

**CURRENT GUIDANCE**

## **Barristers Supervising Immigration Advisers Guidance**

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## Introduction

1. Self-employed barristers, BSB entities and employed barristers in authorised non-BSB bodies are able to act as supervisors for the purposes of immigration advice and services, as this is permitted by section 84(2)(e) of the Immigration and Asylum Act 1999 (IAA 1999) (as amended).
2. This guidance sets out what the Bar Standards Board (BSB) expects of you when acting as a supervisor in accordance with the IAA 1999.

## The legislative position

3. The IAA 1999 provides that no person may provide immigration advice and services unless they are a qualified person. As the Bar Council is a designated qualifying regulator for the purposes of the IAA 1999, an authorised barrister or BSB entity is a qualified person for the purposes of the Act.
4. A person<sup>1</sup> is also a qualified person if they are acting on behalf of, and under the supervision of, a person within paragraph three above and providing advice and services within England and Wales. It is the view of the BSB that this creates a link between the lay client and the barrister, irrespective of whether the service is being provided by the barrister or the immigration adviser. You must therefore comply with your regulatory obligations to clients as if the adviser's client were your client. If you are acting as a self-employed barrister, the relevant Public Access requirements apply.

## The BSB position

5. Barristers supervising an immigration adviser under the IAA 1999 must only do so in instances where it would be appropriate and in the client's best interests (Core Duty 2).

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<sup>1</sup> This can include both corporate and unincorporated persons.

To determine what is ‘appropriate’, the BSB has consulted with the Office of the Immigration Services Commissioner (OISC). They regulate immigration advisers, ensuring they are fit and competent and act in the best interests of their clients. To ensure they do so effectively, they have a number of powers and sanctions they can impose against immigration advisers and organisations they regulate where they (the immigration adviser or organisation) have failed to meet their standards<sup>2</sup>.

6. Rule C85A of the [BSB Handbook](#) prohibits you from acting as a supervisor of an immigration adviser in certain circumstances. This is to ensure:
- The BSB’s regulatory regime is consistent with, and does not undermine, OISC’s regime or those of other approved regulators;
  - There is a consistent and robust level of consumer protection; and
  - You comply with the Associations rules and Core Duty 5. Guidance C126 states that 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<sup>3</sup> or otherwise diminishing the trust that the public places in you and the profession.

Rule C85A provides that:

*You must not act as a supervisor of an immigration adviser for the purposes of section 84(2) of the Immigration and Asylum Act 1999 (as amended) (IAA 1999)*

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<sup>2</sup> The OISC were set up under the [Immigration and Asylum Act 1999](#). They derive their powers from this Act, the [Nationality, Immigration and Asylum Act 2002](#) and the [Immigration Act 2014](#).

<sup>3</sup> gC126 of the BSB Handbook

*where the Office of the Immigration Services Commissioner has refused or cancelled the adviser's registration, or where the adviser is:*

- 1. disqualified in accordance with paragraph 4 of Schedule 6 to the IAA 1999; or*
  - 2. prohibited or suspended by the First-tier Tribunal (Immigration Services); or*
  - 3. permanently prohibited from practising by an approved regulator, or a designated professional body under the IAA 1999, pursuant to its powers as such, and removed from the relevant register; or*
  - 4. currently suspended from practising by an approved regulator, or a designated professional body under the IAA 1999, pursuant to its powers as such.*
7. In relation to rC85A.1, an adviser may be disqualified from registration or continued registration as a qualified person<sup>4</sup> if they have been convicted of an offence under the Immigration Act 1971 (1971 Act) of facilitating illegal entry, altering immigration documents or obstructing an immigration officer or other person acting in the execution of the 1971 Act<sup>5</sup>.
8. In relation to rC85A.2, the First-tier Tribunal (Immigration Services) may suspend registration with OISC if the individual has been charged with an offence involving dishonesty or deception, or those listed within sections 25 or 26(1)(d) or (g) of the 1971 Act.

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<sup>4</sup> s84(2) of the IAA 1999 Act

<sup>5</sup> <http://www.legislation.gov.uk/ukpga/1999/33/notes/division/5/11>

9. In relation to rC85A.3-.4, approved regulator has the same meaning as in the BSB Handbook and the Legal Services Act 2007. The relevant regulatory bodies are:

- The Solicitors Regulation Authority;
- The Bar Standards Board;
- The Chartered Institute of Legal Executives;
- The Council for Licensed Conveyancers;
- Intellectual Property Regulation Board;
- Costs Lawyers Standards Board;
- Master of the Faculties; and
- Institute of Chartered Accountants in England and Wales.

10. In relation to rC85A.3-.4, the designated professional bodies under the IAA 1999<sup>6</sup> regulate lawyers outside of England and Wales. The relevant designated professional bodies are:

- The Law Society of Scotland;
- The Law Society of Northern Ireland;
- The Faculty of Advocates; and

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<sup>6</sup> s86 of the IAA 1999 Act

- The General Council of the Bar of Northern Ireland.

