

Refugee Action Frontline Immigration Advice Project FAQ

Free legal advice on Immigration is in short supply following cuts to Legal Aid. The impact of this is that many vulnerable asylum-seekers and migrants are left with uncertain status resulting in homelessness, destitution and a range of connected issues, such as poor health, mental health problems and exploitation. Such people are turning to charities and not-for-profit organisations for advice. However, immigration advice is closely regulated, with criminal sanctions for giving unregulated advice.

The organisations people turn to include not only migrant and refugee charities, but also charities dedicated to homelessness, youth work, gender issues, healthcare issues, specific local communities, etc. Many of these organisations are not registered with the OISC and some may not be aware of the need for regulation. The demand for advice places these organisations in a profoundly difficult situation.

We aim to support organisations who encounter refugees and migrants with immigration advice needs and to help those organisations to develop to better meet those needs. This may be through:

- *Raising awareness about the importance of regulation and the boundaries of what can and cannot be done without regulation, and/or*
- *Helping organisations to deliver free-to-access regulated immigration advice to their clients directly*

In the case of the latter, we aim to help organisations

- *To become OISC registered,*
- *To expand their current OISC provision, or*
- *To increase the level of OISC advice provision that they can offer.*

Who do we want to help?

Not for profit organisations who are:

- Interested in providing immigration advice to migrants
- Willing to commit staff and volunteer time to training and study, and
- Already registered with the OISC, **or**
- Willing and able to invest the time and resources required to put together an application for registration and to maintain registration, **or**
- Would like to offer free immigration advice or information on a scale that is too small for direct registration with the OISC to be viable.

Where capacity is limited, organisations that support refugees as well as other migrant groups may be given priority.

What needs to be regulated?

“Immigration advice” and “immigration services” need to be regulated if they are given within the context of any employment or volunteering role.

Immigration advice is advice which:

- Relates to a particular individual, and
- Is given in connection with a relevant matter (e.g. asylum claims, immigration applications, nationality applications, EU free movement, unlawful entry, removal and deportation, etc.)

Giving information that is entirely generic (i.e. does not relate to a particular individual – e.g. the definition of a refugee) is not immigration advice. However this is a very difficult boundary to manage; individuals will almost always need help in understanding how the information relates to them and this kind of help *will be* immigration advice.

Immigration services means making representations (e.g. sending letters) on a relevant matter on behalf of an individual and to a government department or court.

Welfare and support are not '*relevant matters*,' and advice and assistance on, these issues, including advice on asylum support, does not need to be regulated. However caseworkers delivering such advice to migrants are likely to be exposed to questions about '*relevant matters*' and should exercise care.

Why do immigration advice and immigration services need to be regulated?

The consequences of giving poor immigration advice, etc. to an individual can have very long lasting implications. That individual can invest thousands of pounds on application fees, health surcharges, etc. on top of any legal fees for an application that may be bound to fail from the outset. If they then find themselves in the UK without lawful status, they can lose their home and their job. They would then become '*overstayers*,' committing an offence in the process – a fact which can have serious negative consequences for any future application or attempt to resolve their status. Their credibility can be undermined, meaning that decision makers may not believe them now or in future, regardless of the truth of the matter. Asylum seekers may be denied protection and forced to return to a country where they fear persecution.

For voluntary organisations and their employees and volunteers, giving unregulated immigration advice is a criminal offence, even where it is given free of charge and in good faith, and even where there is nothing else wrong with the advice that has been given.

When is immigration advice regulated?

For a not-for-profit organisation that does not employ professionals regulated by other regulatory bodies (e.g. practicing solicitors), advice is regulated if:

- The organisation is regulated by the OISC, and
- The individual giving advice is registered with the OISC through that organisation at the required level, or
- The individual is working under a named supervisor and OISC have given their prior approval for that individual to give immigration advice under agreed supervision arrangements

Information on levels and the work permitted at each level can be found further on in this FAQ.

Awareness Raising and good practice training

What if my organisation does not want to be regulated?

