide immigration advice or immigration services.</p> <p>As currently drafted this obligation is in no way circumscribed; the drafting should be addressed.</p> <p>Code 12 “Organisations must, as far as reasonably practicable, satisfy themselves that documents supplied to them in support of an application are genuine”</p>
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	<p>This code would require guidance if adopted, but we do not consider that it is appropriate. It is important that clients be advised to submit only genuine documents and of the potential consequences, including criminal liability, of submitting false ones. A person asked to submit a patently false document would no doubt be professionally embarrassed if the client continued to urge them to do so but this code appears to envisage something more: anti-fraud checks being carried out. This, risks setting the adviser up as advocate on the client's case. The documents are being submitted to the Home Office, which is in a far better position to detect fraud, falsity and forgery. We suggest that a clear statement of the duty not to mislead would be a better way to tackle this matter.</p> <p>This is partially addressed in Code 13 c. but could be made more general.</p> <p>If this paragraph is maintained, guidance will be required. Code 13</p> <p>See above. As to Code 13 (c), while OISC regulated advisors do not have rights of audience before the courts, they may have dealings with the courts in their professional capacity (including as witnesses etc.) and a statement of the obligation not to mislead the court would be appropriate.</p>
Smith Stone Walters Ltd	<p><i>Code 2 – in what circumstances does the Commissioner deem it acceptable for an adviser to work for more than one organisation at the same time? When employing a full-time adviser at Smith Stone Walters, we would not wish the same adviser to be acting as an immigration adviser for another separate organisation.</i></p>
St James's Church Legal Advice Services	<p><u>Clause 12: Satisfying ourselves that documents supplied are genuine</u></p> <p>I object to this. Clause 13 imposes professional duties not to mislead authorities, not to connive at deception and not to advise or perpetrate abuse of procedure. Those are all fine. But Clause 12 goes further and requires us to act against the interests of our clients by refusing to allow them to put forward a foreign marriage certificate because we have doubts about its genuineness. Surely our duty to our clients is to warn that the document he, or she, wants to put forward may be rejected and that additional evidence such as wedding invitations and photographs would help as corroborative evidence.</p>
UKCISA	<p>Introduction (page 1) the small Roman numerals have gone a bit wrong with a capital 'i' at the start of ii, iii, iv so that they read as li, lii, Iv respectively</p> <hr/> <p><i>Code 4: All organisations must remain fit and competent for the Level and Categories for which they are authorised</i></p>

	<p>Perhaps signpost / include a link for the Guidance on Competence?</p> <p>And will there be any accompanying guidance which might subsume some or all of what is currently in the 2012 Code of Standards at paragraphs 17-23?</p> <p>Code 7: Advisers must clearly identify themselves when giving immigration advice or services</p> <p>Would this mean just their name and the name of their organisation? Or something more, e.g. their OISC registration details?</p> <p>Code 9: Act in clients' best interests subject to regulatory and legal requirements</p> <p>Code 9 would, we think, benefit from accompanying guidance to illustrate in what kinds of circumstances any regulatory or legal requirements might override any general obligation to act in the client's best interests.</p> <p>This might be an adaptation of paragraph 3 of the OISC Practice Note 'Meeting client needs and client care' (2007). If so, this would need to be updated to include PBS sponsorship requirements and to clarify that the examples given are not exhaustive.</p>
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Provision of immigration advice and services online (Codes 16 to 17)	Response/Comments
Aaryas Career Ltd	Services provided online must ensure that the online information clearly explains what advice and services they can provide. Include time frames for delivery for work and cost. Clear and prominent statement on their website with current regulation including cooling-off period.
Bail for Immigration Detainees (BID)	Code 17 The requirement that an organisation providing online services must include a clear statement that they comply with current regulations "including any cooling-off period to which clients are entitled" would seem to be unclear. Does this relate to a statutory cooling off period or one that an organisation may itself wish to provide? Either way this should be made clear.
Bar Standards Board	An increasing number of business models are emerging that provide legal services online. The OISC may wish to consider

	<p>including in codes 16 and 17 a general provision that sets out that, the same ethical obligations apply to conduct in an online environment as they would otherwise. As codes 16 and 17 are also very high-level, the OISC may wish to consider whether there are any specific risks posed to consumers by an online model that wouldn't otherwise be present - this could then be further dealt with in guidance.</p>
Faculty of Advocates	<p>16 & 17</p> <p>7. The Faculty is concerned at the implication of these paragraphs that immigration advisers may be dealing with clients whom they have not met and in respect of whom they have not followed requirements arising out of money-laundering concerns.</p> <p>8. The need for advisers to know who their clients actually are would suggest that they should be subject in this regard to obligations similar to those incumbent on solicitors.</p>
Immigration Law Practitioners' Association (ILPA)	<p>Code 16</p> <p>It is of concern that this envisages that all clients are paying clients. The regulation of not for profits is an important part of the OISC's work and that such organisations thrive is essential if persons without means are to obtain advice and representation. The insertion of the word "any" before costs would address this.</p> <p>It should be made clear that all the standards that apply to face to face advice apply also to advice online and that these paragraphs spell out additional, not alternative protections.</p> <p>As per our August 2013 response to the consultation on the Code, record keeping is of particular concern.</p> <p>We reiterate the suggestion we made in that response as to matters the code should cover in its provisions on internet working:</p> <p>The appropriate use of disclaimers (e.g. that advice given cannot be definitive without sight of original documents) and rules as to when the use of such disclaimers is and is not appropriate.</p> <p>Further consideration should be given to the question of cooling off periods and whether specific periods are appropriate in this context. A guidance note would be appropriate explaining such periods. Not everyone understands the term "cooling off period" and it should be explained.</p>
The Legal Ombudsman	Code 16 – The Legal Ombudsman supports the inclusion of

	<i>'the generally expected timeframes of delivery of such work'.</i>
Smith Stone Walters Ltd	No comments to make.
St James's Church Legal Advice Services	<p><u>Clauses 16 and 17 Online services</u></p> <p>I hope that inclusion of our email address in the OISC directory is not going to be interpreted as an offer to provide immigration advice or immigration services on line. At the most it is an invitation to treat, not an offer. I receive one or two inquiries every week from people who email us from abroad because we are almost the only NFP organisation that helps people who are outside the UK. But we never charge and we never go beyond level 1 advice. "Cooling off" doesn't arise.</p> <p>If there is a risk of these two clauses being applied to free services like ours I would suggest that the opening words in each of them should be</p> <p>"An organisation that charges for immigration advice or immigration services on line"</p>

Conflict of interest (Code 18)	Response/Comments
Aaryas Career Ltd	Detailed explanation in writing to a client any circumstances in which the organisation have this should include all interest. And Advantage or potential conflict the client may have in action to act. The client should be given time to read through the information once agreed then adviser can act on behalf.
Bar Standards Board	<p>The BSB's Handbook sets out detailed rules and guidance on conflicts of interests. Specifically rc21 of the Handbook highlights the circumstances in which barristers should not accept instructions when there is:</p> <ol style="list-style-type: none"> a. A conflict of interest between the barrister's own personal interests and the interests of the prospective client in respect of the particular matter or; b. There is a conflict of interest between the prospective client and one or more of the barrister's former or existing clients in respect of the particular matter, unless all of the clients who have an interest in the particular matter give their informed consent to the barrister acting in such circumstances. <p>Guidance also accompanies this. Conflicts of interest can sometimes give arise to complicated questions around whether an adviser should or shouldn't act in a particular matter. Whilst it is not possible to provide detailed guidance or rules around every scenario that may arise, this is an area that</p>

	could perhaps benefit from some guidance.
Bail for Immigration Detainees (BID)	No comments to make
Immigration Law Practitioners' Association (ILPA)	See above. References to organisations in the general codes result in obfuscation of the application of those codes to conflict of interest situations.
Smith Stone Walters Ltd	No comments to make.