### **Before starting a supervision arrangement**

11. Before entering into a supervision arrangement, you must hold a practising certificate, or be authorised as a BSB entity, and should read this guidance in full to ensure you understand your obligations.
12. **Before beginning any supervision of an immigration adviser, you must notify the BSB that you intend to supervise in accordance with Rule C80. Self-employed barristers should do this via your MyBar account. After this declaration, you will need to complete the Immigration Advisers Associations Form on the [BSB website](#) and submit this to [supervision@barstandardsboard.org.uk](mailto:supervision@barstandardsboard.org.uk).**
13. **If you are supervising via a BSB entity, you will need to complete the Immigration Advisers Associations Form on the [BSB website](#) and submit this to [entityregulation@barstandardsboard.org.uk](mailto:entityregulation@barstandardsboard.org.uk).**
14. Within the Immigration Advisers Associations Form, you should provide details of your proposed supervision arrangements and the due diligence undertaken. As a minimum, to comply with Rule C85A, we would expect you to establish if the immigration adviser has ever been registered with OISC, an approved regulator or a designated professional body under the IAA 1999. If they have ever been subject to one of the sanctions listed in Rule C85A, you should contact the relevant organisation for verification. Full details of how to do this are set out in Annex A.
15. Your notification form should set out any further checks you have undertaken, including identification documents and how you have assured yourself the

immigration adviser is professionally competent. This can include reviewing their training record, including any specific training undertaken in relation to vulnerability and how much experience they have.

16. If you are supervising an immigration adviser, they should have either a written contract of employment with you, or they should be under a written contract for services with you which is for a determinate period (subject to any provision for earlier termination on notice). Note that the rules on outsourcing also apply (Rule C86).
17. You must comply with the rules on insurance within the BSB Handbook (Rule C76) and ensure adequate insurance cover is in place for the work undertaken by the immigration adviser. You should inform your professional indemnity insurer of the proposed supervision arrangement.

### **Your obligations and the BSB Handbook**

18. The BSB takes the view that you are personally responsible for any immigration work undertaken by the immigration adviser (Rule C20 and Guidance C65) and that this amounts to Public Access work. You should refer to the Public Access Guidance for Barristers and pay particular attention to the section on intermediaries. The guidance can be found on the BSB's [website](#). You should also ensure you comply with the relevant transparency rules. Guidance on compliance can be found on the BSB's [website](#). Where you are working via a BSB entity, the entity will be responsible for the work of the adviser.
19. A lay client receiving legal advice or other legal services from an immigration adviser working on your behalf, and under your supervision, relies on that relationship to ensure that:

- The advice given is correct,
  - The services provided are to a competent standard, and
  - The services are provided by a person that is fit to provide them.
20. You 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 you do not have the necessary relevant experience (Rule C21.8).
21. You should 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. You should provide details of the supervision arrangements in this documentation to your client, to ensure they are fully informed. You should not mislead or allow your client to be misled about the status of an immigration adviser, nor the arrangements for supervision.
22. You must ensure that you comply with the rules in the Handbook relating to client complaints (Rules C99-C109), so clients can raise any concerns they have with you or the entity. You should also have regard to the BSB's Guidance on First Tier Complaints Handling<sup>7</sup>. If the work has been undertaken on a Public Access basis, the Public Access Model Client Care Letter to the Client in an Intermediary Case sets out avenues for redress and should be appropriately adapted and provided to the lay client<sup>8</sup>.

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<sup>7</sup> <https://www.barstandardsboard.org.uk/for-barristers/bsb-handbook-and-code-guidance/code.html>

<sup>8</sup> <https://www.barstandardsboard.org.uk/resources/resource-library/public-access-model-client-care-letter-to-the-client-in-an-intermediary-case-doc.html>



23. You should have regard to the rules and guidance relating to intermediaries in Public Access cases and:

- Consider whether you have the necessary skills and experience to do the work, including, where relevant, the ability to work with a vulnerable client;
- If the immigration adviser has limited experience, you should consider the amount of direct contact they should have with clients and in any event, assure yourself that your policies and processes have been complied with;
- Consider whether it would be in the best interests of the client or of the interests of justice for the client to instruct a solicitor or other professional client;
- If the matter involves the conduct of litigation and you are not able or instructed to conduct litigation, consider whether the client will be able to undertake the tasks that you cannot perform for them;
- Consider whether the client is clear about the services which you will and will not provide and any limitations on what you can do, and what will be expected of them; and
- If you are not able to act in legal aid cases, consider if the client is in a position to make an informed decision as to whether to seek legal aid or proceed with Public Access.

24. When entering into an arrangement with an 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-C85A).

25. If you are outsourcing work, this does not alter your obligations to your client. You must comply with the outsourcing rules (Rule C86) and you remain personally responsible for the work (Guidance C65).

### *Accepting instructions*

#### Self-employed barristers

26. If you are supervising an immigration adviser as a self-employed barrister, you must be Public Access registered and comply with Rules S24 and C87-90, as they relate to the administration of your practice. In particular, you must ensure that all non-authorized persons working in your chambers, including immigration advisers, are competent and do nothing which causes, or substantially contributes to, a breach of the BSB Handbook (Rule C89.6.d).

