



Guidance on Competence

Office of the Immigration Services Commissioner



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Introduction

The Immigration Services Commissioner has a duty to ensure that those who provide immigration advice or immigration services are competent to do so. This *Guidance on Competence* sets out the standards advisers should meet in order to be considered competent. It is the third edition and has been revised in the light of feedback from the immigration sector and our experience during our first three years of operation.

What do we mean by competence?

When we use this term, we mean the skills and knowledge that each adviser must demonstrate in order to show that they are able to provide good quality advice and services. The detailed competence requirements are contained in this document in the sections starting on page 5.

The OISC measures competence in two ways: through the application process and on audit. Competence is assessed on application in two ways. First, applicants are required to submit a statement of competence in which they can demonstrate they meet competence requirements in different ways, for example the number of years experience they have, professional development they may have undertaken (this will be the OISC's main focus in the case of more inexperienced advisers) and what access they have to updated information on changes in law and procedures. Second, applicants are now expected to undergo formal written competence assessment. At Level 1, this consists of a series of multiple-choice questions that potential advisers can take online and which are designed to give the OISC a clear picture of their level of knowledge and any particular areas of strength or for improvement.

On audit, OISC staff will look at client files to take an initial view as to the competence of the adviser. They have access to expert immigration consultants where they wish to look into an adviser's competence in greater depth.

OISC advice levels

The OISC has divided immigration advice and services into three levels of activity depending on the complexity of the work involved. The competence requirements increase with the complexity of the work. In this way the OISC aims to ensure that advisers who provide only initial advice may continue to do so. Details of the types of work permitted at each level begin on page 4.

Are you providing immigration advice or immigration services?

The definition of immigration advice and immigration services is set out in section 82 of the Immigration and Asylum Act 1999. Immigration advice:

- relates to an individual
- is given in connection with a relevant immigration matter.

Immigration services means making representations on behalf of a particular individual:

- in civil proceedings before a court, tribunal or immigration judge in the United Kingdom
- in correspondence with a Minister of the Crown or a government department.

Please note that the OISC regulates only those who provide immigration advice and services that address **an individual's particular circumstances**. If your work is restricted to signposting or the provision of general information, you do not need to apply to the OISC for regulation.

The following are examples of the kinds of work we do **not** regulate:

- providing general information or leaflets on the immigration and asylum systems
- directing individuals in need of immigration advice to an adviser.

Please contact us if you have any queries about whether you come within the OISC scheme.

Summary of OISC levels of advice

A summary of the work permitted at each OISC level is given on page 4. A detailed explanation of each level begins on page 5.

OISC levels

The three levels of immigration advice that the OISC uses are as follows:

- Level 1 – Initial advice
- Level 2 – Casework
- Level 3 – Advocacy and representation.

Additional information Levels and types of work

Advisers working at a particular level do not need to be competent in all the categories of work permitted at that level. For example, at Level 2, someone providing immigration advice and/or services on nationality issues does not have to be competent at Level 2 in EU and EEA work. However, all advisers at Levels 2 and 3 must be competent in all areas permitted at Level 1, regardless of the areas of their competence at Level 2 or 3. This means, for example, that a business immigration specialist working at Level 3 is expected to be competent in nationality or EEA work at Level 1.

Also, advisers do not need to undertake all aspects of the work permitted to obtain permission to provide advice or services at a particular level. For example, at Level 2, an adviser is allowed to lodge appeals but does not have to do this in order to be permitted to work at this level.

Working under supervision

Code 56 of the Commissioner's *Code of Standards* contains a general prohibition on advisers working beyond the level at which they have been registered.

Nevertheless, the Commissioner recognises that the most effective means by which advisers can move up from one level of competence to another, or from one area of work to another, is through training while being effectively supervised. Therefore, advisers are allowed to work up to the next level if being supervised in accordance with Codes 25–28 of the *Code of Standards*.

