

Introduction

1. The term “immigration advice and services” covers a wide variety of activities (see Commissioner’s introduction to the Code). Advisers must meet the required professional standard in all of the activities covered by the Code in order to satisfy the Commissioner that they are fit and competent to provide immigration advice and services. Prime among these standards is to act in their clients’ best interests.

Code 9: An adviser must always act in their client’s best interests and put their interests before the adviser’s own, subject to regulatory and legal requirements.

2. The promotion of advice and services can take various forms ranging from face-to-face meetings and advertisements in the electronic and print media, to the name that advisers give to their organisations. This note covers how the advice and services should be promoted to potential clients and the standards that the OISC expects advisers to adhere to in their promotion.

Promotional Material and The Promotion of Business

3. The issues of promotional material and the promotion of business are covered by Codes 72 – 80. These Codes must be read in conjunction with the rest of the Code of Standards.

Code 72: Description of the advice and services offered, as well as the qualifications and competence levels of those providing advice and services must not be misleading. It is a criminal offence for an adviser in their promotional material or by other means to offer to provide immigration advice and/or services at a level or in an area for which they are not authorised by the Commissioner.

4. It is crucial that clients are able to make informed decisions about both the services they need and in their selection of an adviser. The description of the advice and services offered is, therefore, essential to potential clients. It is deliberately misleading and potentially prejudicial to a client’s best interests for an adviser to offer a service for which he/she is not authorised by the OISC to provide.

Code 73: Advisers in their literature, website and other promotional materials must not criticise other advisers either directly or indirectly or make statements about success rates.

5. The Commissioner views seriously any criticism of regulated advisers by other advisers, including on the internet. The fact that an adviser is regulated by the OISC means that they have been adjudged “*fit and competent*” to deliver the services for which they are regulated. If an adviser has concerns about the advice or services provided by a regulated adviser, they should bring this to the Commissioner’s attention via a complaint.
6. An adviser’s website is considered as promotional material and accordingly the Code explicitly includes websites used by advisers in relation to their businesses. Advisers should, therefore, bear the following in mind if they wish to include the internet as part of their marketing strategy:
 - While many websites are structured in such a way that data can be copied and lifted from them, this is not an appropriate way to build a site. There may be legal issues with regards to copyright, for example. If advisers wish to use content that has been created by others, they should get prior permission to use such material.
 - Advisers should not include on their site any material that violates copyright or trademark laws.
 - Advisers should never reveal another’s person’s personal information, such as names, addresses or other personal data, without first getting their consent.
 - The website must at a minimum identify the OISC regulatory details including the adviser’s unique number and the OISC logo.
 - A client or potential client, using the web, should have the ability to contact the organisation that runs the site. They do not necessarily need to know the name of the individual staff member who will receive their message. Accordingly advisers’ websites may also include such contact details as shown below to facilitate enquiries:
 - editor@thiswebsite.com
 - info@thiswebsite.com
 - membership@thiswebsite.com
 - webmaster@thissite.com
 - Advisers’ websites should include a privacy statement which advises visitors of the use (if any) that will be made of their email address should they choose to contact them.

- Advisers should not use their websites and links to:

- harm others
- interfere with their work
- invade their privacy, or
- collate data to resell

- Advisers should not use abusive or objectionable language in messages sent to them on their website or place offensive information on their website.

Code 74: All information published by an adviser, whether in printed or electronic format, such as websites, must accurately reflect the adviser’s authorised OISC level. The requirement to ensure that advertising and promotional material comply with the Code of Standards is the personal responsibility of the adviser, and this cannot be delegated.

Code 75: The name of any advice organisation must not suggest connection with, or approval by, government.

Code 76: The advice organisation’s name must not have the potential to confuse or mislead clients.

Code 77: In either instance mentioned in Codes 74 or 75, the OISC may require that the advice organisation change its name.

Code 78: No adviser must claim they have a qualification to which they are not entitled.

Advertisements

7. These Codes are self-explanatory. Advertisements can be written or oral. An adviser cannot avoid direct responsibility for an advertisement by stating that its content was the decision of another part of the organisation. Advisers are under a duty to ensure that the information contained in any advertisement is correct. To do otherwise may mislead potential clients, which could have serious consequences for them.
8. An advertisement can be deceptive in various ways, for example, if it:
 - Contains a false statement of fact.
 - Conceals or leaves out important facts.
 - Promises to do something, but there is no intention of carrying it out; or
 - Creates a false impression.

9. Advisers must be wary of breaching the Trade Descriptions Act 1968. This Act makes it a criminal offence to make a statement that is known to be false or misleading, or recklessly make a statement that is false or misleading with respect to any of the following matters:
- The provision of services, accommodation or facilities – such as an adviser promoting themselves as being a solicitor when they are not or saying they have a 100% guaranteed success rate when they cannot.
 - The nature of any services, accommodation or facilities provided, such as a tradesman recommending “repair” work on a case, which implies the thing to be repaired has been properly examined.
 - The time or manner in which, or persons by whom, any services, accommodation or facilities will be provided.
 - The examination, approval or evaluation by any person of any services, accommodation or facilities so provided, such as claiming a service has been approved or accredited by the CLS or BIA when it has not.

Further information on these and other issues can be found at <http://www.tradingstandards.gov.uk/index.cfm>

10. OISC-regulated advisers, when advertising, should also be aware of the following Codes issued by the Committee of Advertising Practice (CAP).
- The British Code of Advertising, Sales Promotion and Direct Marketing
 - The Television Advertising Standards Code
 - The Radio Advertising Standards Code

For further information advisers should visit the CAP’s website at <http://www.cap.org.uk/cap/> or contact the Committee at:

Committee of Advertising Practice
Mid City Place
71 High Holborn
London, WC1V 6QT

Telephone: 020 7692 222
Email: enquiries@cap.org.uk

Touting

Code 79: An adviser must not promote their business directly or indirectly by unsolicited approaches to prospective clients either in person, by means of telephone calls or in writing. This provision does not include approaches to a current or former client of the adviser acting without inducement, referrals made in accordance with the Code or approaches to a commercial organisation or public body.

11. This Code prohibits advisers from touting for clients. Touting means the preying on vulnerable potential clients in an inappropriate or high-pressured manner and especially at an inappropriate time. An adviser handing out unsolicited business cards at an airport would, for example, fall foul of this Code. The Code extends to advisers approaching potential clients at hearing centres or elsewhere.
12. Nothing in this Code, however, prevents advisers from pursuing legitimate business interests. It is acceptable, for example, for an adviser to send mailshots to commercial organisations or to local authorities seeking referrals from them. In such situations the recipient party has the power, if they so wish, to discard the mailshot.
13. Advisers may also wish to approach current or former clients with a view to providing extra services. For example, an adviser may have assisted a client in obtaining leave to remain in the UK and they may wish to offer to assist them further in obtaining settlement. While such approaches are permitted, they must not become harassment.

Aim and purpose

Promoting good practice is a statutory duty of the Immigration Services Commissioner. This note and the others in our series of Guidance Notes cover the Office of the Immigration Services Commissioner’s (OISC) position on various subjects. This particular note examines the use of promotional material and the promotion of businesses in relation to the regulatory scheme. All references to the Commissioner’s Code of Standards (the Code) are to the July 2007 Code.