Client care letter (Code 19 to 22)	Response/Comments
Aaryas Career Ltd	<p>An organisation must provide every client with a client care letter and should not work until the client has agreed.</p> <p>Must keep a record of the client's agreement by way of a signed and dated copy.</p> <p>Must contain Code 22.</p>
Bail for Immigration Detainees (BID)	<p>Codes 19 and 20</p> <p>Section 20 requires organisations to obtain confirmation from clients that they agree to the contents of their client care letter before carrying out work on a client's behalf. Given that a client care letter itself constitutes work and is likely to be carried out after attendance with the client, the second sentence could benefit from the addition of the word 'further' so as to read: "The organisation should not do any further work for a client until they have agreed their client care letter.[...]"</p> <p>In view of the above suggestion it may be helpful to amend section 19 so as to add the following words given in italics: "An organisation must provide all potential clients with a client care letter at the outset of their case."</p> <p>Codes 19-22</p> <p>BID would welcome the opportunity to comment on the proposed guidance to codes 19-22.</p>
Bar Standards Board	The BSB has no comments on codes 19-21 of the client care letter. However code 22 seems highly prescriptive in comparison to the rest of the code. If guidance will be accompanying these provisions in any event, the detail of what goes into the client care letter could be contained within

	the guidance.
Immigration Law Practitioners' Association (ILPA)	<p>Code 20</p> <p>The reference to provision of a client care letter “other than in 5 exceptional circumstances” is vague. What is intended and what protection is afforded the client in such circumstances?</p> <p>Code 22</p> <p>It is of concern that this envisages that all clients are paying clients. The regulation of not for profits is an important part of the OISC’s work and that such organisations thrive is essential if persons without means are to obtain advice and representation. The Code of Standards must be easy for them to work to.</p>
The Legal Ombudsman	<p>Code 20 – We note the requirement that no work is carried out until a client has agreed their client care letter, other than in exceptional circumstances. Does OISC consider that the nature of immigration work may give rise to situations that require advisers to begin work before a client care letter is issued, particularly given any vulnerabilities in that client group? There is a risk that the potential need for urgent action here may be hampered by process.</p>
Smith Stone Walters Ltd	<p><i>Code 19 – Is it possible to make a distinction here between individual clients (who pay for immigration services themselves) and corporate clients (who pay for immigration services for their employees)? In the former case, it makes perfect sense to issue a client care letter to each individual. In the latter, we already have existing contracts in place between ourselves and the client companies to provide services to their employees – in these cases we would argue that email advice notes to the employees are more effective than client care letters as issues such as payment, complaint handling etc are all managed by the corporate client, not their individual employees.</i></p> <p><i>Code 20 – As outlined above, when working with corporate clients we are taking our instructions from the client company, not the individual employee.</i></p> <p><i>Code 22 – We have comments in relation to 3 sub-points here:</i></p> <p><i>(b-c) We suggest that a statement of the client’s position, options proposed and full details of the client’s instructions can be included in a separate advice note to the client which is referred to in the client care letter, in order to avoid client care letters becoming unnecessarily long. We have historically operated in this way following agreement with our OISC caseworker that this was an acceptable way to proceed.</i></p> <p><i>(h) We query the necessity of giving such photocopies to clients and making this a mandatory part of the client care letter. Not only do clients often take copies themselves</i></p>

	<p><i>before handing us the originals, but we also retain copies on file until such time as a case is completed. We would therefore be in a position to provide a client with a copy of his/her documents if necessary, but do not see any merit in automatically providing copies to clients in every case, particularly as doing so would inevitably increase the cost to our clients. Our preference would be for this sub-point to be removed completely because it is unnecessarily onerous and would increase both costs for the client and administration for the organisation. The same point about photocopies is raised later in Code 53 which we suggest is retained but reworded.</i></p>
<p>St James's Church Legal Advice Services</p>	<p><u>Clauses 19-22 Client care letter</u></p> <p>Client care letters may serve a good purpose where fees are being charged although, in my experience, their real value is not to protect the client but to give the service-provider a blank cheque to recover charges at a specified rate over an unspecified number of hours. We often have people who have been to solicitors asking us to explain what the client care letter means in terms of what they can expect to have to pay. The answer is always "It all depends how long it takes". The same applies to Conditional Fee Agreements. I saw one recently which was described as No Win No Fee but which exposed the client to enormous liabilities if successful!</p> <p>More important, from the point of view of the Not-for-Profit providers, a client care letter imposes a long bureaucratic procedure at the start of the first meeting. A drop-in client has first to articulate his problem. Lets us say he wants to bring his wife over to live with him in the UK. By the time he has explained his problem the not-for-profit adviser can tell him what to do, can promise to email him a link to the forms and the relevant part of the Immigration rules and can invite him to come back when he has been through the email if he needs further advice. But the proposed client care letter has to be drawn up before the advice-giving can start and it has to be typed up to include "a statement of the client's position and the options proposed by the adviser" and "full details of the client's instructions, the work agreed to be done with estimated timeframes" and a lot of standard details about contacts etc which can be handed to the card as Terms of Engagement while waiting to be seen. All this has to be reproduced over again in a client care letter with explanations about the non-charging of fees and the non-holding of client money. The caller has therefore to be told to come back next week to go through the proposed client care letter, agree it and sign before the advice can be given. Instead of a single 15 minute interview there have to be two or three and there is less time left to see callers about welfare, debt, housing etc who don't require a client care letter. Incidentally it should not be assumed that photocopying originals is always possible or appropriate. It is sometimes necessary to read leases or employment manuals or codes which are of marginal</p>

	<p>relevance to the immigration issue and where provision of photocopies is a disproportionate expense and sometimes not practicable.</p> <p>The preferred solution, if the NFP provision of immigration advice is to survive, is to confine the client care letter to where it is needed i.e. in the fee-charging sector, by starting the client care provisions with:</p> <p>“An organisation that charges for its immigration advice or immigration services” [to use the wording of clause 56] “must provide all potential clients with a client care letter, in accordance with the provisions below”.</p> <p><u>Alternatively</u></p> <p>You could confine the need for a client care letter to the provision of immigration services [and omit “immigration advice”] and have one set of requirements for fee-paying services and another one for non-fee-paying. This would then follow the model letters that organisations are working on now, significant features of which are</p> <ul style="list-style-type: none"> (a) they are directed at situations where the client wants representation (“instructions to act for you”) ie not just advice but <i>immigration services</i>; and (b) they provide different models for (i) the NFP sector and (ii) the fee paying sector.
T & S Immigration Services Ltd	<p>Page 4 (point 22) – client care letter. I have several problems with this, mainly because we don’t handle the kinds of cases your organisation is used to. We handle Tier 5 Certificates of Sponsorship for bands, DJs, racing drivers, theatre troupes etc. Often these are for repeat clients such as record companies, booking agencies, concert promoters etc., but we also deal directly with the overseas entertainers or their management companies. This presents several issues to do with the regulations on client care letters:</p> <ul style="list-style-type: none"> 1) The guidance is obviously aimed at Home Office cases where the adviser will be handling passports and dealing with people who are already here in the UK – that is never the case with us. Hence we feel it’s a bit ‘over the top’ in our case. 2) The jobs we get are often from repeat clients; Warner Music might call us and say “We have so-and-so coming in next week to do Later With Jools Holland and the Jonathan Ross Show”. This might be the 20th act we’ve done for Warner Music in the last year. Surely we don’t have to do a client care letter anew for each one?

