

Regulating Immigration Advice

The OISC scheme explained

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1. Introduction

- 1.1 Providers of immigration advice or services in the UK are subject to a regulatory scheme, established by Part V of the Immigration and Asylum Act 1999. The scheme is administered by the Office of the Immigration Services Commissioner (OISC). The Immigration Services Commissioner is John Scampion.
- 1.2 This briefing provides an overview of the scheme. Section 2 describes who is covered by the scheme and section 3 outlines what not-for-profit (nfp) providers need to do to comply with the scheme. The briefing uses the term “provider” to mean both individual advisers and organisations employing such advisers.
- 1.3 Since 30th April 2001 it has been a **criminal offence** to provide immigration advice or services unless the provider is:
- registered with the OISC; **or**
 - authorised to practise by a designated professional body (or an equivalent European Economic Area regulatory body); **or**
 - exempt from the requirement to register with the OISC.
- 1.4 The above categories of provider are considered in more detail in section 3 below. Note, however, that providers who are exempt from the requirement to register are **not** exempt from the regulatory scheme as a whole or from having to comply with the Act. Most of the scheme still applies to exempt providers – see paragraph 1.9 below.
- 1.5 A person providing immigration advice or services when prohibited by the Act from so doing is liable to a fine and/or imprisonment for up to two years.
- 1.6 Nfp providers must obtain an exemption before they provide any immigration advice and services. The position of nfp agencies with employees who are solicitors is as yet unconfirmed.
- 1.7 Nfp providers are exempt from paying an application fee.
- 1.8 Certain nfp providers in the **education and health** sectors are covered by **block exemptions** and do **not** therefore need to apply for an individual exemption. This is considered in more detail in section 3 below.
- 1.9 There are four elements to the scheme:
- the Commissioner’s Rules – these apply to registered providers only;
 - the Code of Standards – this applies to registered and exempt providers;
 - the Guidance to Advisers: Competences – this applies to registered and exempt providers;
 - the Complaints Scheme – this applies to all providers, including members of designated professional bodies.
- These elements are considered in more detail in sections 4, 5, 6 and 9 below.
- 1.10 Documents relating to the scheme can be obtained from the OISC and are also available on its website. The OISC is based at:

5th Floor
Counting House

53 Tooley Street
London SE1 2QN

Telephone: 0845 000 0046
Fax: 020 7211 1553
Website: www.oisc.gov.uk
Contact: info@oisc.gov.uk

- 1.11 This briefing has been written primarily for nfp providers. The contents have been agreed with the OISC.
- 1.12 This briefing is not a substitute for reading the relevant OISC documentation in full nor does it constitute legal advice. All managers and advisers involved in the delivery of immigration advice or services should have an understanding of the new scheme and how it affects their service.
- 1.13 Providers who give immigration advice under a contract with the Legal Services Commission (LSC) must be accredited under the Law Society/LSC immigration accreditation scheme. For further information, see the LSC website at: http://www.legalservices.gov.uk/contract/g_civil.htm#immigration_asylum and the ASA briefing entitled "Immigration and Asylum Accreditation Scheme for advisers working under an LSC contract" on the ASA website at: http://www.asauk.org.uk/fileLibrary/pdf/Immigration_and_Asylum_Accreditation_Scheme003.pdf.

2 Who is covered by the scheme

- 2.1 The regulatory scheme applies to anyone who provides any immigration advice or services, except for someone acting in their capacity as:
- an office holder under the Crown (or otherwise exercising functions on the Crown's behalf); or
 - an employee of a government department (or otherwise acting under the control of a government department).
- 2.2 The scheme applies to providers in the UK regardless of the location of the client.

Definition of immigration advice and services

- 2.3 **Immigration advice** is defined as advice which:
- relates to a particular individual;
 - is given in connection with one or more relevant matters;
 - is given by a person who knows that he or she is giving it in relation to a particular individual and in connection with one or more relevant matters; and
 - is not given in connection with representing an individual before a court in criminal proceedings or matters ancillary to criminal proceedings.
- 2.4 **Immigration services** are defined as the making of representations on behalf of a particular individual in connection with one or more relevant matters:
- in civil proceedings before a court, tribunal or adjudicator in the United Kingdom; or
 - in correspondence with a Minister of the Crown or government department.
- 2.5 For the purposes of paragraphs 2.3 and 2.4 above, **relevant matters** are as follows:

