

Welcome to the Summer edition of the OISCNews



Welcome to this summer edition of OISCNews. “May you live in interesting times”, is purported to be an ancient Chinese curse and the times that we are currently living in are certainly interesting. Since our last newsletter:

- We have had the vote for the UK to leave the European Union.
- The Home Secretary, Theresa May, became the Prime Minister.
- She was replaced by Amber Rudd.
- The Immigration Minister, James Brokenshire, became the Secretary of State for Northern Ireland.
- He was replaced by Robert Goodwill.

What these changes mean in terms of the government direction in respect of immigration and asylum remains to be seen. However, one immediate outcome of all these changes has meant that publication of the OISC’s Annual Report, which we expected to issue before Parliament rose for the summer, has had to be delayed. Interesting times indeed!

Further, the Immigration Bill has received Royal Assent and became the Immigration Act 2016. There is an article in this newsletter that highlights the key developments in the new Act. The newsletter also

contains further dates for your diary in respect of our seminar programme on the new Code of Standards and information about our new Practice Notes that support the Code. We also have included guidance on some Home Office applications that may or may not fall within the OISC’s regulatory jurisdiction.

There is also news on those we have prosecuted seeking to avoid regulation and a topic that is getting a significant amount of media attention, McKenzie Friends.

My colleague Stephen Seymour, wrote to all advisers earlier this month about some important changes to the OISC’s Continuing Professional Development (CPD) scheme. This is a major change for the OISC regulated sector and is a further tangible move towards outcome based regulation. This newsletter explains the background to the change and what advisers need to do to ensure compliance with the new scheme.

We have had discussions with the Association of International Accountants, clarifying the position of their members in relation to them providing immigration advice services. There is an article in this newsletter that outlines these developments.

We also thought it important to bring to advisers’ attention to a disturbing recent development, the cloning of advisers’ web sites. This phenomenon, described as “phishing”, is clearly a matter that registered advisers and their potential clients need to be alert to. An article in this newsletter highlights the issues and what you can do about it.

With all of this going on, may I wish you a fruitful and not too interesting summer!

Deputy Commissioner’s
introduction1

CPD2

Is it covered?.....3

Phishing news.....4

Prosecution news.....5

Consultation6

Immigration Act 2016...7

Continuing Professional Development

Office of the Immigration Services Commissioner News

July 2016

“You should use the time between now and 1 April 2017 to put in place procedures that will maintain your continued competence.”

Changes to the OISC’s CPD scheme

Why change?

Over the last few years the legal services sector has been changing, as has the approach to regulation. The move from prescriptive regulation to a more principle based approach has been encouraged by the Government and the Legal Services Board. Legal Services regulators, including the OISC, have begun to put in place regulatory policies that are outcome based. The Commissioner’s new Code of Standards implemented on 1 April 2016 was a significant move in this direction. CPD has been under the spotlight at both the Solicitors Regulation Authority and the Bar Standards Board for many months now and each organisation has concluded that the way forward for CPD in an outcomes based environment is to focus on the learning achieved, rather than the mandatory completion of a set number of hours.

While the OISC regulatory scheme and sector is very different to that of both the SRA and the BSB, we too have concluded that a new OISC CPD scheme should focus on the outcome of the learning rather than the time spent. We have also concluded that regulated organisations should have the flexibility to decide how they will identify an adviser’s CPD requirements and how CPD will be delivered so that advisers are able to maintain their competence and develop themselves in line with their own and their organisation’s business needs.

Initial changes

With immediate effect, we have removed the requirement for advisers to undertake a set number of CPD hours per year. We have also removed with immediate effect, the requirement for advisers to record their CPD activity on the OISC CPD website.

The OISC CPD website will close on 30 September 2016 and advisers will no longer have access to it.

The closure of the OISC CPD website will also mean that the free on-line courses will cease to be available after 30 September 2016.

What do I need to do now?

Before the OISC CPD website closes, download a permanent record of your CPD. After 30 September 2016 we will be unable to supply any details of the CPD you have completed and recorded on the website.

