

## Aim and purpose of this practice note

Section 83 of the Immigration and Asylum Act 1999 places a statutory duty on the Immigration Services Commissioner, requiring him to promote good practice.

This note, which supports that duty, sets out the Commissioner's views regarding fees, charges and accounts. The note should not be seen as a set of definitive instructions but rather as a view on best practice. The note has been developed with assistance from the external specialists in this sector. Their assistance is gratefully acknowledged.

## Commissioner's Rules and Code of Standards covered by this practice note

The Commissioner's Rules referred to in this note are **Rules 14–21** on fees and **Rules 28–31** on accounts and records. All advisers who take or hold client monies should be aware that the Commissioner believes that **Codes 29–36** of the Office of the Immigration Services Commissioner (OISC) Code of Standards relating to records and case management, extend to financial record-keeping too.

It is not the Commissioner's role to reduce competition or set levels of fees. It is recognised that there will be variation within the fees charged between one adviser and another.

What is important is that fees charged and accounts (bills, invoices, etc.) held relate to each other and that the adviser's dealings with the client are transparent. The fee charged must relate to the fee scale submitted, the invoice charged and any money disbursed in pursuing a client's application.

### 1. Fee scales

- 1.1 **Rule 14: Fees must be charged according to a scale set out by the registered person in a written document that must be shown to a client on initial contact and which must be produced to the Commissioner on request. The scale of fees must relate to the type of work to be done, the ability and experience of the registered person, the time taken and any expenses incurred.**
- 1.2 Advisers must produce a fee scale (price-list) that should be given to each client on first instruction. This document should also explain the refunds policy.
- 1.3 The fee scale may be updated as often as is necessary and copied to the OISC. The Commissioner will want to see the justification for any large change of fees. It must be remembered that the overriding concern is that the adviser acts in their client's best interests (Code 49). The Commissioner will take a serious view of fees that may be considered too high or for work that has not been done properly. This may result in disciplinary action.
- 1.4 The range of payment options available to clients (i.e. cash, cheque or, where appropriate, credit card or electronic payments) should be made clear. Discounting and refund principles should also be offered where appropriate.
- 1.5 On initial contact it is best practice for advisers to inform those seeking advice that they may be able to obtain advice for free. If the adviser contemplates the possibility of exercising a lien (i.e. the right to retain someone's property until payment is received) over the client's passport, documents or other property, this must be fully explained to the advice seeker prior to taking instructions. In the event of having to investigate a complaint about a lien, the Commissioner would wish to see evidence of such an explanation. It is strongly advised that these elements are part of the initial client letter where appropriate.

## 2. Calculation of fees

- 2.1 Rule 15: A registered person must give a full explanation of how the fee is calculated, including whether or not it is a fixed fee and whether it includes VAT or other expenses.**
- 2.2 The fee scale should be clear as to particular inclusions and exclusions. There should be no hidden add-on costs such as VAT, adviser expenses, or administration. All of these must be either rolled up in the fee or estimated prior to any agreement being made. The Commissioner will take a serious view if, for example, VAT is charged but the advice organisation is not registered for VAT and the adviser has paid no VAT. This practice is likely to be a criminal offence. Clients must be given an official receipt for funds passed over. This receipt must note the existence and purpose of the client bank account if applicable and indicate the amount paid and what it was paid for. It may be that an adviser bills after work is completed and ensures that clients make any necessary payments directly to the Home Office or other authorities. In these circumstances a client account is not necessary. The Commissioner must still be able to see the clear correlation between work done and the fees charged.
- 2.3 The purpose of a client account is to protect client money and to make it available to the adviser only after agreed work has been completed. Money that belongs to clients is placed in this account and the adviser cannot use it for running their business. It is not necessary to have a client account for each client. All client money can be paid in and out of one account.