- a claim for asylum;
 - an application for, or for the variation of, entry clearance or leave to enter or remain in the United Kingdom;
 - unlawful entry into the United Kingdom;
 - nationality and citizenship under the law of the United Kingdom;
 - citizenship of the European Union;
 - admission to Member States under European Community law;
 - residence in a Member State in accordance with rights conferred by or under European Community law;
 - removal or deportation from the United Kingdom;
 - an application for bail under the Immigration Acts or under the Special Immigration Appeals Commission Act 1997;
 - an appeal against, or an application for judicial review in relation to, any decision taken in connection with a matter referred to above;
 - work permits and other immigration employment documents.
- 2.6 The provision of **information only**, meaning information on immigration matters not related to the particular circumstances of an individual (for example describing the law in general terms, giving a client a leaflet or referring a client to another provider) is **not** covered by the scheme.
- 2.7 Organisations should consider very carefully whether they are providing information only or advice. Information becomes advice as soon as it becomes tailored to the particular circumstances of an individual enquirer as opposed to being a general description of the law applying to the population or groups within the population. If such advice is on a relevant matter as defined in 2.5 above, the provider of the advice falls within the scheme.

Not-for-profit providers and the scheme

- 2.8 The scheme applies where the provider is providing immigration advice or services “in the course of a business (whether or not for profit)”. **All** nfp organisations and advisers providing immigration advice or services as defined in paragraphs 2.3–2.5 above are covered by the scheme, including:
- advice services providing specialist immigration advice;
 - advice services providing generalist immigration advice, including where this is ancillary to advice on other issues, such as welfare rights or housing;
 - organisations providing immigration advice as a secondary function of their main service, for example providing counselling or hostel accommodation;
 - community and self-help organisations providing immigration advice.
- 2.9 The scheme applies both to individual advisers providing immigration advice or services and to organisations employing such advisers. It applies to both paid and volunteer advisers.
- 2.10 The scheme does not apply to immigration advice or services not being provided in the course of a business, for example advising a friend or family member.

3 Categories of provider

3.1 The scheme distinguishes between four categories of provider: registered providers, members of designated professional bodies, exempt providers and providers exempted by Ministerial Order. These are considered below.

Registered providers

3.2 All immigration providers are required to register with the OISC unless they are authorised by a designated professional body or exempt. In practice, the registration scheme is aimed at non-legally qualified advisers providing services for a profit. Nfp providers who are not members of a designated professional body must be granted exemption from registration by the OISC.

3.3 Registered providers must comply with the Commissioner's Rules, the Code of Standards and the Guidance to Advisers. They are also covered by the Complaints Scheme.

Members of designated professional bodies

3.4 Persons who are authorised to practise by a designated professional body or who work under the supervision of such an authorised person do **not** need to register with the OISC or seek exemption from registration. They need not comply with the Commissioner's Rules, the Code of Standards or the Guidance to Advisers (although they may as a matter of good practice wish to take account of the Code and Guidance). They are covered by the Complaints Scheme.

3.5 The term "authorised to practise by a designated professional body" includes persons who are not immigration specialists but work mainly in another area of law. Members of a designated professional body must, however, comply with the rules and regulations of that body, including those concerning the supervision of legal work. Under the Complaints Scheme (see section 9 below), the Commissioner may make a referral to a designated professional body, which may result in that body taking disciplinary action against a member provider.

3.6 The Act specifies the following organisations as being designated professional bodies:

- The General Council of the Bar
- The Law Society
- The Institute of Legal Executives
- The Faculty of Advocates
- The Law Society of Scotland
- The General Council of the Bar of Northern Ireland
- The Law Society of Northern Ireland

3.7 The position of Law Centres and other nfp organisations employing practising solicitors is unclear. As such organisations employ practising solicitors, some take the view that they constitute solicitors' practices/offices and as such are regulated by the Law Society in the country concerned. If this were the case, such agencies would not need to seek exemption from registration with the OISC. However, we understand that the Law Society and the OISC are still negotiating this point.

3.8 Practising solicitors volunteering in an nfp organisation, for example by participating in a legal advice rota scheme, do not personally need to obtain an exemption. The

organisation concerned must, however, apply for an exemption if other advisers provide immigration advice or services.