	<p>3) The points covered in the letter are usually covered in several different emails between us and the client, depending on what they ask us. For instance we'll tell them some things in one email but then might give them a price quote in a separate message. Your guidelines seem to say these things must be covered all in one letter, but that isn't always practical.</p> <p>4) It would be onerous for us, and very boring for the client, if we have to detail our complaints procedure to every client for every job. Could we not point them to our complaints procedure on our website or something like that? We've handled about 50,000 work permissions in our 23 years in this business, and only ever had one complaint.</p> <p>We're not like most advisers you deal with – for instance we often work on very short time-frames; we can get an initial call in the morning, finish the case by lunchtime and never deal with that client again. Our clients' acts are generally here for less than 2 weeks.</p>
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Confidentiality (Code 23 to 24)	Response/Comments
Aaryas Career Ltd	<p>Confidentiality of all of the information it holds relating to each of its clients.</p> <p>Must ensure that discussions or advice is given in a confidential manner.</p>
Bail for Immigration Detainees (BID)	<p>Codes 23-24</p> <p>BID would welcome the opportunity to comment on the proposed guidance to codes 23-24. BID will in particular welcome clarification of any guidance relating to the holding of electronic data, and the requirement to delete such data at the point when a case ends and/or at the point when the case file is to be destroyed (i.e. at the 6 year point).</p>
Bar Standards Board	<p>The rules on confidentiality are very broad, as this area is complex this maybe another part of the Code that could usefully benefit from guidance. The BSB's rules on confidentiality can be found at rc15.5 and there is also accompanying guidance.</p>

Citizens Advice	This code could have cost implications for our members i.e. Citizens Advice Bureaux). We would like clarity in the guidance as to whether the requirement relates to clients with cases open or potential clients where we await confirmation of whether to act or not. The code would be onerous if it included clients we have acted for and whose cases are now closed - we may not have their up to date contact details and to maintain such data would be onerous and disproportionate. The scale of the impact including costs could only be determined once this is clarified.
Immigration Law Practitioners' Association (ILPA)	NB - there is no section in the response sheet on "Keeping Clients Informed" (paragraphs 25 to 29). We do not have any comments on this or on confidentiality.
UKCISA	Confidentiality is covered by Codes 14 and 90 in the current Code of Standards. It's good to see that Codes 23-24 will have accompanying guidance. However, we would recommend that the Code acknowledges that the organisation may be compelled to disclose information by reason of a legal or regulatory obligation. The guidance on these two paragraphs might be an adaptation of paragraph 3 of the OISC Practice Note 'Meeting client needs and client care' (2007). If so, this would need to be updated to include PBS sponsorship requirements and to clarify that the examples given are not exhaustive.
Smith Stone Walters Ltd	No comments to make.

Keeping clients informed (25-29)	Response/Comments
Aaryas Career Ltd	We suggest that this section includes that an adviser should inform their client whether any other legal service providers will be directly or indirectly involved with the provision of immigration advice and services online. Code 26 – We suggest clarification of the statement ' <i>each of their clients is kept regularly informed in writing</i> ' and the addition of ' <i>in proportion to the circumstances of the case</i> '. For example, there may be multiple applicants in the same household (i.e. a couple or a family) where one letter for them all would suffice.
BID	Codes 25-33 BID has no comments to make with regards to codes 25-33
Citizens Advice	Code 27 This could have an impact on our members if they have an

	immigration adviser only working 1 or 2 days per week. Not all members can guarantee 5 day cover as the cost would be prohibitive.
Smith Stone Walters Ltd	No comments to make.

Interpreters and translators (Code 30)	Response/Comments
Aaryas Career Ltd	Must ensure a suitable interpreter or translator is used (if required)
Bar Standards Board	The BSB has no comments on this.
Immigration Law Practitioners' Association (ILPA)	Code 30 Guidance is needed to indicate what constitutes suitable. For example it may be appropriate, with client's consent, to use friends and family as interpreters in arranging appointments etc. where it would not be appropriate to use them in respect of the substantive case. It is also not appropriate to use persons who may be witnesses.
Smith Stone Walters Ltd	No comments to make.
UKCISA	We think this could benefit from accompanying guidance based on Codes 92-95 of the current (2012) Code of Standard – these Codes contain some crucial principles.

Obtaining additional advice, opinions and professional services (Codes 31 to 33)	Response/Comments
Aaryas Career Ltd	With the clients consent, an adviser may obtain additional advice from other professional services from qualified person. Any additional cost must be made aware to the client and noted in the file. Responsibility for the payment of any fees and costs incurred remains with the organisation.
Bar Standards Board	The BSB has no comments on this.
Immigration Law Practitioners' Association (ILPA)	Codes 31 to 33 It is unclear to us whether these paragraphs or those below on outsourcing work are intended to cover instructing a barrister

	where the advisor is authorised to do so. We consider that for the avoidance of confusion it would be appropriate to deal with instructing a barrister under these paragraphs and recommend making this explicit.
Smith Stone Walters Ltd	<i>Code 32 – We suggest an additional sentence at the end of this code to read as follows: “ ... Alternatively, an email from the client confirming their consent should be held on file.”</i>

Outsourcing work (Codes 34 to 35)	Response/Comments
Aaryas Career Ltd	With the client’s written consent, outsource a particular aspect of the client’s case. Overall control of the client’s case including for the quality of the outsourced work done. Outsourced work cannot be above organisation level.
Bail for Immigration Detainees (BID)	Codes 34-35 BID would welcome the opportunity to comment on the proposed guidance to codes 34-35 Code 34 BID is concerned by the OISC’s decision to allow organisations to ‘outsource’ aspects of a client’s case while expecting the instructing organisation to retain overall responsibility and overall control of a client’s case. BID would prefer to see cases being referred to another suitably qualified and equipped organisation in circumstances where the referring organisation is unable to carry out necessary work on a case. Code 35 Assuming that the OISC’s proposed Code 34 is adopted, code 35 could benefit from further clarification so as add the following words in italic: “Outsourced work cannot be above or outside [or ‘beyond the remit of’] the instructing organisation’s Level and categories”. Or preferably changed to the following: “Outsourced work must be within the instructing organisation’s Level and categories.
Bar Standards Board	The OISC may wish to consider the BSB’s rules on outsourcing. They can be found in section C5 of the Code of Conduct, specifically rc86
Faculty of Advocates	34 & 35 9. We consider that each piece of work should be undertaken by the relevant adviser as that adviser's client. We consider that having a direct

	relationship is the least complex even although this involves setting up another client/adviser relationship. The alternative will inevitably involve unclear lines of responsibility.
Immigration Law Practitioners' Association (ILPA)	As per our August 2013 response we do not consider that the outsourcing of work should be permitted. If, contrary to our view, this is to be done, there should be a definition of out "outsourcing", a clear explanation of to whom work can be outsourced. The draft code makes provision for guidance, and this would be essential, but we suggest that these matters should not be left wholly to guidance but spelt out in the code. It will be necessary, of outsourcing is pursued, to make provision for outsourcing work to solicitors. It is unclear to us whether these paragraphs are intended to cover instructing a barrister where the advisor is authorised to do so.
Smith Stone Walters Ltd	No comments to make.

