

Complaint handling under the revised Code and Rules



The implementation of the July 2007
Commissioner's Code of Standards and Rules
(as it relates to complaints)

Codes and Rules: October 2000 compared with July 2007

The second edition of the Immigration Services Commissioner's Code of Standards and Rules were launched at the OISC's annual conference in November 2006, with implementation set for 2 July 2007.

There are some differences between the October 2000 Code and Rules and those being implemented in July 2007. The most obvious presentational change is that the two documents are now contained in one binder. This is for ease of reference only. The Codes and Rules remain separate documents, with the Rules only applying to registered organisations. Furthermore, the new editions contain no preambles. The preambles from the October 2000 versions of the Code and Rules have now been incorporated into the body of the July 2007 versions.

Under the 2007 Code of Standards advisers are actively encouraged to resolve complaints themselves, with any attempt to do so evidenced in writing with a note placed in the client's file (Code 49). However, if the client has a complaint, they must be told that they can complain directly to the OISC at any time (Code 51).

This note gives guidance on what edition of the Code and Rules will apply (the 2000 or the 2007) to any particular complaint that the OISC may receive.

A table summarising the OISC's approach can be found in Annex A.

Scenario I – Complaint received before 2 July 2007

Any complaint received before 2 July 2007 will be dealt with under the Code of Standards and Rules issued in October 2000.

Example: *Audrey, an Australian citizen, had leave to remain in the UK until 1 January 2007 on the basis of her marriage to a British citizen. On 10 November 2006 she went to International Marital Bliss, a regulated immigration adviser, seeking assistance to obtain indefinite leave to remain. Due to an administrative error on the part of the adviser no application was made. This came to light on 1 March 2007. A complaint was made to the OISC on 5 March 2007.*

The OISC would consider the above complaint under the October 2000 version of the Code and Rules as, while the events happened after the *launch* of the second edition, they took place before *implementation*.

Scenario II – Complaint received after 2 July 2007 arising out of events that occurred prior to 2 July 2007

Where the complaint is received after 2 July 2007 but it concerns events that occurred prior to that date, the 2000 Code and Rules will apply.

Example: *Work Permits R Us, a regulated advice organisation, gave Balaichand, a Bangladeshi citizen, potentially incorrect advice on 1 May 2007. The IT Company, his potential employer, obtained a work permit, but Balaichand was refused entry clearance as a result of the advice and services he received. Balaichand complained to the OISC on 10 July 2007.*

This complaint would be dealt with under the October 2000 Code of Standards and Rules because the advice was given before the second editions of the Code and Rules were implemented.

Even if a complaint is made a considerable time after 2 July 2007, if it concerns events that took place prior to implementation, that complaint will be considered under the October 2000 Code and Rules.

Example: *Christopher is a citizen of Rutania, which was a country in upheaval. In November 2005 while he was studying in the UK there was a military coup and the governing party was overthrown. Emergency Rescue Advisers, a regulated adviser, made an application for asylum in the UK on Christopher's behalf. The Home Office refused the asylum application, but granted discretionary leave. Christopher has remained in the UK since that grant. In late 2006 democracy was restored to Rutania, but Christopher feels uncomfortable returning to his home country. In August 2008 he went to Honest Broker Advice Agency, also a regulated adviser, to find out how he could legitimately remain in the UK. On initial interview his new advisers established that Christopher had a strong claim for leave to remain on the basis of UK ancestry. Christopher feels aggrieved that his first advisers did not explore this option earlier. He complains to the OISC.*

Scenario III – Complaint received on or after 2 July 2007 arising out of events that occurred on or after 2 July 2007

While the adviser/client relationship may have come into existence prior to 2 July 2007, the events actually complained about may only have taken place after that date. Complaints that are based on events that occurred on, or after, 2 July 2007 will be dealt with under the Code of Standards and Rules implemented on that date.

Example: *Work Permits R Us, a regulated advice organisation, gave Dabir, a Bangladeshi citizen, potentially incorrect advice on 3 July 2007. The IT Company, his potential employer, obtained a work permit, but Dabir was refused entry clearance as a result of the advice and services he received. Dabir makes a complaint to the OISC on 10 July 2007.*

Scenario IV – Complaint received after 2 July 2007 based on a series of complaints/events, of which some occurred prior to 2 July 2007 and some afterwards

In an on-going relationship between adviser and client, where some events take place prior to 2 July 2007 and some after, those events that can, on the balance of probabilities, be traced back to having happened prior to 2 July 2007, will be dealt with under the October 2000 edition. Those matters that occurred on or after 2 July 2007 would be dealt with under the 2007 edition. An adviser can make written representations as to why they believe certain matters took place before 2 July 2007 and consequently should be dealt with under the earlier edition. The final decision as to which version of the Code and Rules applies will be for the Commissioner.

Example: *Eduardo, a Colombian student pursuing a two-year post-graduate course of study, first went to Students WorldWide, a regulated advice organisation, in August 2005 seeking further leave to remain in the UK for his studies. This application was successful. On 15 July 2007 Eduardo again approached Students WorldWide for advice about taking up doctoral studies. Eduardo felt that the information taken from him by the adviser was cursory and unsatisfactory. His application for further leave to remain on the basis of his studies was refused on 15 August 2007. He complained to the OISC. Even though there was a pre-existing relationship, the potentially poor advice was received after 2 July 2007. In this situation the OISC would consider the complaint under the July 2007 version of the Code and Rules.*

Example: *Fola is a work permit applicant from Nigeria. In April 2007 he secured a contract to work in the UK for a major multi-national. Entry clearance on the basis of the work permit was secured by International Placements plc, a regulated adviser. He arrived in the UK with his wife Athena, whose visitor's visa was also secured by his advisers. In August 2007 Fola told his advisers that he wanted his wife to remain with him in the UK permanently. An application on her behalf based on her status as the dependant of a work permit holder was made on 3 September 2007. In October 2007 it emerged in discussions with the Home Office that Fola's wife Athena was actually entitled to full Greek citizenship. Fola felt aggrieved by what he sees as a waste of time and money. He makes a complaint to the OISC.*

In this situation the OISC will consider Fola's initial application under the October 2000 version of the Code and Rules. The September 2007 application would, however, be considered under the July 2007 version. Even though there was an on-going series of events, they would also be seen as discrete instances of advice and each instance would be dealt with under the appropriate regulatory documents.

Complaints made before or after 2 July 2007

	October 2000–1 July 2007	2 July 2007	2 July 2007 onwards	Regulatory documents
Scenario	A Obtains potentially poor advice/services before 2 July 2007 and complains to the OISC before that date			October 2000 Code and Rules apply
	B Obtains potentially poor advice/services before 2 July 2007		Complains to the OISC	October 2000 Code and Rules apply
	C Obtains potentially poor advice/services before 2 July 2007	On-going client/adviser relationship		October 2000 Code and Rules apply
	D		Obtains potentially poor advice/services after 2 July 2007 and complains to the OISC	July 2007 Code and Rules apply
	E Obtains correct advice/services before 2 July 2007	On-going client/adviser relationship	Obtains potentially poor advice/services after 2 July 2007 and complains to the OISC	July 2007 Code and Rules apply
	F Obtains potentially poor advice/services before 2 July 2007	On-going client/adviser relationship	Obtains potentially poor advice/services after 2 July 2007 and complains to the OISC	Pre-2 July 2007 advice/services dealt with under the October 2000 Code and Rules. Post-2 July 2007 advice dealt with under the July 2007 Code and Rules.

