

Commissioner's Guidance Notes
to accompany the
Code of Standards April 2016



Aim and purpose

This set of “Guidance Notes” supports the 2016 Commissioner’s Code of Standards. The “Guidance Notes” do not form part of the Code of Standards but amplify and explain certain codes and provide indicative behaviours that the regulated sector and the OISC will use to ensure compliance with the Code.

Code 7 - Advisers identifying themselves

When providing immigration advice or services to clients, advisers must give their full name, business address, the name of the company for which they work and their job title.

Code 8 - An organisation's responsibility as to who can provide immigration advice or services

An "unauthorised person" is someone who is not regulated in accordance with legislation to provide immigration advice or services.

Being employed at a regulated organisation does not mean that the person is automatically permitted to provide immigration advice or services. This also applies to those who are regulated by one of the designated professional bodies or the qualifying regulators (under the Legal Services Act 2007).

Registered organisations must clearly differentiate activities that constitute the giving of immigration advice or services from those that do not. For example, if an administrator simply passes correspondence received from the Home Office to a client, this would not constitute immigration advice or services.

However, if they explain the contents of the correspondence to the client and/or answer questions about it that would be considered giving unregulated advice.

For further detailed guidance and requirements, please refer to the [Guidance on Competence 2017](#)

If staff who are unauthorised persons are asked by an authorised person to inform a client what documents they require or to pass on a message to them, they must make it clear when doing so that they are only passing on the information and not providing immigration advice or services.

Code 9 - Supervision

If a registered organisation wants an unauthorised person to provide immigration advice or services, it must either:

- submit an application for registration on behalf of that person and await authorisation of registration from the Commissioner; or
- apply for that person to provide immigration advice or services whilst working under a supervision arrangement. Such an arrangement must, before it starts, be authorised in writing by the Commissioner.

Advisers who wish to provide immigration advice or services above their authorised Levels and Categories can only do so if a supervision arrangement has been authorised in writing by the Commissioner.

For further detailed guidance and requirements on supervision, please refer to the [Supervision guidance note](#)

Codes 18 and 19 - Immigration advice or services given online

The same ethical obligations apply to the online environment as they do to traditional office based organisations. Registered organisations that conduct some or all of their business online must comply with all of the requirements of the Commissioner's *Code*.

Registered organisations working online must ensure that their websites include the following:

- the organisation's standard contractual terms and conditions;
- the organisation's fee scale;
- the organisation's approved Levels and Categories;
- a list of the names of regulated advisers who work at the organisation and their contact details;
- the types of work undertaken by the organisation;
- the organisation's unique registration number; and
- the OISC logo.

In addition to complying with the provisions of the Commissioner's *Code*, all registered organisations that conduct business online must comply with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and any amendments or additions to those Regulations which are concerned with cancellation rights for online services. Further information can be found [here](#)

Code 20 - Conflict of interest

An adviser or registered organisation may have an interest which may not always lead to a conflict of interest. However, it is best practice for an adviser or registered organisation to make any interest known to the client.

Conflicts of interest arise where it is not in a client's best interest for the organisation or a particular adviser to agree to act or continue to act for them.

Conflicts of interest may arise in a number of ways. For example:

- a registered organisation/adviser may have competing commercial or financial interests that make it difficult to fulfil their duties to the client;
- a registered organisation/adviser may have cultural, community or political affiliations that could potentially undermine the relationship of trust with the client; or
- a registered organisation/adviser may have, for example, several clients with contradictory requirements or accounts.

Registered organisations and advisers are under a duty to make clear to clients where they may have a conflict of interest and ensure that this is fully understood. They must give clients sufficient time in which to decide if they wish to continue to instruct the firm and, if so, under what conditions. Irrespective of the client's wishes, the organisation/adviser must determine whether it is correct to continue to act in the circumstances.

Where there is a real or potential conflict of interest, be it identified prior to the adviser acting for the client or after the adviser has begun acting for the client, the registered organisation/adviser must only act if the client has consented to this in writing. In such circumstances, the Commissioner would expect to see evidence that the conflict was fully explained to the client (using a suitable interpreter, if necessary) and signed and dated written consent from the client allowing the adviser to continue to act on the client's file.

Code 22 - Referrals

Any payment whatsoever (in money or benefits in kind) to a third party is a breach of Code 22. However, this Code does not apply to general marketing or advertising arrangements.

Codes 23 to 26 - Client care letter

A prospective client is someone, for example:

- with whom an adviser has had an initial consultation; and
- there is an expectation of a continuing professional relationship.