Where an organisation does not want to give immigration advice, we offer awareness-raising, good practice training, support with development of service models to cover:

- Who needs immigration advice?
 - *The different situations that migrants can find themselves in and the barriers they may face in trying to lead a normal life*
- What is immigration advice and what are the consequences of giving unregulated immigration advice?
 - *How immigration advice and representation is defined, the difference between 'advice' and 'information,' when advice must be regulated, criminal offence or giving unregulated advice*
- Advice giving boundaries
 - *What advice work can and cannot be done without regulation*
- Models of advice and support
 - *Defining the remit of your service and the manner in which it will be delivered*
- Best practice in advice giving
 - *Case recording, caseworker supervision, file review, training*
- The role of a solicitors and immigration advisers
 - *What solicitors and immigration advisers do, what they don't do or shouldn't do, what can be expected of them*
- Sources of immigration advice
 - *What level of advice is needed, how to find advice at the appropriate level, how to find advice that is legally aided*
- Who qualifies for legal aid
 - *In-scope and out-of-scope matters, financial eligibility, the merits test*
- How to refer cases
 - *Preparing files for referral, briefing clients, managing their expectations, obtaining evidence of means, creating partnerships and referral pathways*
- How to complain about solicitors and immigration advisers
 - *Identifying poor advice and representation and poor service, identifying the appropriate regulatory body, making a complaint*

OISC Training

What if my organisation does want to be regulated?

RA wants to support organisations, their staff and volunteers to navigate the regulatory framework and register with the OISC in order to give high quality, properly regulated immigration advice. To do this, we will offer:

- Free training in immigration law with a focus on the syllabi for OISC level 1 and 2 in both categories, subject to availability and cancellation fees only
- Some individual coaching towards OISC assessments, subject to capacity

- Membership of a community forum dedicated to NGO training in immigration law
- Access to study and revision materials
- Organisational mentoring towards OISC registration, and
- In some cases, other novel approaches to address specific barriers posed by regulation.

What do we need to commit ourselves to?

Organisations must be ready to register with the OISC before any of their staff or volunteers will be invited to sit an assessment. Therefore we will expect organisations and individuals to commit to activities that are necessary to their own applications in order to maximise resources and fulfil the aims of the project. This may include the following:

For organisations:

- Investing the managerial time and resources required to prepare and submit an application for registration with the OISC or an application to raise levels, where applicable
- Investing in professional indemnity insurance, where this is needed
- Allowing staff and volunteers time off work for training, study, revision and assessment. You should allow approximately 10 complete working days for caseworkers with little or no prior experience of immigration law.
- Allowing staff time off in lieu to attend training and assessment events falling on non-work days
- Covering travel expenses for staff and volunteers attending training and/or assessment
- Covering stationary costs associated with printing study materials (>200 pages for OISC L1, >350 pages for OISC L2)
- Paying for up-to-date DBS checks for staff and volunteers, where necessary
- Facilitating engagement with training delivered by videoconference insofar as is practical
- Informing us of the outcome of any applications to the OISC, whether successful or not
- Remaining in contact and providing feedback for the purposes of project evaluation

For individuals:

- Being available to attend training sessions with reasonable advance notice, even if these fall outside of normal working days
- Engaging with training delivered by videoconference insofar as is practical (including from home, if this is a possibility)
- Setting aside time for study and revision outside of training events (you should allow around 10 working days for training, study, revision and assessment.)
- Completing any homework set by the trainer
- Making use of other opportunities to improve knowledge and understanding of immigration law, including coaching and forum membership
- Engaging directly with source material, rather than relying solely on textbooks and manuals
- Submitting an application to the OISC to register or raise levels

- Informing us of the outcome of any applications to the OISC, whether successful or not
- Remaining in contact and providing feedback for the purposes of project evaluation

Some flexibility from both individuals and organisations to facilitate training at short notice to enable us to fill spare places on courses would be greatly appreciated.

How will RA deliver training events?

