

Aim and purpose

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

This note, which supports that duty, sets out the Commissioner's views regarding the Code of Standards relating to supervision, in particular Codes 21–28.

While the codes are explicit, further clarification is regarded as being beneficial for advisers to enable them to better understand the requirements of the OISC in respect of supervision and how they will be enforced. The note is given as guidance and as an indicator of the standards and best practice that the OISC expects to encounter in regulated advice services. It may be that an organisation believes that the standards outlined are inappropriate in their given circumstances. If this is the case, the organisation must be able to show that the standards that it sets equal or better those outlined in this note. It must, however, be noted that the OISC expects supervisors and those who are supervised to adhere as closely as possible to the standards outlined in this note to ensure that their clients' interests are best served.

The note includes a structured guide to the roles and responsibilities of supervisors and those being supervised and aims to assist advisers to reduce the risk of client(s) having reason to complain about the service provided to them arising from a lack of clarity about those roles and responsibilities.

What is covered in this guidance note?

The areas covered are:

1. Background.
2. Progress under effective supervision.
3. Supervisor's duties.
4. Supervisor on holiday.
5. Demonstration of the provision of competent advice or services.
6. Restrictions.
7. Supervisors.
8. File review.

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

The Commissioner's Code of Standards refers to supervision in two places. The first is in **Codes 16(i)** and **16(k)**. The second is in **Codes 21–28**. These two sections have been included in this document as they refer to quite different situations and the level of supervision required.

1. Background

- 1.1 Codes 16(i) and 16(k) require all organisations to demonstrate that they adequately supervise all their staff (including advisers who have submitted Statements of Competence). Under Code 16(i), which relates to the managing and supervising of staff, supervision refers to the professional overseeing of staff and client matters, and also relates to actual advice provided. This Code should be cross-referred to Code 16(k).
- 1.2 Different people within an advice organisation may carry out the functions of management and supervision. We do not wish to prescribe how an organisation might demonstrate that they meet Codes 16(i) and 16(k), as there will be numerous possibilities. Organisations should take into account issues such as the ratio of staff to one supervisor and the ability of staff to contact them for advice. If necessary, they can contact the OISC to discuss their particular circumstances.
- 1.3 Codes 21–28 refer to those members of staff who have not submitted a Statement of Competence form to the OISC for the level at which they are working. These staff are referred to as ‘assistants’ rather than ‘advisers’. Assistants may be staff training to reach Level 1, or a higher level if they are already competent at Level 1. They could be part-time support staff such as bilingual clerks who only take statements from clients and do no other work. Those working in this manner are expected to be closely supervised. Where appropriate, the OISC expects such staff to submit a Statement of Competence once they have gained sufficient training and experience.
- 1.4 We intend to interpret Code 25 as if ‘adviser’ refers to trainees and support staff. The reference in this Code to ‘paragraph 25’ should read ‘paragraph 24’.

2. Progress under effective supervision

- 2.1 The most effective means by which advisers can move up from one level of competence or one area of work to another is through training while being effectively supervised.
- 2.2 As a general principle, the OISC will allow advisers to work under supervision up to the next level. This will, however, only be permitted in a situation of effective supervision as outlined in Code 21.
- 2.3 Code 21 of the Commissioner's Code of Standards states:

Code 21: In organisations where advisers have staff available to assist them with the provision of advice or where advisers employ staff to assist them, there must be adequate management and supervision of the staff. Organisations must identify and nominate a person to act as supervisor. Where there is more than one supervisor within an organisation, one person should be identified as having responsibility for overseeing supervision.

- 2.4 The Commissioner regards effective supervision as being the overseeing and control within an organisation of such persons' activities under a designated adviser's direction.

3. Supervisor's duties

- 3.1 The duty to supervise staff covers not only employees but also independent contractors engaged to carry out work on behalf of the firm, e.g. consultants, locums, advisers' clerks.
- 3.2 Some organisations may have more than one supervisor. Accordingly, they need to appoint a Principal Supervisor who will be the person with overall responsibility for supervision in a firm. The Principal Supervisor cannot escape responsibility for work carried out by the organisation by leaving it entirely to staff, however well qualified/experienced they might be. This principle also holds true for an organisation that has only one supervisor.
- 3.3 The supervisor must ensure that the advisers in their organisation are supervised and managed so as to provide for:
 - 3.3.1 compliance with the firm's duties at law and in conduct to exercise proper supervision over their registered or exempt staff;
 - 3.3.2 adequate supervision and direction of clients' matters;
 - 3.3.3 compliance with the requirements of section 84(2)(c) of the Immigration and Asylum Act 1999 as to the direction and supervision of unqualified persons;
 - 3.3.4 effective management of the practice generally (management functions include business efficiency as well as professional competence. Effective management in respect of business efficiency would be likely to occur if procedures detailed in the OISC registration/exemption application form are operated by the organisation in question); and
 - 3.3.5 file reviews to be undertaken using a file review form which tests that advice is given competently, client matters are progressed, the client is kept up to date with developments on their case at least once every six months, etc.