Temporary inability to work (Code 36)	Response/Comments
Aaryas Career Ltd	Must have arrangements in place if current client's adviser is unable to work for a temporary period so that the client's case can be continued.
Bail for Immigration Detainees (BID)	Code 36 BID would welcome the opportunity to comment on the proposed guidance to code 36
Bar Standards Board	The BSB has no comments on this.
Citizens Advice	Code 36 Definitions in the guidance relating to the timeframe of a "temporary period" would be helpful. There could be practical implications of this for bureaux – the code here, and at 27, seems to assume that an organisations structure provides full time paid roles, which is very often not the case.
Smith Stone Walters Ltd	<i>No comments to make.</i>
Termination of instruction by the client (Code 37)	Response/Comments
Aaryas Career Ltd	With the client's instruction if they decide to terminate their instruction, then arrangements for all documents must be returned as soon as possible. Where removal is imminent, their file must be delivered to the client no later than 3 working days from the receipt of the

	termination.
Bail for Immigration Detainees (BID)	<p>Code 37</p> <p>This section requires further clarification. If a client terminates their instructions, do the documents from the case that must be provided to the client include copies of all correspondence previously sent to the client, together with copies of all calls and other work conducted on the case? If so, should the paragraph not simply state that the file should be provided to the client? But assuming that a copy of the file must be retained by the advisor in case the OISC would wish to inspect it, perhaps the reference to the documents should be to a 'copy file', while confirming that the advisor's copy should be retained for six years?</p> <p>This section may therefore benefit from associated guidance.</p>
Bar Standards Board	The BSB has no comments on this.
Citizens Advice	We would hope to see very clear details in the guidance to this code.
Dynamic Immigration Consultants	Examples can be given on instances where an adviser or organisation could withdraw from the case of a client.
Smith Stone Walters Ltd	No comments to make.

Withdrawing from a case (Code 38 to 40)	Response/Comments
Aaryas Career Ltd	<p>Must not withdraw or threaten to withdraw without good reason.</p> <p>3 days notice before withdrawing.</p> <p>Must inform everyone involved in case about the withdrawal.</p>
Bar Standards Board	The OISC may wish to include more detail on this point. Stating that an organisation must not withdraw from a case except for 'good reason' is quite vague. Although there will be guidance accompanying this Code the OISC may wish to consider whether there should be a defined set of circumstances in which an organisation could withdraw. The BSB at rC26 sets out the circumstances in which a barrister may cease to act and return instructions. This is then further supplemented by guidance in the Handbook which the OISC may wish to refer to. It is difficult to properly assess whether the OISC's provisions in relation to this area are sufficient without also seeing the guidance that will accompany the Code.
Bail for Immigration	BID would welcome the opportunity to comment on the

Detainees (BID)	proposed guidance to code 38-40
Immigration Law Practitioners' Association (ILPA)	<p>Typeface size presents this as a subset of "Termination of instructions by a client". We assume this is not what is intended and formatting should therefore be addressed.</p> <p>Code 40</p> <p>We are concerned at the practicalities of "which organisation is now acting, if known" because of the risks of this being incorrect.</p>
Smith Stone Walters Ltd	No comments to make.
St James's Church Legal Advice Services	<p><u>Clauses 38 to 40 (Withdrawing from a case);</u> <u>Clauses 42, 43 (ending of a client's case)</u></p> <p>Where an organisation is providing free advice on a drop-in basis the question of withdrawal does not arise. It sometimes happens that the client keeps on coming back to try and persuade the adviser to go back on the original advice or to start again on a different premise. The adviser must, of course, act professionally and this will often mean that he or she has already given appropriate advice and is not willing to go further. I don't think this is withdrawal. On the other hand where an adviser has agreed to represent a client for an agreed fee withdrawal before the job has been done has to be regulated. Here as elsewhere I suggest that the obligations should be limited to organisations that charge for immigration advice or services.</p>
T & S Immigration Services Ltd	<p>Paragraph 39 (page 6) says a client must be given at least 3 days' notice if we want to withdraw from a case. I understand the sense of that where an in-country application is concerned, but where a client is asking us to issue a CoS to someone who's not here in the UK I feel that is excessive. For instance, we have had situations where the criminal or anti-social nature of a client's overseas national has only come to light after we have given them some initial advice. Where we find that someone (an example being Mike Tyson) is inadmissible to the UK due to their prison time we will withdraw from the case – there is no purpose in us saying "we will withdraw from this case in 3 days" – we just withdraw and advise the client to cancel the trip. Can I be assured your organisation does not intend to prevent us from withdrawing with immediate effect in cases where 3 days' notice would make no difference? Or, bearing in mind we won't have actually applied for anything in the above example, could we back out of a case before an application is made and then not be bound by the 3-day rule?</p>

	Definition terms – page 11. This does not seem to clearly exempt employers who provide immigration employment documents for those they contract / employ. Maybe I'm missing something.
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Transferring the client's file (Code 41)	Response/Comments
Aaryas Career Ltd	3 working days file should be transferred if clients want.
Bar Standards Board	The BSB has no comments on this.
Bail for Immigration Detainees (BID)	Codes 41-49 BID has no comments to make with regards to codes 41-49
Dynamic Immigration Consultants	After transferring the documents, some clients will not pay, in such a situation, can the best way of balancing up be suggested by the Commissioner.
Immigration Law Practitioners' Association (ILPA)	No provision is made for a lien to be exercised in respect of unpaid costs. What protection will exist for advisors?
The Legal Ombudsman	Code 41 – We note that where a client requires that their case be transferred to another organisation, irrespective of whether payment is outstanding, all documents must be transferred as soon as possible and no later than three working days. The Legal Ombudsman notes that other legal services oppose this particular stance and suggests it is unclear where the interests of the service provider lie here.
Smith Stone Walters Ltd	No comments to make.
Ending of a client's case (Codes 42 to 43)	Response/Comments
Aaryas Career Ltd	Written statement once completion of a client's case. (1) Confirmation that the case has been completed. (2) List of documents being returned (3) A final financial statement where withdrawal is concerned the written confirmation, confirming the withdrawal (list of documents) final financial statement.
Bar Standards Board	The BSB has no comments on this.
Immigration Law Practitioners' Association (ILPA)	Code 42 42(c) again seems to assume all clients are paying clients. It is vital that the code works for not for profits.