- 3.9 Practising barristers/advocates employed by or volunteering in an nfp organisation do not personally need to obtain an exemption. The organisation concerned must, however, apply for an exemption if other advisers provide immigration advice or services.
- 3.10 The Act also allows authorised advisers from other European Economic Area (EEA) states to provide services in the UK without having to register or obtain an exemption. This includes advisers authorised by bodies in other EEA states with a similar function to the OISC or by bodies responsible for regulating the legal profession in such states.

Exempt providers

- 3.11 Nfp providers must obtain an exemption if they wish to provide advice and immigration services (but see paragraph 3.6 above on the position of nfp organisations employing practising solicitors). Providers are committing a criminal offence if they provide such services without having obtained an exemption.
- 3.12 Nfp providers are **not** automatically exempted from the requirement to register, but must normally apply for an exemption (but see paragraphs 3.13 and 7.4 below). Exempt providers are not covered by the Commissioner's Rules, but they **must** comply with the Code of Standards and Guidance to Advisers. They are covered by the Complaints Scheme. These elements of the scheme apply to **all** exempt providers, whatever the route by which they have obtained their exemption.
- 3.13 There are two types of exemption:
- exemptions granted by the Commissioner to individual providers (referred to in this briefing as "individual exemptions");
 - exemptions granted by the Secretary of State to particular categories of provider (referred to in this briefing as "block exemptions").

Providers exempted by Ministerial Order

- 3.14 The Secretary of State has granted **block exemptions** covering providers in the **education and health** sectors. These providers will not therefore need to apply for a temporary or individual exemption, but will of course have to comply with the scheme. The details of the block exemption can be found in The Immigration and Asylum Act 1999 (Part V Exemption: Educational and Health Sector Bodies) Order 2001, Statutory Instrument 2001 No.1403. Advice services provided through universities, colleges of further education and student unions, together with health-sector bodies, are covered.

4 The Commissioner's Rules

- 4.1 The Commissioner's Rules apply only to registered providers. In practice, this means for-profit providers who are not members of a designated professional body. Nfp organisations having contact with the clients of such providers may find it useful to have a copy of the Rules.
- 4.2 The Rules set out a range of requirements, including those related to fee-charging structures, publicity, professional indemnity insurance, financial management and complaints handling.

5 The Code of Standards

- 5.1 The Code of Standards applies to both registered and exempt providers. It distinguishes between different **levels of service** and comprises three sections:
- section 1 covers organisational standards;
 - section 2 covers the behaviour of individual advisers;
 - section 3 covers the competence of individual advisers.
- 5.2 The Code of Standards has been partially matched to the CLS Quality Mark, firstly to maintain a degree of consistency between the two schemes and secondly to reduce duplication of effort by providers in meeting the requirements of the schemes. In practice, nfp providers in England and Wales obtaining the Quality Mark will be partially passported for the purposes of the OISC scheme. They must, however, meet additional OISC requirements (relating to behaviour and competence), which are not covered in the Quality Mark.

Levels of service

- 5.3 The levels of service in the Code broadly correspond to the different CLS Quality Mark levels of service, as follows:

OISC Level	CLS Quality Mark Level
Level 0 - Signposting and Information (comparative only – see 5.4 below)	Self Help/Assisted Information
Level 1 – Initial Advice	General Help
Level 2 - Casework	General Help with Casework
Level 3 – Specialist	Specialist Help

- 5.4 Note that providers operating at level 0 (equivalent to the Self Help/Assisted Information Quality Mark levels) are not covered by the scheme (see paragraphs 2.6 and 2.7 above) and do not have to register with the OISC or apply for an exemption. Information on level 0 is included in the Code for purely comparative purposes.
- 5.5 The organisational standards and adviser competences differ according to the level of service at which the organisation wishes to operate. The standards relating to the behaviour of advisers are the same for all levels of service.
- 5.6 It is essential to note that providers are **prohibited** from undertaking work that is regarded as being above the level at which they have been registered or exempted. In deciding the appropriate levels of service to be covered in their application for exemption, nfp providers will need to consider both:
- the level of organisational standards which the organisation can meet;
 - the level(s) of competence which individual advisers can meet.

This is considered in more detail below.

Organisational standards

5.7 The standards set out in section 1 of the Code have been organised into broadly the same areas as the CLS Quality Mark. The detailed requirements vary according to the level of service being provided.

5.8 The standards are as follows:

(a) **Access to service** – this covers informing clients about such issues as:

- the type of service provided (including the status of the service under the scheme);
- the work to be undertaken on the client's behalf;
- details of any costs;
- who in the organisation is dealing with the case (levels 2 and 3 only);
- how to make a complaint (levels 2 and 3 only);
- the progress and outcome of a case (levels 2 and 3 only).