- 3.4 The supervisor must review a number of separate client files each month for every adviser under supervision. The OISC recommends at least three separate file reviews per supervisee per month. However, this is dependent upon the type and complexity of the cases as well as the experience of the caseworker. Given the OISC's strong recommendation, it is for the organisation to designate a specific number of files to be reviewed; however, this must be agreed with the OISC auditor when a training plan for the supervisee is being developed. There must be evidence on file that active supervision has taken place.
- 3.5 File review forms are to be kept on file **and** in a central folder available for inspection at audit.
- 3.6 The supervisor should be available and competent to answer queries put to them by their supervisee. The supervisor must be present to effectively answer queries from their supervisee.
- 3.7 File attendance notes recording conversations with the client or with the supervisor should be kept on file and should be completed in full. Indeed, where a supervisor has given guidance on a matter to their supervisee, the supervisee should record in their file notes the nature of the discussion that they had with their supervisor. While the notes do not have to be verbatim, they must be sufficiently detailed to give an understanding of the issues.

4. Supervisor on holiday

- 4.1 This situation is unavoidable, so the organisation must establish adequate alternative supervisory cover. This could be by setting up reciprocal supervision arrangements with a neighbouring advice service in order to provide cover when the supervisor is on leave. For further guidance, please refer to the note on cover while an adviser is away.

5. Demonstration of the provision of competent advice or services

Code 22: Advisers must be able to demonstrate that their supervision processes ensure the provision of competent immigration advice or services.

- 5.1 To assist in meeting the requirements of Code 22, a file review system as detailed under Code 21 should be implemented.
- 5.2 The supervisor should promote a culture of openness and ensure that those working under their supervision are not reluctant to approach them for advice. This facilitates more effective case handling and a better overall service to clients.

Code 23: There must be a system for the allocation of cases to advisers according to their ability.

- 5.3 Advisers should not be given work so beyond their competence that it might prejudice the client. Advisers who are given work beyond their competence as part of their training must be supervised and their work must be closely monitored. Advisers who do not have previous experience of immigration or asylum work or in particular areas should be subject to a close degree of supervision for the first six months and all work they produce must be checked. This must be reflected in the file notes.
- 5.4 Advisers must be provided with appropriate and relevant training in order to enable them to meet the standards required for immigration and asylum advice work. Immigration law is constantly changing and so it is important that supervisors keep the training needs for those they supervise under review.
- 5.5 Level 1 advisers who are working at Level 2 under supervision, or Level 2 advisers who are working at Level 3 under supervision, must be subject to close supervision of the work they undertake at the higher level. The supervisee should submit all work produced at the higher level to their supervisor for examination. The supervisor should make notes of any amendments that are required and pass the work back to the supervisee, who should keep on file the copy of the supervisor's amendments to the draft work they produced.

6. Restrictions

- 6.1 On no account should a Level 2 adviser undertake appeals representation before the Immigration Appellate Authority without the adequate supervision of a Level 3 supervisor.
- 6.2 There is some work that OISC-regulated advisers generally are not authorised to deal with, such as representation at judicial review hearings. Supervisors should have a clear understanding of the limits of their competence and authority and be able to recognise cases that should be referred on to a solicitor. When audited by the OISC, a competent supervisor should be able to identify cases that have been referred on for judicial review to solicitors. The OISC auditor should be provided with a referral file containing referral letters to solicitors for such cases.

7. Supervisors

Code 24: Supervisors:

a. should have at least two years' recent and ongoing experience in immigration advice;

7.1 To be able to act effectively as a supervisor, it is important that supervisors have at least two years' recent experience of immigration and asylum casework. This is necessary in order for the supervisor to have the required breadth of current knowledge in immigration and asylum law. This requirement will be strictly enforced in order to protect the interest of clients.

b. must have experience of managing others;

7.2 The OISC acknowledges the realities of advice-giving and the advice sector. We shall work with advisers and the particular circumstances of their organisation. It is important that new supervisors are provided with supervisory management training in order to undertake their function effectively. The OISC caseworker will ask about what training a supervisor has undertaken in order to supervise effectively.

c. must be accessible to those working within the organisation.