	We see nothing about storage of papers. It will not in all circumstances be possible to return all papers to a client (for example if the client is removed without warning). It is vital that proper provision be made for the storage and retrieval of papers. See also further comments on Code 54.
Smith Stone Walters Ltd	Code 42 - As we work on fixed fees, and many of our clients are employees of corporate clients who are not paying for their own immigration services, point c. will often not be relevant. We would like to suggest that this is amended to read: c. a final financial statement (if applicable).
St James's Church Legal Advice Services	I feel the same way about 42 and 43. Giving fifteen minutes of advice to a drop-in client may include a perusal of the client's documents that are handed back with summary advice. One really should not have to prepare and post, or email a written statement that the services have ended and the listed documents have been returned and that there is nothing to pay. On the other hand where a NFP organisation provides immigration services (representation) as well as advice I can see an argument for saying what should happen when it has come to an end. So my proposal is that in these two clauses the word "case" should be followed by "involving the provision of immigration services"

Referral fees (Code 44 to 45)	Response/Comments
Aaryas Career Ltd	Totally agree a regulated person must not demand or accept from any person a fee.
Bar Standards Board	The OISC should consider producing guidance on this subject. This has been a contentious and complicated subject for the Bar and the BSB has produced detailed guidance to supplement a high-level rule. The rule (rC10) simply states that 'you must not pay or receive referral fees.' The BSB has defined a referral fee as 'any payment or other consideration made in return for the referral of professional instructions by an intermediary. For the avoidance of doubt, a payment for the provision of a particular service or for some other reason, and not for the provision or referral of professional instructions is not a referral fee for the purposes of this definition.' As well as guidance in the Handbook the BSB has further guidance on its website which can be found at the following link:

	<p>Guidance on Referral and Marketing Arrangements for Barristers Permitted by the BSB</p> <p>This guidance was drafted as the BSB recognises there are certain circumstances in which referral and marketing arrangements would be permitted by the rules and that there are a variety of possible payment arrangements which would not give rise to prohibited referral fees. The OISC may also similarly wish to consider whether there are any situations that may arise (for example in the sphere of marketing) where further guidance may be beneficial.</p>
Smith Stone Walters Ltd	No comments to make.

Running the organisation (Code 46 to 49)	Response/Comments
Aaryas Career Ltd	<p>Affectively apply appropriate management structure, governance arrangements, processes and policies to support and maintain a viable and sustainable business.</p> <p>Must inform the Commissioner of the individual who has overall responsibilities Business Plan for its current year.</p>
Bar Standards Board	The OISC may wish to consider the BSB's rules and associated guidance on administration of chambers, which can be found at rC89.
Smith Stone and Walters Ltd	No comments to make.

Supervision of a person operating above their Level or category (Code 50)	Response/Comments
Aaryas Career Ltd	Permitted to have person operating above their authorised level or in categories for which they are not authorised if Commissioner has given written approval.
Bar Standards Board	The BSB has no comments on this.
Bail for Immigration Detainees (BID)	<p>Codes 50-66</p> <p>BID would welcome the opportunity to comment on the proposed guidance to codes 50-66</p>
Immigration Law Practitioners' Association (ILPA)	We do not understand proposed Code 50.
Smith Stone Walters Ltd	No comments to make.

Records and case management (Code 51 to 54)	Response/Comments
Aaryas Career Ltd	<p>Effective file management system which is kept clear. Secure records of actions done on behalf of a client must clearly indicate the name of the adviser. Organisation returns the clients documents as soon as possible. Records kept for 6 years.</p>
Bar Standards Board	<p>The OISC may wish to consider specifically referring to confidentiality in this Code. For example the BSB has guidance in the Handbook to accompany a rule that sets out that there must be proper arrangements in place to ensure the confidentiality of clients' affairs. The guidance goes onto state that this duty would include:</p> <ul style="list-style-type: none"> • Putting in place and enforcing adequate procedures for the purposes of protecting confidential information; • Complying with data protection obligations imposed by law; and <p>Taking reasonable steps to ensure that anyone who has access to such information or data in the course of their work, complies with these obligations</p>
Smith Stone Walters Ltd	<p>Code 53 - As per our comment under Code 22, we query the necessity of giving such photocopies to clients. Not only do they often take copies themselves before handing us the originals, but we also take copies of original documents to retain on file until such time as a case is completed. We would therefore be in a position to provide a client with a copy of his/her documents if necessary, but do not see any merit in automatically providing copies to clients in every case. We suggest code 53 is reworded along the following lines:</p> <p>“53. When an organisation receives a client’s original documents it must promptly provide a photocopy of the documents to the client if requested. The original documents must be returned to the client as soon as possible.”</p>
St James’s Church Legal Advice Services	<p>Clauses 51 to 54 (Records and case managements)</p> <p>I have mentioned that photocopying is not always a practical possibility with volunteer advisers, nor is it always necessary eg where the client hands the document to the adviser to read and has it handed back at the end of the interview. I would be happier with</p> <p>“When an organisation receives a client’s original documents they must be returned to the client as soon as possible and, in the meantime, photocopies should be provided wherever practicable.”</p> <p>Our practice is to keep the cards that constitute our records</p>

	<p>forever. But the papers including the client's documents as well as ours are returned when it's all over or, if the client agrees, destroyed. We have absolutely no facilities for six year storage of dead files.</p>
<p>ILPA</p>	<p>Code 54</p> <p>ILPA has repeatedly expressed concerns about how this is to be enforced and indeed has taken the matter to the commercial court, in the case of the Immigration Advisory Service. We said in our 24 May 2012 response to the Legal Services Board consultation on the regulation of immigration advice and services:</p> <p>We have highlighted concerns that the OISC Code of Standards is enforced, with particular reference to the obligation to store client files for six years. When this issue arose when the Immigration Advisory Service went into administration, the OISC indicated that as soon as the organisation went into administration it had no powers to ensure that the files were stored in accordance with undertakings given in the Code of Standards. The Immigration Services Commissioner wrote to the General Secretary of ILPA on 20 December 2011 in the following terms:</p> <p>“As you may recall, we have previously discussed and corresponded about this issue and I have advised you that current legislation gives the OISC no jurisdiction over client files once an organisation ceases to be regulated by my Office. When an organisation leaves the OISC scheme we provide clear instructions that it should arrange for its client files to be transferred to another approved advice provider. Unfortunately, once an organisation is outside of my scheme, I have no powers of enforcement. The OISC ceased to regulate the Immigration Advisory Service on 2nd August 2011.</p> <p>I continue to have discussions with the Home Office /UKBA about introducing changes to the 1999 Act including on this issue and hopefully a suitable legislative vehicle will be found during this Parliament. While I appreciate your concerns about this issue generally and specifically in relation to this former OISC regulated body, given the limits of the legislation, I do not feel that I have any standing in this matter and therefore can do anything further.”</p> <p>This is unsatisfactory for all the reasons ILPA set out in its witness statements for the purposes of the court proceedings In the matter of the Immigration Advisory Service (In Administration) and in the matter of the Insolvency Act 1986, No 5980 of 2011.</p> <p>No changes were made in the Immigration Act 2014.</p>