The level of supervision necessary will vary depending on the training and experience of the supervisee, but initially at least it should be very close. The supervisor should be on the same premises as the supervisee and the latter should be submitting all work produced at the higher level to the supervisor for examination and correction. There must be a system in place for ensuring that corrective action is taken where necessary and the entire process must be properly documented.

The supervisor should actively monitor or oversee the work of the supervisee, not simply serve as a source of second-tier advice.

It is envisaged that there should be some system of staged progression involving a series of assessments of the supervisee's performance to determine whether he or she is ready to move to the next stage. As the supervisee's training progresses, so the degree of supervision can be reduced.

For example, where a Level 1 adviser is being trained to accompany clients to Home Office interviews, the adviser may begin by accompanying a senior adviser, then attending in the company of a senior adviser, and finally going unaccompanied but being fully briefed before and debriefed afterwards and the supervisor checking the interview record.

It is to be expected that this process will generally result in the supervisee becoming fully competent at the higher level. It should not usually become a permanent arrangement.

Code of Standards

This document should be read alongside the *Code of Standards*. This details the organisational standards that the OISC has set for advisers. There are some sections of the Code that relate closely to providing competent advice and services.

Advisers should ensure that they comply with the following:

- Referrals and signposting, Codes 41–47
- Supervision, Codes 25–28
- Record-keeping and file management, Codes 81–89
- Client confidentiality, Codes 14 and 90
- Conflict of interest, Codes 15–16
- Client's interest, Code 9
- Competence, Codes 17–20
- Training and resources, Codes 21–23.

Summary of the OISC levels

Please note that if you only signpost or pass on general information about the immigration system you are outside the OISC scheme. See pages 1–2 for more details.

Area of work	Level 1 Initial advice	Level 2 Casework	Level 3 Advocacy and representation
Asylum	No work on applications permitted (Limited assistance within the immigration rules only)	All aspects of asylum applications and related HRA applications, Case Resolution/Legacy Cases and Active Review. Lodging (in exceptional circumstances) Notices of Appeal	Substantive appeals work, including representation in the AIT, specialist casework
Entry clearance, Leave to Enter or Leave to Remain	Basic applications that are within the Immigration Rules, including immigration employment documents and PBS	Out-of-time applications, concessionary policies, lodging (in exceptional circumstances) Notices of Appeal and Statements of Additional Grounds, representations to the UKBA on illegal entry, overstayer, removal and deportation cases	As above
Nationality and citizenship	Basic applications for registration and naturalisation	Discretionary and complex applications	Specialist casework
EU and EEA immigration law	Basic applications for EEA nationals and non-EEA family members that are within the Immigration Rules, including applications for A8 and A2 nationals	Discretionary and complex applications, lodging (in exceptional circumstances) Notices of Appeal	Substantive appeals work, including representation in the AIT, specialist casework
Detention, applications for temporary admission, CIO bail, immigration judge bail	An adviser at this level must not provide advice/services in this area	Representations to the UKBA, applications for temporary admission, CIO bail	Immigration judge bail, including representation at AIT hearings

OISC Level 1 – Initial advice

Work permitted at Level 1

At this level, applications permitted within the Immigration Rules are listed below. Where cases become complicated or an application is refused, an adviser must refer a client to a higher level adviser as soon as possible. A case may become complicated, for example, where the Home Office questions the validity of evidence or calls a client in for an interview. Level 1 advisers can work on Leave to Remain applications only where the client has outstanding leave. An adviser at Level 1 must establish whether a client already has a more qualified legal representative. Where this is so, the Level 1 adviser must check with that adviser before carrying out any work and copy relevant information to that adviser. The type of work that might be carried out in these circumstances will always be administrative, e.g. notifying the Home Office of a client's change of address.