For 2016-2017 there is no requirement to complete a set number of CPD hours nor to record them in your on-line account. However, you must still comply with Code 6 and ensure you remain fit and competent to provide immigration advice and services.

You should also use the time between now and 1 April 2017 to put in place procedures to identify and deliver CPD that will maintain your continued competence. You will also need to consider how you are going to demonstrate to the OISC that you have done so.

Over the coming months we will be publishing further information about the new CPD scheme.

What happens after 1 April 2017?

All applications for continued registrations that expire on or after 1 April 2017 will require organisations to make a declaration that they have taken action to maintain their advisers’ CPD. This will be part of the annual application for continued registration process.

NOTE:

For your own future reference it is strongly recommended that you print or download a copy of your CPD records held on the OISC CPD website since April 2013. <http://www.oisc-cpd.co.uk/>

To access your CPD records from your on-line CPD account:-

Go to ‘View CPD Records’

Select the ‘CPD Year From’ and ‘CPD Year To’ e.g. 2013 – 2014 from the top of the page

Click on the ‘Search’ button

Scroll down to the bottom of the page and ‘Print’, or

Copy and paste into a Word document to save on your computer

Do this for each CPD year from 2013-2014



July 2016

*“... it is not
always clear
which
processes and
applications
need to be
regulated or
not”*

We are often asked whether certain issues fall to be regulated by the OISC or not. The law is provided by Section 82 of the Immigration and Asylum Act 1999 (as amended) which sets out what matters must be regulated. However, it is not always clear which processes and applications need to be regulated or not. The following areas of work are often, but not exclusively, undertaken by community based charitable organisations and bodies such as local authorities.

1) Access to Public Funds - where destitute people need to gain access to public funds. Two applications in particular have been identified as possibly causing uncertainty:

- A request for a change of conditions of leave granted on the basis of family or private life where the applicant has become destitute, for example the condition related to 'No Recourse to Public Funds'.
- An application for access to public funds under the Victims of Domestic Violence Concession.

The OISC has concluded that the provision of advice and services related to both of these applications is a relevant matter requiring regulation. Advisers undertaking such work can do so at OISC Level 1.

2) Fee waiver applications - where destitute people need to evidence their finances in order to submit an FLR (O) or FLR (FP) application (exercising ECHR rights). We have concluded this is not a relevant matter as producing such evidence does not affect the client's immigration status.

If however such advice and services relate to the completion of the actual FLR (O) or FLR (FP), then this is a relevant matter which must only be conducted by regulated advisers.

3) Direct exceptional case funding applications - where a person writes to the Legal Aid Agency to request an indication that they could obtain legal aid for a case generally outside scope.

This is not a relevant matter under the Act and does not require advisers making or assisting with such applications to be regulated.

Regulated work or not?

4) Contacting a First Responder to ask them to make a referral into the National Referral Mechanism (NRM) for Victims of Trafficking. The NRM is a framework for identifying and supporting victims of trafficking in the UK. Contacting a first responder (for example [Police forces](#), [local authorities](#), [Health and Social Care Trusts \(Northern Ireland\)](#), [Migrant Help](#), [Kalayaan](#), [TARA Project \(Scotland\)](#), [Refugee Council](#)), who will in turn pass the case details of the individual to the competent authorities; the United Kingdom Human Trafficking Council or the Home Office Immigration and Visas; does not constitute a relevant matter.



Guidance and Practice Notes

Since the implementation of the Code of Standards on 1 April 2016, we have issued a number of Guidance and Practice Notes which amplify and explain certain codes and provide further instruction on immigration advisers' compliance with the codes. Guidance notes offer advice on how best to comply with the Code of Standards, while the Practice notes offer information on best practice.

The notes that we have published on specific aspects of the Code are listed below. More notes will be published in the future. If you have any suggestions as to areas that you believe might benefit from a Guidance or Practice note please let us know by e-mailing us at info@OISC.gov.uk.