Fees and accounts (Code 55 to 66)	Response/Comments
Aaryas Career Ltd	<p>No paid the Commissioner the required application fee, must not charge client.</p> <p>Must have a fee scale, should be available upon request. Ten working days informing before fee scale changes.</p> <p>Reasonable charges, written invoice if payment is received first.</p>
Bar Standards Board	<p>Barristers are not permitted to hold client money so although we have some rules on fees (see rC88) they are not as detailed as the OISC's. The BSB has no further comments on this Code.</p>
Immigration Law Practitioners' Association (ILPA)	<p>Code 56</p> <p>What is intended by an agreed fee scale? We have a number of members who have made strenuous efforts to set out their fees and we have seen many law centres consider this where they have made provision for charging. It is possible to set out hourly rates; it is hard to give an indicative number of hours. Fixed fees can be set in straightforward cases but as one solicitor member whose firm has long been committed to publishing its fees put it "now almost no cases are straightforward."</p> <p>Code 62</p> <p>Client account or clients' account, not Client's account.</p> <p>Clause 66</p> <p>We do not know what is envisaged by "otherwise verified" business accounts. In the case of a charity, if it satisfies the Charity Commission as to its accounts, will this be sufficient?</p>
The Legal Ombudsman	<p>We note this section does not mention VAT (although it is in the Client Care Letter Section). Different provisions may apply to different clients, and these provisions are therefore not clear for either the consumer or the provider as to the relevance of VAT.</p>
Smith Stone Walters Ltd	<p>Code 57 - In our view this is far too prescriptive. We provide a copy of our up-to-date fee schedule to the OISC each year when we submit our company re-registration application. We question the need to send the OISC 10 days' advance notice of our intention to change fees. Could the OISC consider rewording this code? If this wording is in place to prevent companies making massive fee increases to unsuspecting clients (?) could a distinction be made between significant</p>

	proposed changes to fees versus small fee increases which we may choose to <i>implement to remain</i> competitive in the market place / keep in line with inflation etc without the need to give advance warning to the OISC each time?
St James's Church Legal Advice Services	<p>Clauses 55 to 66 Fees and accounts</p> <p>These provisions surely apply only to organisations that charge. I think this should be made clear. The need for audited business accounts ought not to apply to the NFP organisations. Their duty to provide financial accounts is owed to their funders, their members and, in some cases, the Companies Registrar and the Charity Commission. Immigration advice is a sideline in most NFP organisations.</p>

Display and use of the OISC registration number. OISC logo and OISC certificate of registration (Code 67 to 69)	Response/Comments
Aaryas Career Ltd	OISC number must be displayed on all advertisements. Logo must be used in accordance with the instructions with approval letter. OISC Certificate must be prominently displayed at the main business premises.
Bar Standards Board	The BSB has no comments on this.
Bail for Immigration Detainees (BID)	Codes 67-70 BID has no comments to make with regards to codes 67-70
Immigration Law Practitioners' Association (ILPA)	<p>Code 67</p> <p>Is the reference to "publications" as opposed to "communications" deliberate? What of letters and/or emails and policies and procedures such as complaints procedures, copies of which are given to clients and third parties?</p> <p>Code 69</p> <p>Could provision be made for a certified copy of the certificate to be displayed at such offices, or for the information contained within it to be displayed, alongside the information as to where the original can be viewed?</p>
Smith Stone Walters Ltd	We believe Code 67 as currently worded is unnecessarily prescriptive, and would like to draw your attention to an extract from the equivalent code of practice for solicitors in relation to publicity (below) . We agree that the OISC registration number should appear on letterhead, website and emails but do not believe it should be a mandatory

	<p>requirement to include it on all printed and electronic publications produced by an organisation.</p> <p>http://www.sra.org.uk/solicitors/handbook/code/part3/rule8/content.page</p> <p><u>Chapter 8: Publicity</u></p> <p>“You must achieve these outcomes</p> <p>O(8.4) <i>clients</i> and the public have appropriate information about you, your <i>firm</i> and how you are regulated;</p> <p>O(8.5) your letterhead, website and e-mails show the words "authorised and regulated by the Solicitors Regulation Authority" and either the <i>firm's</i> registered name and number if it is an <i>LLP</i> or <i>company</i> or, if the <i>firm</i> is a <i>partnership</i> or <i>sole practitioner</i>, the name under which it is licensed/authorised by the <i>SRA</i> and the number allocated to it by the <i>SRA</i>.”</p>
St James’s Church Legal Advice Services	<p><u>Clauses 67 to 76 Display and Business promotion</u></p> <p>This is another instance where the voluntary and NFP sector is being treated as if its organisations are dedicated to providing immigration advice and services and do nothing else. The reality is that, for most non-charging organisations, immigration advice is provided as part of a generalist advisory service offered free to members of the community. We don’t want to promote our immigration advice “business” to the exclusion of all the other advice and assistance we provide. We do not all have premises as CAB do. Display of certificates seems disproportionate. We do not have to display our Consumer Credit Licence. This relentless pushing us to be like the private sector is a strong disincentive to continuing to provide a much needed service to people who can’t afford to pay for it. No wonder the number of applications is going down. Please, please, give us a break. Show that you care for our clients who have nowhere else to go: don’t make it harder for us to help them.</p>

Business promotion (Code 70 to 76)	Response/Comments
Aaryas Career Ltd	Clearly explains the advice or services offered and those descriptions along with qualifications and level. Must not promote statements about their organisation. The commissioner can refuse an organisation change of name.
Bail for Immigration	Code 73

Detainees (BID)	<p>This code prohibits organisations from making promotional statements about their organisation's success rate. This could however conflict with a charitable aim e.g. a project aimed at showing the benefits of funded legal advice and representation upon case outcomes, while seeking charitable donations so as to continue the project's work. This code could therefore be amended so as to allow promotional statements aimed at furthering a charitable cause.</p> <p>Codes 71-76</p> <p>BID would welcome the opportunity to comment on the proposed guidance to codes 71-76</p>
Bar Standards Board	<p>Rather than specific rules on advertising and business promotion, the BSB has general rules on not misleading clients and potential clients. This is supplemented by specific guidance which states that knowingly or recklessly publishing advertising material; which is inaccurate or likely to mislead could also result in breach of the misleading clients rule. The guidance goes onto state that barristers should be particularly careful about making comparisons with other persons as these may often be regarded as misleading. The OISC may wish to consider whether some of the rules in this section may be better placed in guidance.</p>
Citizens Advice	<p>Code 75</p> <p>This has implications for our members who merge, or change their area of benefit because they pick up services of failing bx, etc; we need to clear guidance on whether this impacts our organisations or not</p>
Immigration Law Practitioners' Association (ILPA)	<p>Code 74</p> <p>Particular attention should be given in guidance on code 74 to the appropriate use of the words "legal" or "law"</p>
Faculty of Advocates	<p>3. The restrictions on promotional material in paragraph 72 are said to be "orally or in writing" while the restrictions on promotional statements in paragraph 73 are not said to be "orally or in writing". These two paragraphs are counterparts of each other and we cannot see why the restrictions should be expressed differently in this regard.</p>
Smith Stone Walters Ltd	No comments to make.

Complaints (Code 77)	Response/Comments
Aaryas Career Ltd	Witten procedure of handling of complaints approved by the

	commissioner. Includes written statement informing clients that they have the right to complain to the OISC.
Bar Standards Board	The BSB has no comments on this.
Bail for Immigration Detainees (BID)	Codes 77-83 BID has no comments to make with regards to codes 77-83
Citizens Advice	This has implications for our members who merge, or change their area of benefit because they pick up services of failing bx, etc; we need to clear guidance on whether this impacts our organisations or not
Immigration Law Practitioners' Association (ILPA)	Code 77 We have some concerns that the approval requirement could lead to delays in making minor modifications to a code where glitches are discovered or where something in the organisation changes. Approval should be rapid and a high level rather than getting into discussions of detail. ILPA said in its August 2013 consultation response "Regular reviews of a log where complaints are collected in one place can highlight weaknesses in an organization and are a useful management tool." We consider that a complaints' log should be required. We consider that it is good practice to produce complaint forms in different languages but are concerned that the last non-English language forms published by the OISC date from 2007 and carried an outdated address and website.
Smith Stone Walters Ltd	No comments to make.