## 3. Work undertaken

- 3.1 Rule 16: A registered person must not charge for work that has not been undertaken or has been undertaken unnecessarily.**
- 3.2 This rule is self-evident – only work undertaken must be charged for. Advisers must not seek to persuade clients to pursue courses of action that have no chance of success. Similarly, advisers must not undertake any work for which they do not have explicit instructions. Advisers must not expend unused client funds, finding other things to charge to it. Advisers must also not use one client's money in respect of another client's matter. If an adviser has charged for work in advance, the components of any fee work not carried out must be refunded as soon as possible.

## 4. Overcharging

- 4.1 Rule 17: A registered person must not take unfair advantage of the client by overcharging for work done or to be done. He or she must not charge a fee that is unreasonable given the circumstances of the case.**
- 4.2 Advisers should read this rule in conjunction with Codes 51–54 governing client care. It is crucial that advisers are as transparent as possible in their dealings with clients. The issue of fees often gives rise to complaints, and advisers must be seen to be charging what is fair, reasonable and disclosed to their clients. The fee charged must directly relate to the fee scale submitted to the OISC. Further, when the fee charged is viewed objectively, it must not be so high as to compare unfavourably with the average fee scales provided by advisers.
- 4.3 The reasonableness of a fee is judged by a number of factors. The OISC will look at the actual work undertaken, the fee scale submitted by the advice organisation and the relative bargaining power of the adviser and client. Finally there will be a comparison with the fees charged by other advice organisations undertaking the same work. It is vital, therefore, that the client is given every opportunity to make an informed decision prior to giving full instructions.

## 5. Transparency

- 5.1 Rule 18: A registered person must, as far as possible, make clear to the client the costs of the work to be done before it is carried out or the advice is given.**
- 5.2 Advisers must recall that they are in a position of trust and influence in respect of their clients. They owe their clients a duty of care. This duty must not be abused. Clients will for the most part be unfamiliar with UK immigration law and procedure. After initial contact, but prior to undertaking any work, the adviser must:
- discuss their understanding of their client's needs
  - indicate a proposed course of action and any viable alternatives
  - ensure that the client understands why the adviser has proposed a particular course of action and the processes involved
  - relate the proposed course of action to the fee scale provided on initial contact
  - secure agreement to a course of action at a given price.

## 6. Additional work

- 6.1 Rule 19: A registered person must advise the client of any additional work that needs to be undertaken and any costs that may be incurred or for which that client may become liable.**
- 6.2 Clients are to be consulted in writing prior to expenditure being incurred on their behalf that is over and above what the fee scale (or any other quotation) illustrates. This Rule must be read in conjunction with Rules 20 and 21.
- 6.3 Advisers must not undertake work without full instructions from their clients. If an emergency arises and the client gives instructions for further work to be undertaken prior to payment, this is a matter for the adviser and client to work out. The OISC would still require that any extra fees charged are reasonable.

## 7. Estimate

- 7.1 Rule 20: A registered person must give details of the whole costs of the work to be undertaken unless for some reason, which must be explained to the client, it is not practicable to estimate the entire costs at the outset.**
- 7.2 Following from Rule 19 it is essential that advisers' dealings with clients are as transparent as possible. Clients must be able to make an informed decision about what is best for them in their particular circumstances.
- 7.3 Clients should understand what is being done for them and receive timely updates. These updates must explain potential cost implications too.

## 8. Exceeding the estimate

- 8.1 Rule 21: A registered person must notify the client in writing as soon as he or she becomes aware that the initial estimate of costs is likely to be exceeded.**
- 8.2 If circumstances change and further work needs to be undertaken, an adviser must take immediate steps to inform their client of the change and the implications, including cost implications, of further work. Advisers must not undertake work without being instructed to do so.