(b) **Seamless service** – this covers:

- when it is appropriate to refer clients to alternative providers;
- withdrawing from a case.

(c) **Running the organisation** – this covers management policies, procedures and structures, including:

- how the service is organised;
- key objectives and forward planning;
- financial control and accounts;
- staff recruitment, training, management, supervision and appraisal;
- referral procedures;
- client satisfaction;
- anti-discrimination;
- client confidentiality;
- professional indemnity insurance;
- complaints handling.

(d) **People management** – this covers:

- management and supervision of advice/casework;
- casework allocation related to the ability of advisers;
- supervisor standards;
- case reviews.

(e) **Running the service** – this covers:

- enquiry/case records;
- case management;
- accessibility of records to clients and the OISC;
- clients' documents;
- publicity.

(f) **Meeting clients' needs** – this covers:

- confidentiality;
- conflict of interest;
- the use of interpreters;
- equality of service.

Behaviour standards

5.9 The standards in section 2 of the Code apply to individual advisers at whatever level of service they are operating. They cover:

- (a) Acting in the **best interest of the client**.
- (b) Appropriate **behaviour**, including:
 - respect for the client and the legal system and following due processes of law;
 - acting objectively and fairly with respect to the client;
 - demonstrating on request that the adviser is authorised to provide advice or services under the scheme;
 - not knowingly misleading immigration or other legal authorities;
 - not abusing immigration and asylum procedures.
- (c) **Client care**, including:
 - recognising that as a result of illness or trauma, some clients may be unable to provide a full account of events relating to their case;
 - helping such clients to obtain appropriate assistance, including obtaining necessary reports;
 - ensuring that clients receive a full explanation of their position and any proposed course of action, using an interpreter if necessary;
 - advisers not abusing their position in respect of clients.

Competence standards

5.10 Section 3 of the Code sets out general competence standards for individual advisers, covering:

- (a) **Competency** – this means ensuring that advisers:
 - have the necessary skills, knowledge and competences to meet the needs of their clients;
 - do not advise or act beyond the scope of their competence;
 - do not advise or act beyond the level at which they are registered or exempt.
- (b) **Training and resources** – this means ensuring that advisers:
 - have ready access to up-to-date information on immigration law;
 - have the knowledge, competences, resources and information relevant to their level of service, as set out in the Guidance to Advisers (see section 6 below);
 - can demonstrate that they have acquired the relevant knowledge, competences and resources and can keep them up-to-date;
 - have a documented training plan related to the requirements set out in the Guidance to Advisers, which is regularly reviewed;
 - where relevant, have an induction programme.

6 The Guidance to Advisers: Competences

- 6.1 The competence standards set out in the Code of Conduct are set out in more detail in the Guidance to Advisers. The Guidance currently in effect is the 2nd edition issued in June 2002. Registered and exempt providers must follow the Guidance.
- 6.2 The Guidance uses three levels of advice. These are levels 1, 2 and 3 described in paragraph 5.3 above. The Guidance also divides immigration into the following six categories of work:
- asylum;
 - applications for, or for variation of, entry clearance or leave to enter or remain;
 - unlawful entry into, or stay in, the United Kingdom, refusal of leave to enter or remain in the United Kingdom and removal or deportation from the United Kingdom;
 - nationality and citizenship under United Kingdom law;
 - citizenship of the European Union, admission to, and residence in, Member States under European Community law;
 - an application for release from detention, ie temporary admission, adjudicator's bail, or Chief Immigration Officer's bail;
- 6.3 At each level, the type of work permitted within each of the six categories is specified. At level 1, no work at all is permitted on unlawful entry or detention. At levels 2 and 3 all six categories of work are permitted.
- 6.4 At each level, competence requirements are specified. These are divided into knowledge and skills. They become more stringent the higher the level of service.
- 6.5 Advisers working at a particular level do not need to be competent in all the categories of work permitted at that level. However, all advisers at levels 2 and 3 must be competent in all areas permitted at level 1. So, for example, an adviser who is competent at level 3 in asylum does not have to be competent at level 3 in EU and EEA work; however, they must be competent at level 1 in this area.
- 6.6 When applying for an individual exemption, nfp providers will need to submit a Statement of Competence for each adviser providing immigration advice or services. This is considered in more detail in section 7 below.