Notification to the Commissioner by organisations and advisers (Code 78 to 81)	Response/Comments
Aaryas Career Ltd	Must submit an appropriate application form 10 working days notification needed for any changes. 10 working days for any personal circumstances changes. Business, address change 10 working days notice needs to be given.
Bar Standards Board	In addition to what is contained in these Codes, the OISC may wish to consider whether they should include a general obligation for organisations to co-operate with their regulator. The BSB has this enshrined as a core duty. This is further supplemented by high-level outcomes and rules in section C4

	of the Handbook.
Immigration Law Practitioners' Association (ILPA)	<p>Code 78</p> <p>This is infelicitously worded. It is not for the OISC to determine whether an organisation can change its legal status; it is for the OISC to determine whether it continues to be authorised to provide immigration advice and services if it does so.</p> <p>Code 80</p> <p>We have no idea what is envisaged by a requirement to notify the OISC of any significant changes to one's personal circumstances and do not consider that this passage is appropriate.</p>
Smith Stone Walters Ltd	No comments to make.
Request for exemption from the Code's provisions (Code 83)	Response/Comments
Aaryas Career Ltd	Written reason for why exempted from any Code or part of a code. Until commissioner has given agreement no adviser is exempt.
Bar Standards Board	The BSB has no comments on this.
Immigration Law Practitioners' Association (ILPA)	<p>Code 83</p> <p>The Code is a reference document for clients and third parties, including another advisor, so that they know what they can expect from an OISC regulated advisor. How will they find out that an exemption has been made?</p>
Smith Stone Walters Ltd	No comments to make.

Any separate or further comments you may wish to make	Response/Comments
Bar Standards Board	The BSB has no further comments.
Citizens Advice	This is a general comment - we would ask for clarification in the guidance as to whether the codes apply to organisations such as members of Citizens Advice that only give advice to level 1 on a non-fee charging basis. As opposed to those giving advice at Level 2/3.
Dynamic Immigration Consultants	There is no part of the proposed changes that seems dissatisfied. All the information in the draft are well styled and structured. Apart from the above observations, the changes are necessary in order to get the best from the advisers.

<p>Faculty of Advocates</p>	<p>2. We note the extensive intention to issue guidance. In general, our view is that any requirements which are mandatory for advisers must be in the Code and contained within one single document. If it is proposed to relieve advisers of certain burdens and to contain these as guidance only these should be contained in separate guidance.</p> <p>3. We regret that the references to “adviser” in the previous code have been replaced with the word “organisation” “except where the obligation is clearly an individual one.” We consider that the term adviser is unambiguous and properly represents the person who should be regulated. This form of drafting has produced a highly unsatisfactory result. Using paragraph 46 as an example, it appears that individual advisers, at least if in sole practice, must “...have and effectively apply appropriate management structures, governance arrangements, processes and policies to support and maintain a viable and sustainable business...” and that, as they must be available for inspection, must presumably be in writing. We wonder whether this is intended as a burden on individual advisers? We note the obligation to obtain authorisation before making a name change. This would appear to apply to a person who wishes to do this on marriage.</p> <p>4. Generally, the drafting of the code is poor and ungrammatical; many sentences start out singular and finish plural.</p>
<p>Immigration Law Practitioners’ Association (ILPA)</p>	<p>We see nothing in the code on the co-location of supervisor and supervised. This omission should be addressed. This is of concern. ILPA said in response to the 2012 consultation</p> <p>An organisation seeking to provide the highest standards of supervision will wish to co-locate the supervisor and persons supervised. A supervisor who is in the same location as persons supervised can see and oversee what those being supervised are doing and also be approached directly with requests for support. Colocation is not a sufficient condition for adequate supervision, but we consider it to be a necessary one. Persons may spend some time working off –site, but the underlying arrangement will be that their place of work is one collocated with their supervisor.</p> <p>An organisation not seeking to provide the highest standards of supervision will find it easier to cut corners by isolating supervisors from those supervised. We also consider that it is likely to be more difficult to demonstrate that the supervisor</p>

knew or ought to have known or poor practice if they are not located in the same place as those supervised.

ILPA commented in the June 2013 response to the OISC consultation on amending the Code and Rules on its concern at the range of work permitted at Level 1, given the requirements for qualifying at that level, and also on the significant and increasing body of persons of limited means who do not qualify for legal aid and the need to support those wishing to become regulated to assist them. We suggested that there was merit in exploring whether level one might be split into two, with a lower level designed for not for profits who want to offer assistance with basic matters and a higher level, with much more stringent entry requirements to make greater demands of those currently doing the range of level one work. Those comments can be found at <http://www.ilpa.org.uk/resources.php/21061/response-from-theimmigration-law-practitioners-association-to-the-office-of-the-immigration-service>

We set out the relevant part of that response below.

Regulation by the OISC is not keeping pace with changing landscape of immigration advice and the loss of previous protections against poor advice and exploitation. This is a matter deserving of urgent attention.

A changing landscape

We observe with some dismay that only in the Immigration Act 2014 are changes made to the Office of the Immigration Services Commissioners powers some of which have, on any sensible analysis, been outstanding since 1999. These came into force in part on 20 October 2014 and come fully into force on 17 November 2014. With immigration acts, or acts in part about immigration, in 2002, 2004, 2006, 2007, 2008, 2009, there has been no lack of legislative opportunity to address these lacunae. We are glad that they are being made now; they should have been made ere now.

The immigration, asylum and nationality law, regulatory and funding landscapes have changed greatly since 1999. In particular there have been cuts to legal aid, including the removal of many immigration cases from the scope of legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Local authority funding for legal aid has been cut considerably. The Immigration and Asylum Act 1999 has not proven to be the acme of complexity in immigration law that it appeared to be at that time.

The idea of regulation is to protect people from poor quality advice and/or unscrupulous advisors. In 1999 ILPA was involved in discussions which culminated, during the passage

of the act, in the removal of advice on support for persons under immigration control from the scheme because it was felt at the time that there was a lot of free advice of high quality available on support from generalist advisors who might be unwilling to join the scheme and that this was the best protection against bad advice. Advice on immigration, asylum and nationality law is highly complex and we consider that regulation is necessary; someone doing their incompetent best poses a risk, but the principle that the availability of good advice is the best protection against falling into the hands of poor quality advisors remains true.

There are many areas of immigration, asylum and nationality law that a lay person is in no position to negotiate, let alone a lay person unfamiliar with the 11 English language, with UK system and procedures, or perhaps just with the systems and procedures of UK Visas and Immigration. Such persons do not have access to justice without advice and representation. If they cannot find good advice and representation, they are likely to turn to any advice, just to get some assistance. In many areas of the country those entitled to free advice must travel considerable distances to get it and may have little choice of legal representative.

The structure of what is funded has changed. There is no legal aid funding for drop in advice sessions at Law Centres etc. that would have allowed an initial diagnosis of what type of claim a person had and, in broad terms, the options open to them. This had provided a measure of protection against poor or unscrupulous advice.

ILPA's most recent submissions on the effect of the cuts to legal aid are (follow hyperlinks for documents)

ILPA submission to the Justice Select Committee enquiry into the Impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, 30 April 2014

<http://www.ilpa.org.uk/resources.php/26291/ilpa-submission-to-the-justiceselect-committee-enquiryintothe-impact-of-changes-to-civil-legal-ai>

and

ILPA Evidence to the National Audit Office, Legal Aid, 21 July 2014

<http://www.ilpa.org.uk/resource/29091/ilpa-evidence-to-national-audit-officelegal-aid-21-july-2014>

The current risks

How does a person get advice? It is not unlawful to give unregulated advice or services; it is only unlawful to do so "in

the course of a business, whether or not for profit”². Dependence on informal advice, which may be well meant but wrong or just wrong, is likely to increase.