This person can be distinguished from someone who asks one-off questions and who has no expectation or gives no indication of intending to instruct the registered organisation or adviser further; for example, where an individual attends a drop-in advice centre.

Registered organisations/advisers should be aware of the need to maintain accurate records of all communication with prospective clients in line with the requirements of the *Code* relating to records and case management (Codes 53 to 57).

There may be exceptional circumstances in which a registered organisation or adviser might undertake work on behalf of a client without the client having yet agreed their client care letter or even being issued with one. For example, where a client is in detention and is about to be removed and there is an urgent need to submit representations on their behalf, it might not be possible to get agreement to a client care letter before acting for the client. A note explaining the situation together with a full record of the initial discussion with the client must be placed on the client's file. However, as soon as reasonably practicable, a client care letter must be issued to the prospective client and the contents agreed with them before any further work is undertaken.

Confirmation of the costs estimated or agreed includes whether the fee is a fixed fee, whether it includes VAT, expenses and how and when payments must be made.

Codes 27 and 28 - Confidentiality

Advisers are under a duty to ensure that information relating to their clients is kept confidential. Advisers must ensure that information is accessible only to those authorised to have access to it. Certain types of information such as communication between the client and their adviser, the client's personal details or their financial records must not be discussed or divulged to third parties.

Advisers are responsible for the conduct of those who undertake work on their behalf. They must ensure that all staff are aware of the need to handle and dispose of confidential material securely, including electronic data.

There are exceptions to the strict confidentiality requirements such as when required by statute, by court order or by the Commissioner.

Code 29 - Keeping clients informed and communications in general

Written communications with clients and all other relevant third parties can be done in a variety of ways. The following, for example, are acceptable:

- Hard copy letter;
- Email; or
- Fax.

Code 35 - Interpreters and translators

Registered advisers must be sensitive to the potential for there to be communication difficulties between them and their client, even if they speak the same language. If it becomes clear that the client and adviser are unable to communicate clearly and easily, then the adviser must arrange for a suitable interpreter to be present when they meet their client.

The adviser must also ensure that any documents relevant to their client's application have been translated into English by a suitable translator.

A suitable interpreter or translator is one who is competent to provide such service taking into account their relevant qualifications, experience, independence and membership of such organisations as the National Register of Public Service Interpreters (NRPSI).

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

If a client wishes a friend or family member to interpret for them, the adviser must assess and decide if the person is sufficiently competent and able to do so. This includes assessing whether they understand the instructions, their role as interpreter, and can communicate clearly and accurately between themselves, the client and the adviser. The adviser must also ensure that the person interpreting is willing to act as an interpreter and understands the requirements relating to client confidentiality.

It is not appropriate to use a witness or potential witness as an interpreter.

Codes 38 and 39 - Outsourcing work

Outsourcing work is where a registered organisation uses an agent to undertake work that the outsourcing organisation is authorised to do. The outsourcing organisation remains responsible for the work done by its agent.

Registered organisations will be expected, through their written record keeping, to demonstrate to the Commissioner that their client agreed to the outsourcing and the reason why the work was outsourced. In particular, if the work is outsourced to an affiliate office abroad, then the reason for this must be fully explained to the client and full agreement must be evidenced. Where work is outsourced abroad, clients have a legitimate expectation that they will receive the same standard of service they would have received from the UK based office in accordance with the Commissioner's *Code*.

Payment of fees for outsourced work remains the responsibility of the instructing organisation irrespective of whether the client has agreed to pay the fees direct to the agent organisation.

Code 40 - Temporary inability to work

There may be occasions where a registered organisation is unable to provide immigration advice or services to a client due to an adviser being temporarily unable to work. This may include either planned or unplanned absences. In such situations the registered organisation must make suitable arrangements for cover as soon as practicable and inform the client in writing of these arrangements. In cases where it is either known by, or becomes apparent to, the registered organisation that an adviser will be absent for more than one month, the registered organisation must contact their caseworker at the OISC to discuss how cover for the work will be arranged during the period of absence.

For example, an organisation must ensure that a designated person is attending to all emergency work associated with the adviser's case load. In cases of long term absence (i.e. for more than one month), the organisation must arrange for another suitably qualified adviser to ensure the continued effective delivery of service to clients.

Code 43 - Withdrawing from a case by the organisation

The following are examples of 'good reason' for an organisation to withdraw from a case:

- a conflict of interest becomes known;
- the client's matter becomes too complex for the registered organisation or reaches a level at which the registered organisation is not authorised to practise;
- the client fails to pay fees as agreed.