7 Obtaining an individual exemption

Who needs to apply for an individual exemption

- 7.1 All nfp agencies who are currently providing immigration advice and services should already have been exempted from registration unless:
- they are a member of a designated professional body (but see paragraph 3.6 above); or
 - they are covered by the block exemptions for providers in the education and health sectors.
- 7.2 A provider who is providing immigration advice and services but who has not been exempted from the scheme is committing a criminal offence and is therefore liable to a fine and/or up to two years' imprisonment. Any such provider must immediately refer ongoing and new immigration enquiries/cases to providers who comply with the

scheme. They may resume providing immigration advice or services at any point in the future by obtaining an exemption from the OISC. Organisations seeking to provide immigration advice or services for the first time must obtain an exemption before doing so.

- 7.3 Providers applying for an individual exemption will need to demonstrate that they comply with the Code of Standards and the Guidance for Advisers. They must continue to comply in order to maintain their exemption. They will be audited for compliance at least every three years. However, at level 1, providers may not be audited at all if the OISC takes the view that there is a low risk of harm to clients. When assessing that risk, factors that may be considered are the organisation's complaint history and other audit regimes to which it is subject.

CABx

- 7.4 All CABx are exempt at level 1. This is by virtue of an agreement between the OISC and the National Association of Citizens Advice Bureaux (Citizens' Advice), the Northern Ireland Association of Citizens Advice Bureaux (NIACAB) and Citizens Advice Scotland (CAS).
- 7.5 Note that CABx exempted under the arrangement will still need to comply with the Code of Standards and the Guidance to Advisers, and are covered by the Complaints Scheme.
- 7.6 The above arrangement applies to level 1 only, and covers both bureaux and individual CAB advisers at that level. CABx wishing to be exempted at levels 2 or 3 must apply for an individual exemption in accordance with the procedures described in paragraphs 7.7–7.31 below.

Standard procedure for applying for an individual exemption

- 7.7 The procedures set out in paragraphs 7.9–7.31 below apply to:
- all nfp providers except CABx wishing to be exempted at level 1; and
 - all nfp providers including CABx wishing to be exempted at levels 2 or 3.
- 7.8 Providers must apply for an individual exemption by making a full application to the OISC. Before applying all providers should ensure that their staff have been informed about:
- the scheme and how it applies to the organisation's service;
 - the organisation's position concerning exemption;
 - the importance of continuing compliance with the scheme;
 - any procedures (for example, enquiry/case allocation, supervision and monitoring) put in place to ensure compliance and to avoid anyone inadvertently acting outside of the scheme.
- 7.9 The organisational standards set out in the Code of Standards have been matched to CLS Quality Mark standards, and organisations obtaining the Quality Mark will therefore be **partially passported** for the purposes of the OISC scheme (see paragraph 7.15 below).
- 7.10 Organisations wishing to apply must obtain an OISC Registration/Exemption Pack. The packs are available on the OISC website at www.oisc.org.uk/home. The OISC pack is in five sections, as described below.

- 7.11 Nfp providers applying for exemption at level 1 must complete the pack called “application pack for exemption at level 1”. Nfp providers applying for exemption at levels 2 or 3 must complete the pack called “application pack for exemption”.
- 7.12 Section 1 of the pack covers the organisation’s details and must be completed by all applicants.
- 7.13 Section 2 of the pack is divided into three parts:
- 7.14 **Part A** relates to the **Commissioner’s Rules** and must be completed by applicants seeking to register with the OISC (ie for-profit providers). Nfp providers seeking an exemption do not have to complete section A and it is therefore not included in the forms for completion by them.
- 7.15 **Part B** covers the **organisational standards** in the Code of Standards, which have been matched to CLS Quality Mark standards. Applicants seeking an exemption do **not** have to complete section B if they have obtained the Quality Mark. Other applicants must complete section B.
- 7.16 **Part C** covers the **behaviour** standards in the Code of Standards. These are not matched to the CLS Quality Mark. All applicants must complete this section.
- 7.17 Section 3 relates to advisers’ individual competence. The **Competence Statement** covers the **competence** standards in the Code of Standards and Guidance to Advisers. These are not matched to the CLS Quality Mark. All applicants must submit a Competence Statement for **each** adviser listed in the main application form, ie every adviser in the organisation who provides immigration advice or services covered by the scheme. The Competence Statement must be completed and signed by each individual adviser.
- 7.18 There is a separate Competence Statement for each level of service. The Statement lists the six categories of immigration work given (see paragraph 6.2 above). The adviser must indicate which categories of advice they wish to provide. The Guidance then seeks confirmation that the adviser has the knowledge and skills required for the level and categories applied for. It also seeks confirmation that the adviser has access to the interpreting facilities, information sources and ongoing training that are required by the Code of Standards. Finally there is a declaration, covering such matters as whether the adviser has:
- operated under a different name;
 - been disciplined or struck off by a designated professional body;
 - criminal convictions;
 - had an LSC contract or CLS Quality Mark refused or cancelled;
 - been sued by a client;
 - made a claim on their professional indemnity insurance.