Asylum

Only very limited services are allowed at this level. No substantive asylum work is permitted (especially applications and appeals). Only one-off assistance is permitted, including:

- notifying the UKBA of a change of address
- extension of Temporary Admission
- applications for permission to work
- travel document applications for someone granted Humanitarian Protection/Exceptional Leave to Remain

Applications for entry clearance, Leave to Enter or Leave to Remain

Work permitted

Basic applications that are within the Immigration Rules in the following categories:

- visitors
- students
- spouses/unmarried partners
- other family members
- immigration employment documents
- all applications under PBS, visitors, diplomats, their family members and domestic staff, and non-asylum Case Resolution/Legacy Cases
- other applications such as au pair, postgraduate medical/dental training and private medical treatment.

Work not permitted

Applications involving detailed representations and follow-up correspondence such as:

- applications for Indefinite Leave to Remain on the grounds of long residence in the UK (14 years' continuous residence)
- applications for settlement on the grounds of domestic violence
- applications for further leave to remain/settlement in respect of adopted children
- applications that are not within the Immigration Rules.

Illegal entrants, overstayers, removal or deportation from the uk

No work is permitted at Level 1.

Nationality and citizenship under UK law

Basic applications for:

- naturalisation as a British citizen
- registration as a British citizen.

EU and EEA immigration law

Basic applications for the following:

- residence permit for an EU/EEA national
- family permit for a non-EU/EEA family member
- entry clearance for non-EU/EEA family member
- Workers Registration Scheme
- A2 Accession Scheme.

Detention, applications for temporary admission, CIO bail and immigration judge bail

No work is permitted at Level 1. A client must be referred on to a higher level adviser as soon as possible.

Competence requirements

Advisers at this level need to demonstrate the following:

Knowledge

1. Sufficient knowledge of immigration and asylum law to identify:
 - that a client is subject to immigration control
 - possible immigration categories that might apply
 - relevant forms and procedures that apply
 - the requirements of the Immigration Rules that must be satisfied in respect of a particular application
 - relevant time limits
 - urgent situations.
2. Clear understanding of the limits to the adviser's knowledge and competence and of when to refer a case on. This includes a general knowledge of immigration and asylum work and procedures, particularly in relation to illegal entrants and overstayers, to ensure that a client can be referred appropriately.
3. Knowledge of the types of evidence needed to support cases and how to obtain them.
4. Awareness of the European Convention on Human Rights (ECHR), particularly Articles 3 and 8, and the Human Rights Act 1998 (HRA) in order to identify cases that should be referred on.

Skills and aptitudes

1. The ability to draft letters and complete application forms clearly and accurately in English, using the correct terminology and enclosing the appropriate evidence or a clear explanation why it has not been provided.
2. Sufficient verbal communication and interpersonal skills to:
 - identify to whom an enquiry relates to, establish their wishes and intentions and the relevant facts of the case
 - communicate advice clearly to a client, giving reasons and explaining any other options
 - inform the client of what steps they and the adviser need to take, including urgent action
 - communicate effectively in English with the UKBA and other agencies.
3. The ability to identify appropriate resources (e.g. textbooks, internet) and use them effectively.
4. Awareness of and a commitment to follow established good practice.
5. The ability to act with an appropriate sense of urgency.
6. The ability to maintain clear, comprehensive, accurate and structured records.

OISC Level 2 – Casework

Work permitted at Level 2

At this level, more complex applications in all categories are permitted as well as applications outside the Immigration Rules and applications under Home Office concessionary or discretionary policies. An adviser at this level can submit One-Stop Notices and lodge appeals on initial grounds but must then refer the case to a higher level adviser.

The following additional work is permitted at Level 2:

- applications to the UKBA, including asylum and human rights applications and concessionary or discretionary applications
- Case Resolution/Legacy Cases and Active Review
- applications for Humanitarian Protection
- representing clients in correspondence with the UKBA and at UKBA interviews
- representations to the UKBA in support of cases
- drafting client statements, including asylum statements
- submitting One-Stop Notices
- lodging appeals (only in exceptional circumstances where immediate referral is not possible)
- applications for temporary admission and Chief Immigration Officer's bail
- family reunion applications
- representations regarding ongoing immigration or asylum casework to MPs
- instructing a barrister or advocate for advice and to draft appropriate grounds of appeal (where permitted by the Bar Council).