## 9. Appropriate accounts

- 9.1 Rule 28: A registered person must keep appropriate accounts, including a distinct record of the transactions undertaken for each client.**
- 9.2 This rule must be read in conjunction with Rules 29 and 30 as outlined below. By doing so, clients' funds are protected from inclusion in advisers' general business activities. Client funds belong to the client up until the point where appropriate expenditure has been incurred on their behalf.
- advisers must keep a client bank account separate from the business bank account
  - transfers into and out of the client account must have supporting documentation
  - a statement showing their account balance must be available to clients on request
  - there must be a direct correlation between work done and monies charged. Please refer back to section 4 above on overcharging
  - accounts and records must comply with current legislation as set out in the Companies Act 1985 and annual fiscal budget where appropriate
  - the Commissioner's Rules and Code of Standards do not replace any obligations/requirements of any UK law or institution (e.g. VAT, Inland Revenue, Companies Act, Charities Commission, Companies House)
  - advisers must give access to historic and day-to-day records to OISC caseworkers upon request.
- 9.3 OISC caseworkers must be given sight of bank statements referring to the client account upon request. Reconciliation of the client account should be of the adviser's records against their bank statements.

## 10. Records

- 10.1 **Rule 29: A registered person must keep a clear written record of all advice given, all work done and all transactions made on behalf of each client and all fees paid by the client. Such records should be available for inspection by the Commissioner so as to enable him to carry out his functions under the Act.**
- 10.2 Clients must be given an official receipt for funds passed over. This receipt must note the existence and purpose of the client bank account and indicate the amount paid and what it was paid for. Advisers must keep their accounting records (invoices paid and all receipts, ledgers, bills, statements, cash books, etc.) for a minimum of six years.
- 10.3 Client financial records must be filed in a way that is easy to reconcile with the financial statements. Clear invoicing records must be kept that can be easily linked to transactions on client files.
- 10.4 The records must, wherever possible, be originals. If it is impossible to obtain/retain original documentation, the adviser must be able to provide a legitimate reason for the absence of the original.

## 11. Fees and client monies

- 11.1 **Rule 30: Fees to the authorities should, wherever possible, be made by the client direct to the authorities. Where it is necessary to hold client money, either in respect of future payments to be made on behalf of the client or in respect of fees paid for work not yet done, or for any other purpose, the money should be held in a separate client account.**
- 11.2 The purpose of a client account is to protect client money and to make it available to the adviser only after agreed work has been completed. Money that belongs to clients is placed in this account and the adviser cannot use it for running their business. It is not necessary to have a client account for each client. All client money can be paid in and out of one account.
- 11.3 The office account belongs to the adviser and they can use the funds in it as they wish. It is effectively a normal business account. Money that belongs to a client should never go into this account.
- 11.4 An adviser may ask for money in advance of carrying out work. This is sometimes referred to as 'money on account of costs' or 'money on account of fees'. However, the adviser must not use this money until they have done the work agreed.
- 11.5 The adviser should inform the client that agreed work has been completed and inform them that they will be using money in the client account to pay the fee for that work. This should be done by sending the client a bill or a letter stating what work has been done.
- 11.6 When the agreed work has been done, the agreed fee in the client account becomes payable to the business and is only then transferred into the office account. It is no longer client money.
- 11.7 This system should always be followed, even when there is a fixed fee. At the time the client pays the money on account, the work to be done under the fixed fee has clearly not taken place. Until it is, an adviser may not use client money.
- 11.8 Another common use of the client account is to pay fees for applications, interpreters, medical reports, barristers' fees and experts' fees. These are sometimes referred to as 'disbursements'. They are all expenses that the client must pay to third parties and the money never belongs to the adviser. It must therefore always be dealt with using the client account. Clients may provide cash or a cheque made payable to the adviser for this.