Adverse declarations will not necessarily prevent individuals from gaining registration/exemption, but they are essential in enabling the OISC to consider the application fully.

Levels of service and applications for exemption

- 7.19 Providers must **not** provide advice or services beyond the level at which they have been registered or exempted. This prohibition applies to both organisations and advisers. This means, for example, that an organisation exempted at level 1 cannot provide a service at level 2, even if it happens to employ an adviser who can meet

the level 2 competence standards. Similarly, if an adviser is exempted at level 1, he or she is prohibited from providing immigration advice or services at levels 2 or 3, even if the organisation is exempted at one of these levels.

- 7.20 Organisations should apply at the highest level at which they wish to be exempted, taking account of the organisation's capacity and its ability to meet the OISC's requirements. For example, if an organisation wishes to provide a service at the level of General Casework (level 2), it must:
- **either** meet the organisational standards for level 2 providers **or** obtain the CLS Quality Mark at the General Help with Casework level; and
 - ensure that advisers meet the behaviour standards; and
 - employ at least one adviser who meets the competence standards for level 2.
- 7.21 Note that organisations seeking exemption via the CLS Quality Mark route must obtain the Quality Mark at the General Help level or above, as the Self-Help or Assisted Information levels cover organisations providing information only. They should apply for the Quality Mark level that corresponds to the highest level at which they wish to be exempted by the OISC.
- 7.22 Different advisers within an organisation may be exempted at different levels (but not at a level higher than that applying to the organisation). Thus an organisation exempted at level 2 may for example employ two advisers exempted at level 2 and three advisers exempted at level 1.
- 7.23 Individual advisers may be exempted at different levels for the different categories specified in the Statement of Competence (as listed in paragraph 6.2 above). An adviser may, for example, be exempted at level 2 in relation to asylum work and at level 3 in relation to the other categories. In such a case, the adviser will need to complete two separate Competence Statements.
- 7.24 Managers and supervisors should assess the level of competence of each adviser in relation to each of the six categories.

After an application has been made

- 7.25 The procedure that the OISC follows is different for those providers that apply to be exempted at level 1 and those that apply to be exempted at levels 2 or 3.
- 7.26 The OISC will undertake a desktop audit of the application. This means that an auditor will examine the documentation submitted by the provider and consider whether it meets the OISC's requirements.
- 7.27 OISC staff will provide advice to applicants where it is felt that there is a need to change any policies or procedures set out in the application, giving providers the chance to take corrective action after their application has been submitted.
- 7.28 If the provider has applied for exemption at levels 2 or 3, the OISC will then conduct a pre-exemption audit at the provider's premises. The auditor will seek evidence that all the procedures and policies checked during the desktop audit are working in practice. If the auditor feels that changes need to be made they will advise the provider of these and recommend corrective action. Depending on the nature of the change, the auditor will either ask for written evidence to be sent to them by a particular date or arrange another appointment to visit the provider to check that the corrective action has been taken.

- 7.29 If the provider has applied for exemption at levels 2 or 3, during the pre-exemption premises audit, the auditor will assess that each adviser is competent at the level at which they have applied. As the provider will not have any live files to review at this stage, the auditor may ask them to submit a dummy file dealing with a particular scenario chosen by the auditor. Alternatively they may ask questions to check the advisers' knowledge of immigration statute and case law. The questions will be focused on the areas of work the organisation intends to conduct. Furthermore if the organisation's business plan states that it will focus on a particular client group, the advisers will be asked about the law affecting that group. If a provider has applied for exemption at level 1, generally the OISC will not conduct a pre-exemption audit.
- 7.30 Once the auditor is satisfied that the provider has all the correct procedures and policies in place and that the advisers are competent at the level at which they have applied, the OISC will exempt the provider from the scheme. The provider will then be able to provide immigration advice and services.
- 7.31 If the auditor feels that the provider is not ready to give immigration advice at the level at which it has applied, the OISC will exempt it at the level that the auditor feels is appropriate. The OISC may also exempt an individual adviser at a level of competence below that at which he or she has applied. In these circumstances the auditor will recommend remedial action such as training courses that the adviser should take before re-applying at a higher level of competence.