If at all possible, this should be done in a timely manner and three days should be the minimum notice that should be given.

Where the organisation wishes to withdraw for the following reasons, a shorter period of notice may be appropriate;

- the registered organisation discovers that the client is using its services to further a criminal act;
- the registered organisation discovers that the client is using its services to mislead the relevant authorities.

Codes 46 and 47 - Ending of a client's case

Codes 46 and 47 apply to all clients who have been issued with a client care letter in line with Codes 23 to 26.

Codes 53 to 57 - Records and case management

An “adequate record” of interactions would include everything relevant to the client’s case. It must include details of instructions taken, advice given (including the merits of any proposed action), action taken and by whom, and any other relevant matters. Interactions include communications by telephone and e-mail.

The attendance note of any meeting or conversation between the adviser, the client and any relevant third party (for e.g. the Home Office) must include a full record of their discussion. The note of the first substantive meeting/conversation between the client and their adviser must include full details of their discussion of the client’s immigration history, the instructions taken, any advice given and action agreed.

Case records should include copies of any relevant correspondence with the client or third parties, including copies of applications and supporting evidence. Correspondence includes e-mail correspondence.

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

When writing to the client and other interested parties such as the Home Office, correspondence from advisers must include the adviser’s full name, address, name of the registered organisation for which they work and their job title.

Registered organisations must maintain a full list of all their clients. This must include, where relevant, each client’s name, date of birth, Home Office reference number, the type of application made and the date that the case was opened and closed, including the outcome of the matter.

The *Code* requires that all client records are kept for at least six years. This requirement applies even if the client’s records have been transferred to a new advice organisation or given to the client. A copy of the client’s file must be retained even if the original file is no longer held by the organisation.

Registered organisations must comply with the requirements of the Data Protection Act 1998. Everyone responsible for using data has to follow strict rules called 'data protection principles'. They must make sure the information is:

- used fairly and lawfully
- used for limited, specifically stated purposes
- used in a way that is adequate, relevant and not excessive
- accurate
- kept for no longer than is absolutely necessary
- handled according to people's data protection rights
- kept safe and secure
- not transferred outside the UK without adequate protection

Codes 58 to 69 - Fees and accounts

Guidance on codes 58 to 69 can be found at: [Guidance note on fees and accounts](#)

Code 74 - Touting for business

An example of touting for the business of providing immigration advice or services would be cold calling people offering to provide them with immigration advice or services or attending Home Office premises, such as detention centres, with the intention of encouraging individuals to instruct their organisation.

Code 79 - Procedure for handling complaints

A good complaints procedure should include, but is not limited to, the following:

- details of how to complain to the registered organisation;
- details of how to complain to the OISC;
- details of who to complain to at the registered organisation;
- details of timescales for acknowledging and investigating complaints;
- details of how complaints are investigated;
- details of how a complaint investigation will be communicated to a complainant;
- details of the action that may be taken following a complaint; and
- details of how complaints will be recorded in a central complaints log held by the registered organisation.

Codes 80 to 83 - Notifications to the Commissioner by organisations and advisers

A 'significant change' in circumstances for a registered organisation may include:

- a change in the way immigration advice or services is provided (for example, changing from face-to-face contact to online provision of immigration advice or services);
- the creation of links with other immigration related organisations such as colleges or other advice giving organisations;
- a change in management and/or business ownership;
- changes to OISC registered staff; or
- changes to bank accounts or professional insurance providers.

A 'significant change' in personal circumstances for individuals may include:

- if an adviser has become seriously ill and is unable to work;
- if an adviser has to have an extended period away from the office;
- if an adviser or any person owning and/or running the organisation is subject to bankruptcy proceedings;
- if an adviser, or any person owning and/or running the organisation no longer has a right to work in the UK;
- if an adviser, or any person owning and/or running the organisation is arrested, charged, cautioned or convicted; or
- if an adviser, or any person owning and/or running the organisation is investigated by the police or the Home Office.

The above lists are not exhaustive, but are presented to give an indication of the type of issues that would constitute a significant change.

Code 84 - Serious misconduct

The purpose of Code 84 is for advisers to notify the Commissioner, within a timely period, of issues that could adversely affect their organisation including matters relating to an adviser's fitness and/or competence. Examples of such serious misconduct would include but are not limited to the following:

- persons providing immigration advice or services whilst not regulated;
- persons providing immigration advice or services above their authorised registered levels and/or categories; or
- persons involved in misleading the authorities, abusing the immigration system or advising others to do so.