Competence requirements

Advisers at this level, in addition to the competences required at Level 1 (see pages 5–7), need to demonstrate the following:

Knowledge

1. Detailed knowledge of immigration and nationality law, including:
 - grounds for applications
 - UKBA practice in the consideration of cases
 - UKBA concessionary policies
 - grounds for lodging appeals including human rights grounds
 - procedures for human rights applications, e.g. One-Stop Notices.
2. Detailed knowledge of relevant rights of appeal, time limits and procedures up to and including the lodging of the appeal and an awareness of relevant rights of appeal, time limits and procedures at the later stages of the appeal process.
3. A working knowledge of relevant case law and precedents and how to access and use them effectively when making representations on the client's behalf.
4. Detailed knowledge of the types of evidence needed to support appeals and applications outside the Immigration Rules and how to obtain them, and also the relative weight to be attached to different types of evidence.
5. Detailed knowledge of the European Convention on Human Rights (ECHR), the Human Rights Act 1998 (HRA) and other relevant law.
6. Where an adviser is working on asylum cases, they must have a detailed knowledge of asylum legislation and procedures, including the 1951 Refugee Convention, its 1967 Protocol and the UNHCR *Handbook for determining refugee status*.

7. Where an adviser is working on bail and detention cases, knowledge of the powers of the immigration authorities to grant bail or temporary admission, procedures for obtaining bail and UKBA practice in the consideration of cases, including an awareness of the factors that must be taken into account when detaining an individual for immigration reasons.
8. Clear understanding of the limits to the adviser's knowledge and competence and of when to refer cases on. This includes a general knowledge of immigration, asylum and nationality law and procedure to ensure that a client can be referred on for advice in areas in which the adviser is not qualified at Level 2. Advisers at Level 2 must be competent in all areas of work permitted at Level 1.

Skills and aptitudes

Interviewing and advising

Sufficient verbal and written communication skills so as to:

- engender trust in a client
- ask relevant questions, employing different techniques to access relevant information
- obtain clear, detailed instructions, statements and case histories
- deal sensitively with vulnerable or traumatised clients
- make clear, pertinent and effective oral and written representations to the UKBA and other agencies on the client's behalf
- give clear, detailed advice based on relevant laws and policies
- explain complex legislation and policies in simple clear language.

Drafting

The ability to:

- make clear, pertinent and effective written representations in English on behalf of clients, including drafting grounds of appeal
- draft clear, detailed, structured and effective statements in English on behalf of clients
- produce documents in English that are readily comprehensible and comprehensive.

Analytical and advocacy skills

The ability to:

- identify the primary and secondary issues presented by a client's case and the applicable laws or policies
- adequately assess the merits of cases presented
- make clear, cogent oral and written representations in support of cases
- identify and use the most appropriate sources of up-to-date information on case law and other specialised subjects in support of cases
- identify the salient points in an argument and respond to them effectively
- identify the evidence required to support a case and to evaluate the relative weight of the evidence
- represent a client effectively at UKBA interviews
- identify where referral to other professionals may be appropriate and to instruct appropriate experts
- where applicable, obtain and effectively challenge reasons for detention, using human rights legislation where appropriate, and do so in the course of a bail hearing where necessary.

Record-keeping and file management

The ability to:

- maintain clear, accurate records of UKBA interviews and legal proceedings
- maintain clear, comprehensive and well organised case files and an organised and accessible file management system
- maintain clear, accurate and comprehensive records of contacts with the client or third parties and other relevant matters.

OISC Level 3 – Advocacy and representation

Work permitted at Level 3

Some advocacy work is permitted at Level 2, for example a Level 2 adviser may make written and oral representations to the UKBA. However, it is only possible to represent clients at appeal hearings before an immigration judge at the AIT at Level 3. Level 3 work is any work done pursuant to the lodging of the notice of appeal against refusal, as well as the conduct of specialist casework, e.g. challenging existing case law and third country asylum cases. It requires a high level of knowledge of immigration law and practice, including a thorough conversance with relevant case law, human rights legislation and also asylum law where applicable. Level 3 advisers should also be aware of rights and procedures connected with judicial/statutory review, although they are not permitted to represent clients in proceedings in higher courts, nor to instruct counsel to do so.