8 Ongoing compliance with the scheme

- 8.1 The OISC aims to audit not-for-profit providers once every three years, following risk assessment, to ensure their continued compliance with the scheme. Like the pre-exemption audit, the auditor will carry out a desktop audit of policies and procedures and a premises audit to check that those procedures are effective. At the premises audit, the auditor may check advisers' knowledge of the law in the same way as at the pre-exemption audit.
- 8.2 The audit will also involve a review of around ten files to check the quality of advice given. These files may be selected beforehand or on the day of the audit. A number of OISC caseworkers have backgrounds in immigration and all receive training in immigration law. It is therefore most likely that the file review will be conducted by the OISC caseworker. In addition the OISC has a pool of external consultants who are specialists in immigration law. If the OISC caseworker thinks there is a particular concern about the quality of advice they may ask one of these consultants to attend an audit to offer further guidance.
- 8.3 While the auditor or external specialist is conducting their review of the files, they will give positive feedback on good work. They will also discuss possible alternative courses of action the provider could have taken. If it is clear from the files that there is a particular area of law that the provider is not familiar with, the auditor will recommend relevant training courses. The auditor may also recommend that the provider should develop an ongoing relationship with a more experienced local agency that has successfully passed its audit. This would be a supportive relationship involving regular file review by the more experienced agency.
- 8.4 If the auditor takes the view that the provider has failed to meet the required standards, they are under a duty to report this to the Commissioner. Depending on the seriousness of the failures, this may result in the withdrawal of the provider's exemption.

The Quality Audit Pilot Project

- 8.5 The OISC is currently piloting a new quality audit scheme. The scheme is a combination of five interrelated features: quality indicators, file review, skills and knowledge criteria, assessing competence and discussion between adviser and caseworker.
- 8.6 At present the OISC is piloting the competence assessment part of the scheme. This involves investigation and trial of different methods of assessment that could be used for the formal testing of an adviser's knowledge of immigration and asylum law as well as how they apply that knowledge in their provision of immigration advice and services.
- 8.7 The OISC will keep advisers informed via its publication *OISCnews*. The pilot is due to finish in September 2004 with formal testing starting in January 2005.

9 The Complaints Scheme

Scope of the scheme

- 9.1 The Complaints Scheme applies to **anyone** providing immigration advice or services (as defined in paragraphs 2.3–2.5 above), ie registered providers, exempt providers and members of designated professional bodies.
- 9.2 Leaflets to publicise the Complaints Scheme are available in different languages for distribution to advice providers, community groups, libraries etc.
- 9.3 The scheme covers **relevant complaints**, which are defined as:
- the competence or fitness of a person to provide immigration advice or immigration services;
 - the competence or fitness of a person employed by, or working under the supervision of, a person providing immigration advice or immigration services;
 - an alleged breach of either the Code of Standards or the Commissioner's Rules (where the Code or the Rules apply);
 - an alleged breach by someone regulated by a designated professional body (or equivalent EEA regulatory body) of the rules of that body.
- 9.4 The scheme enables "any person or their representative or other interested parties" to make a relevant complaint to the Commissioner. This means that advice services and other organisations can have a role in identifying unscrupulous providers and bringing them to the attention of the Commissioner.
- 9.5 The Commissioner can instigate the complaints procedure on his own initiative where he identifies circumstances in which a complaint could have been made.

How the scheme works

- 9.6 The scheme sets out a procedure for making a complaint and details how complaints are handled by the Commissioner. Providers should familiarise themselves with these procedures.
- 9.7 The Commissioner will not notify the Home Office or Appellate Authorities of an investigation or outcome of a specific complaint, except where the Home Office or an Appellate Authority is the complainant. However, if asked by the immigration authorities, the Commissioner will confirm that a complaint is being or has been

investigated. Providers may sometimes consider it helpful to their client's substantive legal case to inform the immigration authorities about a complaint against another provider.

9.8 The Commissioner will determine complaints in accordance with the civil standard of proof, ie the balance of probabilities.

