

## Aim and purpose

The law<sup>1</sup> says that the Immigration Services Commissioner must promote good practice. This note sets out her views on good practice in relation to advisers' premises.

The Commissioner believes that:

- clients should be able to sit down with their adviser to discuss their case and find out what the adviser can do for them; and
- this should be in premises where the client is safe and can talk to their adviser in confidence.

The Commissioner's Code of Standards highlights client confidentiality in Code 40 and client interest in Code 49.

The Code is explicit, but the Commissioner wants to clarify what is expected of advisers. This Guidance Note explains the standards she expects of regulated advisers' premises. If an organisation thinks that these standards are not appropriate to their circumstances, it must be able to show that its own standards are at least as good. Please remember, however, that the Commissioner expects regulated advisers to keep as closely as possible to the standards outlined here.

## 1. Premises

**Code 49:** Code 49 of the Commissioner's Code of Standards states: An adviser must always act in the best interest of the client and put the client's interest before his or her own, subject to regulatory requirements and the law.

- 1.1 The OISC understands 'premises' to mean the property together with its immediate surroundings, including any office or meeting room, access routes into and around a building, reception and other facilities used in the course of business.
- 1.2 Advisers are under a duty always to act in the best interest of their clients, and put the clients' interests first. The client's safety and welfare should not be compromised by the adviser's premises.

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<sup>1</sup> Section 83(3) of the Immigration and Asylum Act 1999

- 1.3 The Commissioner's Code of Standards states that clients should be able to discuss their case with their adviser. In most cases this will require a face-to-face meeting between client and adviser. It is essential for an adviser to have an office or at least a dedicated space for this purpose.
- 1.4 The Commissioner expects the location and size of premises to be appropriate for the type of work an adviser does. There should be enough room for clients to sit comfortably to explain their case. Confidentiality must be protected. This requires space to hold private conversations and keep files securely (see section 2).
- 1.5 The Commissioner expects that an adviser's premises will not put clients, the Commissioner's staff or any other visitors at undue risk to their personal safety.
- 1.6 Access routes into and around an adviser's premises must also not threaten the safety of visitors or pose any undue risk.
- 1.7 The premises must have a private space large enough to accommodate a client with a child in a pushchair or a person using a wheelchair with the door closed. Advisers are reminded that on 1 October 2004 it became law<sup>2</sup> for all organisations or businesses to take 'reasonable steps' to make their premises accessible to disabled people. Where this is not possible, organisations can fulfil their duties by providing their service in another way. Further details are available from the Disability Rights Commission at [www.drc.gov.uk](http://www.drc.gov.uk) or on 08457 622 633.
- 1.8 Advisers must comply with all relevant legislation that governs businesses. The Commissioner expects advisers and their premises to conform to all such legislation. Health and safety regulations set minimum standards for employers and their business premises. You can find out more about this on the Health and Safety Executive's website, [www.hse.gov.uk](http://www.hse.gov.uk).
- 1.9 The Commissioner recognises that not all advisers can have their offices staffed at all times during business hours. However, it is expected that advisers will have arrangements in place that enable clients to contact them in emergencies. The adviser must make their emergency contact details available, for example on their answer phone and/or out-of-office auto-reply on e-mail. Out-of-office arrangements could also include the use of a 'serviced office' or message relaying facility. Advisers must make sure that both their clients and their OISC caseworker are aware of any arrangements. For further advice on making arrangements for longer absences, please see the Guidance Note on cover in the absence of an adviser.

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<sup>2</sup> Part 3 of the Disability Discrimination Act 1995

- 1.10 The Commissioner expects that all messages or communications left for advisers (see paragraph 1.9) are checked regularly and dealt with as soon as possible. An adviser's absence should not compromise their clients. Failure to ensure this could lead to disciplinary action. Advisers should refer to the previously published Guidance Note on cover in the absence of an adviser.
- 1.11 Advisers and advisory organisations change over time. It is the adviser's duty to ensure that the OISC's records are kept up to date. Advisers must tell both their clients and OISC caseworker within a reasonable amount of time – at most 10 working days – if they move premises, open new branches or take on new advisers. Each address from which immigration advice or services are provided must be registered with the Commissioner, and every individual adviser must be approved before offering advice. This also ensures that the OISC can give potential clients details of advisers near them and allows government departments to check whether an adviser is approved.

## 2. Client confidentiality

**Code 40:** Code 40 of the Commissioner's Code of Standards states:  
An adviser must keep the affairs of the client and all information relating to a client confidential, except where the adviser is compelled to disclose information by a legal obligation.

- 2.1 Confidentiality is not simply an issue of best practice but a clear requirement under the Data Protection Act 1998.
- 2.2 Anyone using personal data (such as name, address or other personal details) should comply with the eight principles of good practice, being that data must be:
- fairly and lawfully processed;
  - processed for limited purposes;
  - adequate, relevant and not excessive;
  - accurate;
  - not kept longer than necessary;
  - processed in accordance with the data subject's rights;
  - secure; and
  - not transferred to countries without adequate protection.
- 2.3 Anyone holding personal information must be registered with the Information Commissioner. Further information on this can be obtained by calling 01625 545 745.

- 2.4 All computer systems that contain client information must be password protected. Filing cabinets containing client files and similar information must be kept locked at all times.
- 2.5 Advisers must make sure that client confidentiality is not breached because of the physical environment in which they operate. They must ensure that interviews and meetings with clients are conducted in strict confidence behind closed doors with no chance of being overheard.

### **3. Client confidentiality – advisers working from home**

- 3.1 The Commissioner understands that advisers may sometimes have to work from home. Advisers practising from home must ensure that client confidentiality is not compromised as a result.
- 3.2 All computers containing client information must be password protected. If other members of the household have access to the computer, the files containing client information must be password protected.
- 3.3 Any storage area or filing cabinets used for client papers must also be kept securely locked.
- 3.4 There must be a separation between working and living areas, especially when other people live there, so that conversations with clients are held in private.
- 3.5 Some clients will have suffered traumatic experiences and may not be best served by being advised in an adviser's home. Advisers are reminded of the duty of care they owe their clients as explained by the Commissioner in Codes 51 to 54, which relate to client care.

#### **Checklist**

Advisers should consider the following issues:

- Is confidentiality of conversations guaranteed?
- Can paper files be stored securely?
- Can computer systems be sufficiently protected?
- Will clients be comfortable and secure?
- Will the site of the premises negatively affect the client's interest?
- Can the adviser's safety or that of other members of their household or staff be guaranteed?
- Will current professional indemnity insurance cover be sufficient?
- Will the Commissioner's staff be able to carry out an audit or any other aspect of her business?