

**CURRENT GUIDANCE**

## **Barristers Supervising Immigration Advisers**

### **Introduction**

1. Under previous versions of the Code of Conduct, self-employed barristers were prohibited from acting as a supervisor for the purposes of immigration advice and services. This prohibition was lifted on the introduction of the new BSB Handbook in January 2014.
2. Barristers are now able to act as supervisors for the purposes of immigration advice and services, and in fact, this is specifically permitted by the Immigration and Asylum Act 1999 (IAA 1999) as amended.
3. This guidance sets out what the Bar Standards Board (BSB) expects of barristers when acting in such a capacity.

### **The legislative position**

4. The IAA 1999 provides that no person may provide immigration advice and services unless they are a qualified person. A qualified person includes a person authorised to provide immigration advice and services by a designated qualifying regulator. The Bar Council is a designated qualifying regulator for the purposes of the IAA 1999 and so a barrister would constitute a qualified person.
5. The legislation goes on to set out that a person is also a qualified person if they are acting on behalf of, and under the supervision of, a person within the preceding paragraphs (which includes those authorised by a designated qualifying regulator), whether or not they are under a contract of employment.
6. The BSB has considered the wording of the legislation and takes the view that it creates a direct link between the lay client and the barrister, irrespective of whether the service is being provided by the barrister or by a supervised person.

### **The barrister's obligations to the lay client and the BSB Handbook**

7. A self-employed barrister is unable to provide legal services unless instructed in accordance with Rule S24. Rule S24 provides that a barrister may supply legal services if:

- i. Appointed or instructed by the court;

- ii. Instructed by a professional client;
- iii. Instructed by a licensed access client (in which case the licensed access rules must be complied with);
- iv. Instructed by or on behalf of any other client, provided the matter is public access instructions (in which case the public access rules apply), or the matter relates to the conduct of litigation.

8. When a barrister provides immigration advice and services, it is likely that they will be undertaking activities defined as legal services in the BSB Handbook (including, for example, legal advice). If they are acting as a supervisor for the purposes of the IAA, it is likely that in the first instance they will provide such services to the supervised immigration adviser. However, these services are ultimately for the benefit of a lay client. A lay client receiving legal advice or other legal services from an immigration adviser working on behalf of, and under the supervision of, a barrister relies on that relationship to ensure that (i) the advice given is correct, (ii) the services provided are to a competent standard and (iii) the services are provided by a person that is fit to provide them. The BSB takes the view that this direct link created between the lay client and the barrister means that the barrister is **personally responsible** for any immigration work undertaken by the supervised immigration adviser.

9. You should ensure that before entering into an agreement to supervise an immigration adviser you exercise due diligence. In particular, you should check whether the immigration adviser has been prohibited, or is currently suspended, from practice by the Office of the Immigration Services Commissioner (OISC): <https://www.gov.uk/government/publications/list-of-prohibited-or-suspended-immigration-advisers/list-of-prohibited-or-suspended-immigration-advisers>. You should also check with OISC whether the immigration adviser's registration has been cancelled by them. Supervision by a barrister should not be used to circumvent the OISC regulatory regime and it would not be in the public or clients' interest for you to supervise such individuals, as this would undermine the trust and confidence that the public places in you or in the profession (Core Duty 5 in the BSB Handbook). Your obligations under Core Duty 5 require you not to act in an association with a person where, merely by being associated with such person, you may reasonably be considered as bringing the profession into disrepute. A rule change explicitly prohibiting entering into this type of arrangement will be included in the BSB Handbook, in due course, subject to approval from the Legal Services Board.

10. Barristers are also reminded that, if they are providing a legal service to the supervised immigration adviser (or to another intermediary) or to the immigration client, then Rule S24 and the public access rules must be adhered to.

11. Barristers should not act as a supervisor for the purposes of immigration advice and services unless they are registered as a public access practitioner. Barristers should also refer to the public access guidance for barristers and pay particular attention to the section on intermediaries. The guidance can be found here: <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/codeguidance/>

12. Barristers acting as supervisors must comply with all the relevant provisions of the Code of Conduct, including the Core Duties, and should not act as a supervisor in relation to any matter for which they do not themselves have the necessary relevant experience. Barristers should also take care to pay particular attention to Rule C22.1 and associated guidance when engaging with clients in relation to immigration advice and services. The rule requires that the terms/and or basis on which instructions have been accepted should be set out in writing to the client. If there are any supervisory arrangements in place, the BSB would expect this to be included in such documentation to the client. You should not mislead or allow your client to be misled about the status of a supervised immigration adviser, nor the arrangements for supervision.

13. When entering into an arrangement with a supervised immigration adviser, you should remind yourself of the BSB Handbook rules regarding the prohibition on paying or receiving referral fees (Rule C10), and entering into associations with non-BSB regulated persons (Rule C79-C85). In particular, if you are entering into an arrangement with a supervised immigration adviser you **must** notify the BSB's Supervision Department: <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/supervision/>

14. It should also be noted that the lay client may be entitled to complain to the Legal Ombudsman if they are dissatisfied with the service provided via the supervised immigration adviser. Rule C99 requires that barristers notify clients in writing when they are instructed (or at the next reasonable opportunity) of their right to make a complaint, including their right to complain to the Legal Ombudsman.

### **What does a suitable supervision arrangement look like?**

15. The BSB takes the view that a suitable arrangement for the supervision of an immigration adviser requires the following factors to be present:

- Frequent documented contact between the barrister and supervised immigration adviser;
- An evidenced, sufficient level of oversight of the supervised immigration adviser's work – you should have full up to date knowledge and understanding of all the casework the adviser is undertaking in your name. You should carry out a risk assessment of the case in order to ensure that the supervised immigration adviser is competent to deal with all the relevant issues that may arise in the case; and
- Barristers supervising immigration advisers should be readily available to provide guidance as and when required. For example, it is unlikely that a barrister is able to have sufficient oversight of a supervised immigration adviser if they are in a different country.

16. If you would like to discuss your duties and responsibilities when supervising an immigration adviser, contact the Bar Council's Ethical Enquiries Service:

<https://www.barcouncil.org.uk/supporting-the-bar/ethical-enquiries-service/>

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