Code of standards

[Guidance Notes to accompany the Code of Standards.](#)

Financial guidance

[Fees and accounts.](#)

[Invoicing customers](#)

Supervision

[Supervision of trainee immigration advisers](#)

Complaints

[Investigating client's complaints](#)

Other

[Immigration advisers and parliamentarians](#)

[Licensed access scheme](#)



July 2016

“the attempt to acquire sensitive information such as usernames, passwords, and credit card details by masquerading as a trustworthy entity in an electronic communication.”

We have recently had reported to us two instances of fraudsters attempting to use fake websites to pass themselves off as OISC registered organisations.

Phishing is the attempt to acquire sensitive information such as usernames, passwords, and credit card details (and sometimes, indirectly, money), often for malicious reasons, by masquerading as a trustworthy entity in an electronic communication.

Fake websites

Fraudsters appear to be using web pages that look like the homepage of OISC registered organisations. In one of the reported instances, an alleged fraudster bought a domain name that differed only slightly to that of the registered organisation.

The fraudsters then cloned the registered organisation’s website with slightly changed text, and crucially, contact phone numbers. This was not an obvious or badly spelled attempt, but to all intents and purposes, an entirely genuine web page. This activity may be calculated to harm the registered organisation’s reputation, gain clients while acting illegally or to trick potential clients into disclosing personal/confidential information.

Please be aware that fraudsters sometimes include genuine links to UK government web pages on their web pages. This is to try and make their emails and web presence appear genuine.

How to Remove the Offending Content

All websites have people responsible for their content, generally called webmasters. They should have a contact page or email address on their sites, so you can contact them and ask to have duplicate content removed. While many content thieves will ignore emails of this nature, others will take down your content as soon as you ask them to, especially if you mention that you will file a complaint against them if the site is not taken down in a timely manner.

Phishing Advice!



Who Is Hosting This?

If your request falls on deaf ears, then you can contact the website hosting service that hosts the site. You can find the information you need by going to whoishostingthis.com/; zen.co.uk/ ; hostadvice.com/ or similar hosting discovery sites and typing in the URL of the site that has stolen your content. Website hosting services usually are much more efficient when it comes to removing duplicate content than webmasters. Often, they will take down the entire site that has posted your content without permission.

What else should I do?

The OISC urges advisers to be alert to this activity as it can harm your reputation, your profits and your potential clients’ futures. If you encounter phishing, please contact **ActionFraud** where you can also get more general advice about fraud and internet crime. <http://www.actionfraud.police.uk/> or call 0300 123 2040 (textphone 0300 123 2050).

You can also get Google to take action https://www.google.com/safebrowsing/report_phish/ ; Microsoft <https://support.microsoft.com/en-us/kb/930167>; or Apple <http://www.apple.com/uk/legal/more-resources/phishing/>

While the OISC has no jurisdiction to get involved in individual cases, please do let us know of any phishing cases so that we might share your experience with fellow regulated organisations by e-mailing Investigators&Intelligence@oisc.gov.uk and/or your OISC caseworker.

Prosecuting Illegal Immigration “Advisers”



Office of the
Immigration
Services
Commissioner
News

July 2016

“This is not a technical or victimless crime, you were advising vulnerable people who could not handle their immigration cases on their own... they trusted you and you betrayed that trust”

On 8 April 2016 [REDACTED] was sentenced at the City of London Magistrates’ court to 18 weeks’ imprisonment on 4 counts of providing unregulated immigration advice and services. Each count to run concurrently, suspended for 2 years. She was also ordered to pay £600 towards prosecution costs and a victim surcharge of £80.

[REDACTED] claimed to be an experienced immigration adviser and charged fees of £3,200 to assist a client’s son and family to obtain leave to remain in the UK. The investigation uncovered a number of similar applications being made by her over a number of years through her own organisation named *Enough Is Enough*.

In sentencing, Judge Hannay said:

“You need to be clear that these are serious offences that you have pleaded guilty to.... They are also aggravated by your knowing disregard of the statutory regime, and we are alarmed at your misuse of clients’ money.....these matters are so serious that only a custodial sentence will suffice.”

[REDACTED], pleaded guilty at the Birmingham Magistrates’ Court on 25 April 2016 to a charge of providing unregulated immigration advice or services between August 2013 and May 2015. She was sentenced to 10 weeks’ imprisonment, suspended for 12 months, and ordered to pay compensation of £2,613, costs of £1,604, and a victim surcharge of £80.