7.3 This element of Code 24 focuses on the accessibility of the supervisor to those working in the office and is regarded as paramount to the success of supervision systems. It must be adhered to. The supervisor should be located within the same office premises as those who are being supervised.

7.4 Factors to be taken into account in relation to accessibility include the following:

7.4.1 The office should be supervised and managed by a registered/exempt supervisor, who must attend the office with sufficient frequency and spend sufficient time there to allow for adequate control of and consultation with staff, and for consultation with clients.

7.4.2 It is particularly important that systems of supervision and management encompass the work of those persons from time to time working away from the office (e.g. at home, visiting clients, at court, at the Home Office, at a police station, at a consulting room open for only a few hours per week, or staffing a stand at an exhibition).

7.4.3 When the supervisor at an office is away on holiday, on sick leave, etc., suitable arrangements must be in place to ensure that any client work and other duties are fully met.

7.4.4 If the supervisor will be away for a month or more, the arrangements will normally need to include the provision at that office of another adviser who is qualified to supervise.

Code 25: A supervisor, supervising advisers working at Levels 2 and 3 in addition to complying with paragraph 25, should:

a. have sufficient experience, having completed an average 12 hours per week relevant casework in two out of the previous four years;

7.5 In order to effectively supervise, a supervisor will need an extensive breadth of experience. Supervisors will need to be able to confirm that they have undertaken cases in the last four years in the different categories identified in Levels 2 and 3.

b. spend a minimum of 12 hours per week on average in a supervisory capacity;

7.6 The amount of time spent supervising will relate directly to the number of staff that the supervisor oversees and the size of the caseloads held by the staff. It is therefore important that realistic caseloads are set for both supervisee and supervisor. The supervisor must be able to spend a reasonable amount of time supervising the caseloads of those they oversee.

c. maintain their own caseload.

7.7 In order to keep up to date with changes in immigration law and practice and effectively supervise, it is important that supervisors retain a personal caseload. This should continue to provide them with an effective spread of cases at Levels 2 and/or 3. It is important for the supervisor to have such a caseload since this will enable them to develop a greater insight into immigration law and thereby be in a position to offer guidance to those they oversee.

8. File review

Code 26: A supervisor or other competent person must undertake random sampling of the work of those under supervision in order to assess the quality of advice provided. The sample must be sufficient, along with other indicators, for the supervisor or other competent person to be able to assess the overall quality of an adviser's work.

- 8.1 In order to undertake a random sampling of client files, the supervisor will need to review fully a specified number of files from each of the people that they supervise and use an appropriate and comprehensive file review form. For further guidance on this, please see the notes on file review and file review notes under Code 21 above. File reviews should be done monthly so that standards of advice-giving are effectively monitored. Moreover, the supervisor should also be monitoring adherence by the adviser to other office policies and procedures, such as recording key dates on files and in, for example, a central diary.
- 8.2 A file review of work undertaken by a caseworker should indicate whether corrective action is required. If an OISC auditor notes a lack of competence in relation to a supervised caseworker's file(s) then this will raise questions over the rigorousness of the file review procedure and possibly over the competence and effectiveness of the supervisor.

Code 27: A record of the review must be retained on the case file as well as being stored centrally.

8.3 In order for the file review form to be available for inspection, it should be kept in a central location in a file review folder. It should also be kept on the actual file, subject to the review. The OISC will want to ensure that this procedure is adhered to stringently.

Code 28: Systems must be in place to ensure corrective action is undertaken where necessary.

8.4 It is important that any necessary corrective action identified as a result of a file review is undertaken promptly. There should be a deadline of no more than five working days for the completion of the corrective action. There should be a system in place that ensures that the corrective action has been undertaken.

8.5 For a corrective action system to work, it will be necessary for the supervisor to provide feedback on performance to their supervisee and inform them about any corrective action that needs to be taken. The supervisor should provide a full explanation to the supervisee regarding the need for corrective action and should address any concerns that the supervisee has. Failure to provide effective feedback to the supervisee may mean that the supervisee omits to undertake the corrective action within the required time limits since s/he does not understand the importance of taking the corrective action demanded. The supervisor will also need to consider the training needs of the supervisee.

8.6 As indicated under Code 21, a file note must be generated to ensure that the supervisor's advice is recorded and actioned within the agreed time limits.