#### BSB entities

27. If you are supervising an immigration adviser via a BSB entity, you must comply with the rules relating to BSB entities. In particular, you must ensure that all employees and immigration advisers are competent and do nothing which causes, or substantially contributes to, a breach of the BSB Handbook (Rule C94.2.d). You should have regard to Guidance S7 in the Handbook and the relevant provisions in the Code of Conduct, especially Rules C17, C21.7, C21.8 and C22.

#### Employed in an authorised (non-BSB) body

28. If you are supervising an immigration adviser in your capacity as an employed barrister of an authorised (non-BSB) body, you must comply with the rules of the approved regulator that regulates the authorised non-BSB body (Rules I8 and S36). If you are employed by an authorised non-BSB body but the supervision

arrangements do not constitute part of the organisation's work, you will need a dual capacity practising certificate (employed and self-employed). This will enable you to provide supervision as a self-employed barrister, provided that you comply with all relevant rules for self-employed practice and have regard to this guidance.

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

29. The BSB takes the view that the following factors are likely to be present as part of any effective supervision arrangements:

- The immigration adviser is genuinely acting on your behalf and under your supervision and you are readily available to provide guidance and supervision to the immigration adviser;
- The arrangements are discussed between you and the immigration adviser before you begin to supervise and documented in a protocol, which is included within their contract (of either employment or services). This will be in place for each immigration adviser you propose to supervise and include the terms of engagement with clients and any financial and insurance arrangements. This will help ensure that you: have undertaken due diligence; can manage your own workload; understand the level of supervision which is required and act appropriately; and set clear expectations governing your relationship with the immigration adviser. The BSB may ask to see a copy of this protocol (Guidance C125);
- You regularly supervise in person so you can have proper oversight of the work. Whilst this may need to be provided remotely from time to time, you need to assure yourself that all processes are being followed correctly; and

- You have frequent documented contact with the immigration adviser so that you have full up to date knowledge and understanding of all the casework the immigration adviser is undertaking in your name.

#### Examples of good practice

- Completing a risk assessment of the case to ensure the supervised immigration adviser is competent to deal with all the relevant issues that may arise;
- Weekly contact and oversight of case progress;
- Daily availability so the immigration adviser can contact you if there is an urgent matter;
- Assigning appropriate cover if you are taking holiday;
- The use of training logs, checklists and regular feedback to monitor the ability and professional development of the immigration adviser, to ensure competence;
- Limiting direct client contact by the immigration adviser unless and until certain internal quality standards have been demonstrated to have been met; and
- Ensuring that tasks on a case are appropriately delegated and no immigration adviser is asked to complete a task that is beyond their competence.

#### Examples of high risk practices

- The barrister has no experience of supervising others' work and has undertaken no training to develop their skills in this area;
- More than three immigration advisers being supervised by one barrister;
- A lack of training for the immigration adviser or barrister on the case management systems used as this could increase the risk of errors and/or result in insufficient oversight; and
- The barrister has not carried out an assessment of the immigration adviser's advocacy skills to ensure that the adviser is competent to attend Tribunal hearings on the barrister's behalf (where relevant).

#### BSB concerns about supervision arrangements

30. The BSB will not formally approve the supervision arrangement. However, if there are concerns about your compliance with Rules C80 and C85A, the BSB will consider the extent to which you can demonstrate your compliance with this guidance when determining what regulatory action, if any, to take in relation to an alleged breach of Rule C85A.

#### Further advice

31. 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/>

February 2020

**Bar Standards Board**

**Annex A – How to check if an immigration adviser has been sanctioned**

**OISC**

Sanction	Where to check
Prohibited from practice or currently suspended	On their <a href="#">website</a>
Whether the adviser, or their organisation, has had their registration refused or cancelled	Email <a href="mailto:foi-dpa@oisc.gov.uk">foi-dpa@oisc.gov.uk</a>  Note that this can take up to 20 working days

**Approved regulators**

Sanction	Where to check
Bar Standards Board	
Past disciplinary findings, including disbarments and current suspensions	On the 'Past disciplinary findings' page of our <a href="#">website</a>
Current suspensions pending a disciplinary hearing	On the 'Interim suspended barristers' page of our <a href="#">website</a>
Solicitors Regulation Authority	On their <a href="#">website</a>  Any further queries can be submitted to the <a href="#">Contact Centre</a>

Chartered Institute of Legal Executives	On their <a href="#">website</a>
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**Designated professional bodies under the IAA 1999**

Sanction	Where to check
The Law Society of Scotland	The Scottish Solicitors' Discipline Tribunal's <a href="#">website</a>
The Law Society of Northern Ireland	Email <a href="mailto:enquiry@lawsoc-ni.org">enquiry@lawsoc-ni.org</a>
The Faculty of Advocates	Email the Dean's Secretariat <a href="mailto:deans.secretariat@advocates.org.uk">deans.secretariat@advocates.org.uk</a>
The General Council of the Bar of Northern Ireland	Submit a letter to the Chief Executive of the Bar Council of Northern Ireland stating the purpose for which you require the information. Send this to:  The Bar Library 91 Chichester Street Belfast BT1 3JQ Northern Ireland