Work permitted at Level 3 includes:

- conduct of specialist casework
- preparation of cases in the AIT, including drafting full grounds of appeal
- representing clients before the AIT
- instructing a barrister or advocate to appear at the AIT (where permitted by the Bar Council).

Competence requirements

Advisers at this level, in addition to the competences required at Levels 1 (see pages 5–7) and 2 (see pages 8–10), need to demonstrate the following:

Knowledge

1. Detailed knowledge of immigration, asylum and nationality law, including:
 - grounds for complex applications in the areas of work in which advice/services are provided
 - UKBA and AIT practice in the consideration of appeals and complex cases
 - UKBA concessionary/discretionary policies in complex cases
 - grounds of appeal to the AIT, including human rights and race relations grounds.
2. Detailed knowledge of relevant rights of appeal, time limits and procedures in the AIT, up to and including full hearings before the AIT, and sufficient awareness of rights and procedures in relation to judicial/statutory review to make appropriate referrals to a solicitor.
3. A sufficiently thorough knowledge of relevant case law and precedents to identify and make good use of appropriate case law to support a client's case, anticipate and respond effectively to the citing of precedents by the immigration authorities, and to do so during a hearing where necessary. Also sufficient knowledge and skill to be able to challenge existing case law where appropriate.
4. A sufficiently thorough knowledge of the types of evidence needed to support complex cases and appeals up to AIT level and how to obtain them.

5. A sufficiently thorough knowledge of the European Convention on Human Rights (ECHR), the Human Rights Act 1998 (HRA), the Race Relations (Amendment) Act 2000 and other relevant international law relating to immigration and asylum cases to be able to make effective and appropriate representations using this legislation in complex cases and appeals up to AIT level.
6. Clear understanding of the limits to the adviser's knowledge and competence and of how to refer cases on. This includes a general knowledge of immigration, asylum and nationality law and procedure to ensure that a client can be referred on for advice in areas in which the adviser is not qualified at Level 3. Advisers at Level 3 must be competent in all areas of work permitted at Level 1.

Skills and aptitudes

Interviewing and advising

The ability to explain clearly to the client in plain language the progress of their case, including the progress of any appeal, the outcome of the hearing, the implications for the client and the options open to them. Also to advise on the merits of further appeals and take clear instructions from the client as to how they wish to proceed.

Drafting

The ability to draft in clear, written English, making use of case law and human rights legislation where appropriate:

- complex applications
- complex letters, statements and representations
- full grounds of appeal to the AIT
- witness statements

- skeleton arguments and other relevant documents for AIT cases
- instructions to a barrister or advocate
- statements and other relevant documentation for higher court work.

Analytical and advocacy skills

Where the adviser wishes to represent clients at hearings before the AIT, sufficient verbal and written advocacy skills to do so effectively, including the ability to:

- make clear, cogent oral and written representations in the course of legal proceedings
- identify when it is appropriate to apply for an adjournment of a hearing
- identify the salient points in an argument and respond to them effectively, in the course of a legal hearing where necessary
- re-evaluate evidence in the light of representations from the UKBA
- anticipate and respond effectively to the citing of precedents by the immigration authorities, in the course of a hearing where necessary
- challenge existing case law where appropriate
- make effective and appropriate representations in appeal proceedings using ECHR, HRA, the Race Relations (Amendment) Act 2000 and other relevant international law relating to immigration and asylum cases
- accurately assess the merits of referring a case to a solicitor for judicial/statutory review proceedings.