9.9 Where a complaint is upheld by the Commissioner, he may:

- if the provider is registered, take account of the complaint when the provider next applies for continued registration, or in more serious cases, require the provider to immediately apply for continued registration;
- if the provider is exempt, withdraw the exemption;
- if the provider is either registered or exempt, and where the complaint is particularly serious or there has been a history of complaints, lay a disciplinary charge before the Immigration Services Tribunal (see paragraphs 9.11–9.14 below);
- if the provider is a member of a designated professional body (or an equivalent EEA regulatory body), refer the complaint to the relevant body.

If there are issues raised that may be useful to other providers, he may publish good practice points.

9.10 The Commissioner must keep the list of designated professional bodies under review and report to the Secretary of State if he considers that a body is failing to effectively regulate its members in relation to immigration advice and services. The Secretary of State has the power to remove a body from the list and to extend the scope of the Code of Guidance to apply to members of a particular body.

The Immigration Services Tribunal

9.11 The Immigration Services Tribunal deals with:

- appeals by providers against a decision by the Commissioner to refuse an application for registration or exemption;
- appeals by registered or exempt providers concerning the determination of a complaint or the imposition of a sanction by the Commissioner;
- referrals by the Commissioner of complaints concerning registered or exempt providers.

9.12 Complainants cannot appeal to the tribunal where the Commissioner has dismissed a complaint against a provider, although if they believe that they have new information, they may ask the Commissioner to review the complaint.

9.13 Tribunal members must be legally qualified or have substantial experience in immigration services or immigration law. The tribunal normally comprises three members, one of whom is legally qualified (though in relation to certain procedural matters, decisions may be made by a single legally qualified member).

9.14 Where the tribunal upholds a complaint, it may:

- direct the Commissioner to take account of the complaint when the provider next applies for continued registration;
- direct the provider to immediately apply for continued registration;
- direct the Commissioner to consider whether to withdraw the provider's exemption;

- direct the provider to repay a client in cases where an unreasonable fee has been charged;
- direct the provider to pay a penalty to the Commissioner;
- restrict, suspend or prohibit the provider from providing immigration advice or services.

10 Where to get further advice

- 10.1 The OISC can provide basic advice and guidance on the operation of the scheme and the exemption application process.
- 10.2 Organisations can contact their advice network or umbrella body for further information on the scheme. A list of advice network contacts is contained at the end of this briefing.
- 10.3 Organisations employing solicitors or barristers/advocates can contact their professional body for advice and guidance. Contact details are set out at the end of this briefing.
- 10.4 CLS Support is run by ASA and offers help and guidance on the CLS Quality Mark. This includes a free telephone consultancy service and written briefings to ASA members and organisations belonging to the following advice networks in England and Wales:
- Advice UK
 - Age Concern (England)
 - Citizens' Advice
 - Dial UK
 - Law Centres Federation
 - Shelter
 - Shelter Cymru
 - Youth Access

We can be contacted on 0870 7700447 or by email at cls.support@asauk.org.uk. We are unable to provide detailed help on the regulatory scheme described in this briefing.

Getting further help

Network contacts

Development Team manager
advice^{uk}
12th Floor
New London Bridge House
25 London Bridge Street
London SE1 9ST
tel: 020 7407 6622

Citizens Advice
Myddleton House
115-123 Pentonville Road
London N1 9LZ
Bureau Management
Consultancy Line
tel: 0845 120 2035

CLS Consultancy Line
tel: 020 7833 7046/7134 or
01873 810101

Shelter's CLS Support
Tricia Euston
tel: 01706 654867
Mark Ellison
tel: 01233 647070

James Kenrick
Youth Access
1a Taylor's Yard
Alderbrook Road
London SW12 8AD
tel: 020 8772 9900

John Edwards
Age Concern England
1268 London Road
London SW14 4ER
tel: 020 8765 7468

Management Helpline
DIAL UK
St Catherine's Hospital
Tickhill Road, Balby
Doncaster DN4 8QN
tel: 01302 310123

Lynn Evans
Law Centres Federation
8-19 Warren Street
London WC1P 5DB
tel: 020 7387 8570

JJ Costello
Shelter Cymru
25 Walter Road
Swansea SA1 5NN
tel: 001792 469400

Office of Immigration Services Commissioner (OISC)
6th Floor, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX
tel: 020 7211 0500 www.oisc.gov.uk

The Office of the Information Commissioner
Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
tel: 01625 545 745 www.dataprotection.gov.uk