On sentencing, the magistrate said:

“The offence had been aggravated by your incompetent service, prejudice caused to the victim’s immigration status and money charged over a prolonged period of time. You have also shown a disregard for statutory requirements and used fraudulent methods in doing so.”

[REDACTED] and who had been struck off the Solicitor’s Roll in 2015, pleaded guilty at Birmingham Magistrates Court on 13 April 2016 to 2 charges of providing unregulated immigration advice and services between September and October 2015.

The offences related to bail applications for 2 individuals held at an Immigration Reception Centre.



[REDACTED] a serving prisoner recently convicted of providing unlawful immigration advice and services as a result of a separate investigation, was sentenced to 12 months’ imprisonment on each count concurrent.

On sentencing, His Honour Judge Eyre described his actions as:

“Acting in deliberate defiance of the law having already been convicted of the same offence and whilst on bail awaiting sentence, you chose to defy the law again.”

[REDACTED] was sentenced on 13 May 2015 to 8 months’ imprisonment suspended for 2 years at the Central Criminal Court, having pleaded guilty to 4 charges of providing unregulated immigration advice.

She was also ordered to pay £500 compensation, £1,000 costs and a £100 victim surcharge.

Upon sentencing, the Judge, Recorder Mr Nigel Lithman QC described her actions:

“I regard these offences as serious. Immigrants often find themselves in a vulnerable position.....The applicant was prevented from getting proper advice and his application was refused... You have aptly demonstrated what can happen when unqualified individuals hold out as immigration advisers.”

[REDACTED] pleaded guilty to 10 charges of providing unregulated immigration advice and services between March 2012 and January 2016. He had established a business in Newham, London, providing immigration advice and services to a large number of people while using the name of a legitimate solicitors firm based in another London borough.

[REDACTED] appeared at Southwark Crown Court on 1 June 2016 where he was sentenced to 8 months’ imprisonment suspended for 2 years, 200 hours of unpaid work and 12 months’ supervision by a probation officer on each of the 10 counts, concurrent. He was also ordered to pay £500 towards prosecution costs. And asked for 5 additional, similar offences to be taken into consideration.

On sentencing, the presiding judge Mr Recorder Wales QC said of

[REDACTED] actions:

“This is not a technical or victimless crime, you were advising vulnerable people who could not handle their immigration cases on their own... they trusted you and you betrayed that trust.”



July 2016

“the OISC explained the problems McKenzie Friends operating in the area of immigration and asylum pose to the immigration services sector.”



....in other news

Members of the Association of International Accountants (AIA) and Licensed Access with the Bar

The AIA has been granted Licensed Access by the Bar Standards Board (BSB) to instruct counsel on behalf of their members.

An OISC registered adviser wanted to know whether by virtue of their AIA membership they could use Licensed Access to instruct counsel in their capacity as an OISC adviser. This would potentially mean a Level 1 adviser instructing counsel to undertake Tribunal or even judicial review work. The OISC held discussions with the AIA and agreed that the following guidance on Licensed Access be provided to AIA members.



‘AIA is recognised by the Bar Standards Board for Licensed Access. The Licence permits AIA UK practising members to instruct the Bar directly for advice and for representation before the County Court, Crown Court, Magistrates Court, First-Tier Tribunal Immigration and Asylum Chamber, First-Tier Tribunal Tax Chamber, Upper Tribunal Immigration and Asylum Chamber and Upper Tribunal Tax and Chancery Chamber.

AIA members may only use Licensed Access in relation to accountancy service provision and not outside the scope of their given expertise as a qualified accountant.

If you have any questions relating to AIA members’ use of Licensed Access please contact the AIA.’

<https://www.aiaworldwide.com/news/licensed-access>

Consultation: Reforming the Approach to McKenzie Friends

A McKenzie Friend is the name given to individuals that are not qualified lawyers, but provide assistance to litigants in person. They are allowed to prompt, take notes, and suggest questions in cross-examination. In the past they have often assisted people in the Family Court and have provided their services for free.