While Level 3 advisers may have the ability to draft statements and other relevant documentation for higher court hearings, they must not represent or seek to represent clients in higher courts. The Court and Legal Services Act 1990 and the Solicitors' Act 1974 govern rights of audience in higher courts. These Acts deny a right of audience to those who are not legal professionals except in certain circumstances, such as where a judge has allowed a right of audience as a McKenzie Friend. An OISC-regulated adviser, who by definition provides immigration advice and/or services in the course of a business, must not seek to appear as a McKenzie Friend. OISC-regulated representatives must not seek to appear unless they have rights of audience under the primary legislation noted above.

Record-keeping and case management

Excellent record-keeping and case management skills, including the ability to:

- collate a well organised and well presented hearing bundle
- manage a busy schedule, including a diary of required attendances at legal hearings, and deal effectively with conflicting priorities while protecting the client's best interests
- maintain a clear record of case conferences with counsel and the client, including any discussion of the options open to the client, the merits of any appeal, the implications for the client and any further instructions taken.

Glossary

AIT

Asylum and Immigration Tribunal, the unified single-tier tribunal that will replace the two tiers of the Immigration Appellate Authority (IAA) – the adjudicators and Immigration Appeal Tribunal (IAT) – with effect from 4 April 2005. From that date, adjudicators will be named immigration judges.

Case law

Principles of law arising from decisions in the courts.

CIO bail

Chief Immigration Officer bail. This is one way a detained person or someone acting on their behalf can apply for release.

Concessionary policies

Policies that the Home Office has developed in immigration and asylum cases that are not law but which the Home Office should follow.

Discretionary policies

Policies that the Home Office has developed in immigration and asylum cases that are not law but which the Home Office should follow.

Discretionary Leave

Leave granted outside the immigration rules at the discretion of the Home Office to those considered not to be in need of international protection or who have been excluded from such protection.

ECHR

European Convention on Human Rights.

EEA

European Economic Area.

EU

European Union.

Exceptional Leave

Exceptional Leave to Enter or Remain was granted outside the immigration rules at the discretion of the Home Office. Such leave has now been replaced by the terms Discretionary Leave and Humanitarian Protection.

General information

Information about immigration and asylum procedures that does not refer to an individual's circumstances, for example leaflets that explain various immigration procedures.

HRA

Human Rights Act 1998.

Humanitarian Protection

Leave granted to anyone who is unable to demonstrate a claim for asylum but who would face a serious risk to life or person arising from the death penalty, unlawful killing, torture, inhuman or degrading treatment or punishment.

Immigration judge

The title of a member of the Asylum and Immigration Tribunal (see above).

Judicial review

The determination by the High Court of the legality of decisions of public bodies. Judicial review is confined to the review of questions of law and does not extend to a review of the merits of the administrative decision.

McKenzie Friend

A term used to describe someone who assists an unrepresented party in court (taking notes, acting as a witness to proceedings, organising papers and/or quietly giving advice). They have no right of audience and can address the court only if invited by the presiding judge. The OISC does not permit such activity by those it regulates.

One-Stop Notice

Introduced under sections 74 and 75 of the Immigration and Asylum Act 1999. The Notice requires applicants to state in full any human rights grounds they wish to rely on in order to remain in the UK.

Precedent

A judgment or decision that should be followed in cases where there are similar facts (see case law above).

Referral

Where an adviser finds that a client needs advice from another adviser (e.g. because the advice needed is beyond the first adviser's level of competence), and contacts an alternative adviser to arrange to transfer the client.

Signposting

Where an adviser provides information to a client about alternative sources of advice (e.g. because the advice needed is beyond the first adviser's level of competence) so that the client can make contact with another adviser.

Skeleton argument

A written argument submitted to a court outlining the case for the appellant/applicant.

Statement of Additional Grounds

The response to a One-Stop Notice (see above).

Statutory review

An application to the High Court under section 101(2) of the Nationality, Immigration and Asylum Act 2002 for a review of a decision of the Asylum and Immigration Tribunal (see AIT above). It is determined by a single judge without a hearing and by reference only to written submissions and documents filed.

UKBA

The United Kingdom Border Agency, a shadow agency of the Home Office. The UKBA deals with immigration, nationality and asylum matters and includes the Immigration Service.

July 2008