- 11.9 An adviser may also carry out work without taking money on account. The client would then be billed for the work done and this is paid into the office account. This still follows the main principle that the adviser cannot use client money before the agreed work has been done. If an adviser does this consistently and gets the client to pay third parties directly, e.g. application or interpreters' fees, and they can show this, they do not need to have a client account.
- 11.10 Read in conjunction with the other rules in this section, as an alternative to paying fees directly to advisers, clients should be encouraged to pay fees directly to the authorities. The Commissioner recognises that there may be instances where business needs (e.g. a large volume of work permit applications) dictate that payments should be made by the adviser rather than individual clients. It is vital, however, that a separate client account is established to administer such payments.
- 11.11 If any disbursement is to progress the client's case, then there is no difficulty with this type of transfer. If, however, monies are used to subsidise the work undertaken for other clients or the adviser's administrative costs, there will be difficulties. The essence of establishing a separate account is to offer protection to the client in the progress of their case. There must not be a mingling of funds and all expenditure or transfers must be directly attributable to work undertaken.
- 11.12 Discounts are perfectly acceptable. Advisers should not offer such discounts to the detriment of their business or more importantly the detriment of other clients. Further, discounts must not be subsidised by charging other clients more for the work undertaken on their behalf. The Commissioner insists on transparency in all dealings with clients.
- 11.13 Where a client fails to pay an adviser, best practice would be to take action through the courts, where appropriate. The OISC recognises, however, that this is not always practicable. There is the possibility of exercising a lien over the client's property. There must, however, have been prior, evidenced agreement to this course of action. The client must have been properly informed at first contact if this is contemplated.

## 12. Accounts

- 12.1 Rule 31: A registered person must have audited, certified or otherwise verified business accounts.**
- 12.2 This issue of suitable accounts relates to both fitness and competence. The OISC wants to see a connection between work undertaken, fees charged and the fee scale submitted. There must be a readily identifiable co-relation. The OISC must be satisfied that the advice organisation is a viable going concern. The Commissioner must be satisfied that the advice organisation will not disappear in the short to medium term and that client monies are protected. This is part of the reason why the Commissioner insists on Professional Indemnity Insurance and that advisers maintain a separate client account.
- 12.3 **All** organisations must produce an **externally approved** balance sheet and profit and loss sheets. Advisers must produce externally approved annual accounts, whether they are a charity or other not-for-profit organisation, self-employed, a partnership or limited company.
- 12.4 Annual accounts for self-employed advisers or partnerships should include a profit and loss statement and a balance sheet. These accounts will be signed off by the adviser/owner of the business and will mirror exactly the income and expenditure declared to the Inland Revenue as part of the tax return. The Inland Revenue issues an acknowledgement of accounts received, and states that tax is calculated using those accounts as a basis. The notification of tax payable to the Inland Revenue will be taken as approval of the accounts.
- 12.5 Small and medium-sized limited company accounts (including limited liability partnerships formed as a company) are entitled to exemption provisions laid out in the Companies Act 1985 relating to annual financial statements and audit provisions. The Treasury annually reviews these thresholds.
- 12.6 Directors are responsible for preparing financial statements that give a true and fair view of the state of affairs of the company at the end of the financial year, and must be certified as such by a director.

- 12.7 The audit exemption negates the need for external audit. However, companies are required to engage an accountant to produce legal financial statements. The accountant then verifies the accounts as true and fair. The accountant must be registered as a member of one of the following:
- Institute of Chartered Accountants of Scotland
  - Institute of Chartered Accountants in England and Wales
  - Institute of Chartered Accountants in Ireland
  - Association of Chartered Certified Accountants
  - Association of Authorised Public Accountants.
- 12.8 Small and medium-sized limited company accounts (including limited liability partnerships formed as a company) must be both certified by the company directors and verified by an external accountant (as long as the accountant is registered with one of the associations in paragraph 12.7 above) as a 'true and fair reflection of the year's financial activity'.
- 12.9 Large company accounts are to be audited by a UK registered auditor on an annual basis.
- 12.10 Under the Companies Act 1985, large companies are subject to an annual audit performed by a firm of one of the UK's accountancy bodies who hold the permission 'registered auditor'. Under the Companies Act, directors of large companies have to file annual audited report and accounts with Companies House within 10 months of the company's year-end date.
- 12.11 There may be advice organisations that are part of an accountancy firm. The Commissioner recognises that it may be onerous to ask such an organisation to outsource their accountancy work, but insists that there are 'firewalls' between the immigration and accountancy parts of the business to ensure transparency. The Commissioner further insists that the accountants are registered with one of the associations in paragraph 12.7 above.