Live online training will be our preferred method of training. This will be in the form of a webinar or videoconference. The trainer will be able to share their screen and webcam, and participants will be able to interact with the trainer and ask questions. There will be reading time before webinars commence, and online activities to complete outside the webinar. This method brings a number of benefits:

- Reduced costs for participants (no travel expenses)
- Time savings for participants attending training from their home or workplace
- The ability to reach people regardless of where they are living and working
- The ability to bring together people from different locations all over the UK
- Low costs: most organisations, staff and volunteers will already possess the equipment needed to participate.
- The ability to record training sessions as video files, and to convert these to audio files for use on accessible and mobile devices (Note, where an external trainer is commissioned: the trainer will retain intellectual property rights and distribution will be subject to their approval)

What software and equipment is required for online training events?

RA pays a regular subscription to a provider in order to host videoconferences. The software is free-to-download for invited attendees. Invitations can be received by e-mail with a link to the conference. Where the software is not already installed, the link will start the download process.

For equipment, all that is required is access to a computer or mobile device (e.g. an iPad) with a microphone and a good network/WiFi connection with a high or unlimited data. Headsets are preferable to built-in microphones because they pick up less ambient noise (these start at around £10.) Webcam sharing is possible but limited, so webcams are not essential.

For first time users, RA recommends trying out software and equipment in advance of the training. This can be done by e-mailing RALTG@refugee-action.org.uk to request a 'test webinar'

What will be the format of training courses?

Our OISC Level 1 (Immigration) course consists of an introductory podcast and five full days of training, as follows:

- Podcast – Regulation, Ethics, Legal Aid, Drafting, etc
- Day 1 – Introduction to Immigration Control
- Day 2 – General Grounds for Refusal and Nationality Law
- Day 3 – Private and Family Life
- Day 4 – EEA Free Movement
- Day 5 – Visits, work and study

The timetable for each day of training is as follows:

- 9:30 am – Registration and directed reading
- 11:00 am – Live webinar / presentation
- 12:20 pm – Lunch and activities
- 1:20 pm – Live webinar / presentation
- 2:40 pm – Activities
- 4:00 pm – Live webinar / feedback on activities

Trainees will therefore be expected to devote a full day to training for each half-day delivered and to complete any homework set.

We also offer revision days and a one-day course to enable registration at OISC Level 1 in the Asylum and Protection category.

The format of OISC Level 2 courses has yet to be determined, but is likely to involve separate 5-day courses in 'immigration' and in 'asylum and protection'. We aim to start delivering these in the second half of 2017.

How soon can an organisation expect to receive training?

This depends on a number of factors, including:

- Preparedness of unregistered organisations to undertake the registration process.
- Existence of spare places on existing training sessions.
- Availability of the trainer to book new sessions.
- Flexibility of organisations to allow staff time-off to attend training sessions.
- Flexibility of individuals to make themselves available for training sessions.

Where both organisation and individual are prepared and willing to be flexible, we would expect to be able to provide training within six months.

How much study leave will be required?

This will depend very much on the individual involved, their previous experience, their aptitude for law, their motivation, the relevance of the syllabus to their day to day work, etc. However, we are of the view that most individuals will require a significant amount of study leave (several days' worth) to maximise their chances of passing assessments. **Training alone will almost never be sufficient for an individual to pass an assessment without a significant degree of self-study.**

What if registration with OISC is not a viable option for an organisation?

There may be other ways of meeting a demand for advice within the regulatory scheme. Please contact our legal officer, James Conyers to discuss this further.

Information for staff and volunteers:

What qualifications do I need to have in order to apply for registration?

The OISC do not require any formal legal or other qualifications. However, they do require you to:

- Be working or volunteering for an organisation that is already registered or is applying for registration
- Have some advice-giving experience (not necessarily in law)
- Pass an assessment at the appropriate level
- Undergo a Disclosure and Barring Service (DBS) check

In addition, if you are not a British Citizen or an EEA national, you will need

- Permission to work in the UK, and
- 18 months left before your current leave to remain expires

The assessments are difficult for those new to the field and will require additional time for study, practice and revision.

Some people who have already qualified under the Law Society's 'Immigration and Asylum Accreditation Scheme' (IAAS) may not need to sit an assessment.