There is increasing pressure from clients and those supporting them for advisors to act above their level OISC level because they can find no one to whom to refer the client.

Given the prohibitions in the scheme and the cuts to legal aid there is a risk that the poor will either get more informal advice (“not in the course of a business”) or will get advice that should be regulated but is not. In this landscape, the burden that falls on regulation to protect individuals under immigration control is increased. A regulatory scheme is only as good as its ability to regulate its members. If it fails adequately to do so it may do harm by providing reassurance that does not have a basis in fact, notwithstanding that such harm must be offset against the good that it is doing.

Challenges and how they might be addressed

Lack of clarity about what is within the OISC scheme and what exempt may lead to generalist advice agencies doing less for persons under immigration control than they are permitted to do, because they wrongly think it prohibited. Greater clarity is needed around what is in and outside the scheme and this should be sensible.

The details of regulation can be unclear. Volunteering is a complex area. Members have struggled to get an answer as to whether a solicitor registered with the Solicitors Regulation Authority needs OISC accreditation to supervise the immigration advice or services of unqualified volunteers. They have also struggled with the question of whether volunteers can accredit as part of an OISC-regulated organisation alongside employees.

A number of non-governmental organisations are, without assistance, unclear as to how and to whom complaints about bad practice should be made, what remedy clients have and the speed with which concerns will be addressed.

OISC Level 1 needs to be examined in the light of the difficulties the impecunious now have in securing legal advice. As set out in the responses listed in **Annex 1**, ILPA has long been concerned about the ease with which persons could enter the scheme at level 1 relative to the advice and services that they were then permitted to provide, although we are aware that the OISC has taken steps to address entry requirements.

We have suggested that there is a case for splitting the current OISC level 1 into a basic level, relatively easy to sign up to, for not for profits who want to give basic help but currently stay away from the scheme entirely, or are part of

	<p>the scheme but take on a regulatory burden disproportionate to the very basic assistance they give, and a higher entry level at which the (incredibly wide) spectrum of work currently done at level 1 can be carried out.</p> <p>That higher level might be the existing OISC level 2. Or elements of it might be something regulated by a different body altogether. It is possible, for example, that some of those currently regulated by the OISC may be attracted to set up Alternative Business Structures for which provision was made in the Legal Services Act 2007 because it offers them the possibility of remaining in control of their business while running it as a law firm. Another example is that draft legislation currently before parliament (The Legal Services Act 2007 (Chartered Institute of Legal Executives) (Modification of Functions) Order 2014) would permit the Chartered Institute of Legal Executives to regulate organisations as well as individuals in England and Wales, including those providing immigration advice and services. Under Schedule 18 to the Legal Services Act 2007 a person must hold a fellowship of the Institute as well as being accredited by the Institute in immigration and asylum to be part of its regulation of immigration and asylum. It is to be anticipated that if the instrument is approved some of those currently regulated by the OISC in those jurisdictions will consider regulation by the Institute instead, especially those advisors who would like to be able to undertake work on applications for judicial review.</p> <p>There is scope to look at whether there are areas in which consideration might be given as to how, for example not for profits, might be permitted to specialise. For example could organisations working with refugees be trained to give advice in the specialist area of family reunion? The project is fraught with difficulty given that it increases the risks of “not knowing what you do not know” and it may be that such projects can only ever sit behind triage by specialists, but give the current difficulties in obtaining advice it is necessary at least to discuss it.</p> <p>We suggest that rather than simply wait and see how changes affect the giving of legal advice and representation in immigration law and whether individuals are safeguarded adequately it is important, when access to advice is in such a fragile state, to scrutinise potential effects with the regulators, with professional bodies such as ILPA and with solicitors, barristers, Legal Executives, those currently regulated by the Office of the Immigration Services Commissioner be they Citizens Advice bureaux, other not for profits or private companies and those considering OISC regulation.</p>
The Legal Ombudsman	It appears to us that, in comparison to other regulator’s schemes, OISC’s approach is more prescriptive. Consumer protection is a prominent driver in a more outcome focused approach which the Legal Ombudsman greatly encourages.

	<p>The Legal Ombudsman is concerned there is a regulatory gap in situations where barristers are supervising OISC registered immigration advisers. If complaints arise in these situations, we can accept a complaint when questions arise about the barrister's supervision of the work carried out. However, it is not clear which complaint would take precedence; the one against the barrister or the one against the OISC adviser (which OISC would deal with).</p> <p>We consider that a memorandum of understanding should be drawn up between OISC and the Office for Legal Complaints (OLC) that sets out the boundaries of the relevant jurisdictions to provide clarity for consumers and professional services providers.</p> <p>We are also concerned that there is a lack of provision for consumer redress in both consultations. This could result in a disparity in redress where someone uses an adviser regulated by OISC compared to someone who uses a lawyer who falls under our jurisdiction. We understand there is nothing that OISC can currently do about the lack of consumer redress, as they have no powers under the Act which governs them. However, the Legal Services Board's 2012 paper on the regulation of immigration advice and services¹ encouraged OISC and the Legal Ombudsman to discuss a voluntary jurisdiction scheme which would allow us to deal with complaints and provide redress in relation to OISC regulated advisers.</p> <p>We suggest this consultation may be an opportunity for a discussion regarding this before the Code is published with a view to enhancing consumer confidence, and avoiding confusion, about their access to redress.</p> <p>We suggest an additional section in the Rules which says, for example:</p> <p><i>'The Commissioner will determine a complaint by reference to what is, in his/her opinion, fair and reasonable in all the circumstances of the case. In determining what is fair and reasonable, the Commissioner may take into account (but is not bound by) :</i></p> <ul style="list-style-type: none"> <i>a) what decision a court might make</i> <i>b) the relevant Rules of conduct at the time of the act/omission; and</i> <i>c) what the Commissioner considers to have been good practice at the time or the act/omission'</i> <p>This would enable the consideration of the individual merits of</p>
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¹ Legal Services Board Consultation: 01 March 2012 – Regulation of immigration advice and services

	<p>a case that is not fettered inappropriately by the rules and ensures fairness to all parties.</p> <p>Thank you for giving us the opportunity to feed into these discussions. If you have any queries about any of the points raised in this response, please get in touch with Katherine Wilson (Policy and Research Associate) at katherine.wilson@legalombudsman.org.uk</p>
Smith Stone Walters Ltd	<p>You will see that I have reworded the code numbers throughout in red type as they didn't tally with the Code of Standards Consultation document.</p>
University of Reading	<p>As an Immigration Advice Service provided by a University with Highly Trusted Sponsor Licence we recommend that additional guidance from OISC is required and should include references as appropriate to sponsorship requirements within the Points Based System (PBS). The current Practice Note, 'Meeting client needs and client care', was published in 2007 before the introduction of PBS. This Practice Note deals with the need to respect confidentiality and when legal or regulatory obligations impose an exception to this. We would suggest that this needs to be updated to reflect PBS sponsor obligations so that this would form the guidance that would accompany the revised Codes.</p>