However, recently it has been reported that there has been an increase in the number of McKenzie Friends and also in the number that charge fees. As a result of this there has been considerable media attention on the subject and the Lord Chief Justice and the Judicial Executive Board carried out a consultation to which the OISC responded [mckenzie-friends-oisc-consultation-response](#).



In respect of immigration, any advice or service that is a relevant matter as described by Section 82 of the Immigration and Asylum Act 1999, falls to be regulated or the person is acting unlawfully. Many of the activities of a McKenzie Friend that would be allowable in other subject areas are therefore required to be regulated under the 1999 Act.

In its response to the consultation the OISC explained the problems McKenzie Friends operating in the area of immigration and asylum pose to the immigration services sector. Recent prosecutions have evidenced unregulated advisers attempting to circumvent the regulatory scheme by claiming they are acting as McKenzie Friends, when in fact they have quite clearly been providing immigration advice and services illegally for substantial fees.

The *Guidance on Competence* is clear on registered advisers acting as McKenzie Friends; “OISC regulated advisers, who by definition provide immigration advice and/or services in the course of business, must not seek to appear as a McKenzie Friend.” The OISC explained this in response to the consultation and asked that any Code of Conduct for McKenzie Friends make clear that they are forbidden from providing any immigration advice or services.

July 2016

“The government has also said it is committed to placing new limitations on the detention of pregnant women and will introduce regular bail hearings to ensure those entering detention stay there for the shortest period possible.”

REQUEST AN OISC SPEAKER FOR YOUR EVENT

Immigration advice organisations are invited to contact the OISC if they have an interest in receiving input or representation from the OISC at one of their future events.

Advisers organisations should email sharon.harris@oisc.gov.uk in the first instance to register an interest. Advisers will subsequently be contacted to discuss possible options.

On 13 May 2016 the Immigration Bill received Royal Assent [Immigration Act 2016](#).



The 2016 Act includes a range of new powers to:

- tackle illegal employment, including a new offence of illegal working
- prosecute landlords and agents who repeatedly fail to carry out right to rent checks or fail to take steps to remove illegal migrants from their property
- provide immigration enforcement officers with new powers to search individuals and properties and seize identity documents if they suspect someone to be here illegally
- electronically tag foreign national offenders on immigration bail
- restrict the support given to people whose claims for asylum have been rejected to those who are destitute and face a genuine obstacle to leaving the UK
- resettle unaccompanied children impacted by the ongoing migration crisis
- ensure all public employees in customer-facing roles speak good English
- impose a new skills levy on businesses bringing migrant labour into the country to reduce reliance on imported labour, and boost the skills of young people in the UK.

The government has also said it is committed to placing new limitations on the detention of pregnant women and will introduce regular bail hearings to ensure those entering detention stay there for the shortest period possible.

Code of Standards Seminars

We are continuing to present seminars to assist advice organisations to become fully conversant with their responsibilities under the new Code.

These seminars will help participants develop a thorough understanding of the requirements for professional conduct and client care in the context of our new principle-based approach to the regulation of immigration advice and services.

On 30 June, we held two further seminars in central London where nearly 100 advisers were invited to attend. We have booked events in Sheffield on 4 August and in Manchester on 23 September. We are in the process of arranging an event in Scotland.

Places will be limited so only one person from each particular organisation may attend. Please note that the allocation of places is generally on a “first come, first served” basis. The seminars are open to advisers and regulatory compliance officers within registered organisations. There will be 50 places available at each seminar, so if you are invited, please ensure that you attend.



FOI at the OISC

Recently we have published a number of Freedom of Information (FOI) responses on our website. These are published under the Freedom of Information Act, which gives anyone the right to access certain information held by public sector organisations, including the OISC.

[published responses to FOI requests](#)

OISC News is published by the Office of the Immigration Services Commissioner.

For general queries telephone our helpline on **0345 000 0046** Address: **5th Floor, 21 Bloomsbury Street, London WC1B 3HF**

Telephone: **020 7211 1500** Email: info@oisc.gov.uk

WWW.OISC.GOV.UK