What work can I do once registered?

This depends on the levels and categories you are registered at. There are three levels (1, 2 and 3) and two categories ('asylum and protection' and 'immigration.')

- Very little work is permitted at level 1 in Asylum and Protection, so no assessment is required.
- Level 1 in Immigration allows you to make basic immigration applications for regular migrants and people outside the UK.
- Level 2 in Asylum and Protection permits you to work on initial asylum applications and further submissions/fresh claims up until a decision is received and the applicant needs to appeal or apply for judicial review.
- Level 2 in Immigration permits you to work on all kinds of immigration applications up until the point at which an appeal is necessary.
- Level 3 in either category permits you to work on appeals to the First-tier Tribunal and Upper Tribunal (Immigration and Asylum Chamber.)
- Judicial review applications require a solicitor and cannot be done under OISC regulation.

Therefore if you want to give immigration advice to asylum seekers and irregular migrants you will need to register at level 2 in one or both categories (depending on the nature of the work you wish to do.) Further detail on what can be done at each level can be found in the [Guidance on Competence](#).

Are there any other restrictions on the work I can do?

Yes – you are only permitted to give immigration advice on behalf of the organisation you are registered with. However, it is possible to register with more than one organisation at the same time.

How do I apply for registration?

To apply for registration you must complete a "[New adviser application and competence statement](#)" form.

This should be accompanied by a recent DBS check (within the last 6 months) and proof of your right to work in the UK.

If you do not have a recent DBS check then the best course of action is to submit the DBS form and fee (currently £26) to OISC with your application. This will enable OISC to begin processing your application while the DBS check is pending, and so reduce delays.

Full details of the application process can be found at section 5 of the page on [how to become a regulated immigration adviser](#).

Full details of how to complete and submit the DBS check can be found in the '[OISC: Disclosure and Barring Service \(DBS\) check guidance](#).'

If I am already registered; how to I apply to raise my level?

As previously mentioned, it is possible to register with OISC to give advice in two different categories; 'asylum and protection' and 'immigration.' However, you should be registered at the Level 1 in both categories before proceeding to Level 2 and above. In other words, you cannot proceed to Level 2 in 'asylum and protection' until you have attained at least level 1 in 'immigration.'

To raise your level you need to complete and submit an "[Adviser Raising Levels Competence Statement](#)" form, which is available at the link below:

Can I jump straight to registration at the higher levels?

Normally, OISC expect you to pass the level 1 immigration assessment before you can register at a higher level. However as the assessments are held at different times of the day, it may be possible to sit both assessments on the same day. You will need to pass both assessments to be registered at the higher level. Whether OISC will permit you to do this is likely to depend on your knowledge and previous experience. If you are proposing to do this, you should contact OISC to discuss when applying.

Do I have to take two assessments if I want to register at the same level in both categories?

No. As previously mentioned, there is no assessment for Level 1 in Asylum and Protection. At level 2 or 3, if you apply to register in both categories, you will still only be given one paper. However you will not know in advance which paper you will be given. If you do not pass that paper, you will not be registered at that level in either category.

When should I submit my application?

After receiving your application, OISC will notify you of a date on which you can take the assessment. This will usually be the first available date after you have submitted your application. The level 1 assessments are held every month, usually towards the end of the month. Therefore, as soon as you are sure you can be ready to sit the assessment, you should submit your application. If you do not pass first time, you will be invited to a second assessment. If you do not pass second time around your

application will be refused. OISC will normally expect you to wait six months before re-applying.

Level 2 and level 3 assessments are held every three months, usually towards the end of February, May, August and November. You should time your application to ensure that you don't have to sit the assessment either before you are ready or long after you're ready and have forgotten all your training. Therefore, the best time to submit an application is likely to be slightly under 3 months before the assessment you hope to sit (to guarantee a place) although close to the assessment is also possible. At level 2 and above, you are only allowed one attempt at the assessment. Again, OISC normally expect you to wait six months before re-applying following a failed assessment.

In general, if you fail to attend assessment(s) without a reasonable explanation, your application will be rejected.

Can I transfer my registration to another organisation?

Yes. Provided you do so within six months of leaving your old organisation, you can do this without having to undergo new DBS checks or re-sit assessments. The new organisation simply needs to inform OISC that you are now working for them (you may need to chase them to do this.) After six months, new DBS checks become necessary, and re-sits are likely to be required. This is because immigration law is a fast-moving area of law and knowledge needs to be maintained and regularly updated to remain competent.

Registered advisers who are not already volunteers may want to consider volunteering as a means of retaining registration between jobs with registered organisations.

When and where are the assessments held?

A full list of the assessment dates and centres can be found on the '[Competence assessment centres: immigration advisers](#)' page. Further details are only supplied after you have made your application.

Where can I find past papers and further information on the assessment process?

Links to resource booklets, syllabi, past papers etc. can be found in the page on [OISC competence assessments](#).

Information for organisations not already registered with the OISC:

What is essential reading when making applications?

The [Code of Standards, 2016](#) should be read by all owners and advisors as well as the person preparing the application.

The [Guidance on Competence](#) sets out what work is permitted at each level. This will help you to decide at which level the organisation needs to be registered.

The '[Application for registration guidance](#)' explains how to apply for the registration of both organisation and advisors. It is located alongside the application form that needs to be completed for the organisation.

There is also guidance for advisors on '[How to become a regulated immigration adviser.](#)'

What does an organisation need to have in order to register with the OISC?

Non fee-charging organisations need to have:

- Owners (usually the Chief Executive and Trustees), all of whom must be:
 - Fit to be owners (see '[Guidance on the fitness of owners](#)')
 - Available to sign the declaration on the application form
 - Available in future to sign the declaration on annual '*continued registration*' applications
- A point of contact to be responsible for liaising with OISC
- Advisors who are:
 - British Citizens, EEA nationals or have permission to work and at least 18 months leave to remain at the time of application.
 - Fit to be advisors (see '[Guidance on the fitness of immigration advisers](#)')
 - Competent to give advice at the level at which the organisation wants to give advice (see '[Guidance on competence:2012](#)') and can demonstrate this on assessment
- Unique e-mail addresses for all advisors
- Disclosure and Barring Service (DBS) checks for all advisors
- Professional Indemnity Insurance (PII) or a quote for PII
- A business plan
- Templates for client care letters and client closure letters
- A complaints procedure

Organisations that choose to charge fees to some or all of their clients will also need to provide a fee scale and details of a business account/client account.

Templates and guidance for the documents required can be found on the [model documents](#) page of the OISC website.

What does it cost to apply for registration?

Non fee-charging organisations do not pay fees for any applications to the OISC. However there are other costs associated with registration:

- Staff time to prepare the application
- Professional Indemnity Insurance

- Fees for DBS checks for each advisor who applies (circa £26)
- Training costs (where applicable) including training to meet 'Continuing Professional Development' (CPD) requirements
- Paid time off work for staff to sit assessments
- Travel costs associated with training and assessment

What forms are there, and what are they used for?

- The '[Application for registration with the OISC](#)' form is for unregistered organisations applying to become registered.
- The '[New adviser application and competence statement](#)' form is for new advisers applying to become registered for the first time, or following a break in registration of 6 months or more. This may be at the same time as the organisation is registering, or after the organisation has registered.

*Note: An 'Application for registration with the OISC' should be accompanied by 'New adviser application and competence statement' forms for each adviser. **An organisation can only register if it has advisers who can also register.** Similarly an adviser can only register through an organisation that is already registered or applying for registration.*

- The '[Registered organisation raising levels: application form](#)' is for organisations that are already registered and are applying to raise the level of advice that they can provide.
- The '[Adviser raising levels competence statement](#)' form is for registered advisers who wish to apply for registration at a higher level or at the same level in a different category.

Note: An organisation can only be registered at the level of its highest-level adviser. Similarly an adviser can only register at the level of the organisation or below. Therefore it may be necessary for advisers to raise their level at the same time as the organisation they work for.

- Registration is granted for a year at a time. Therefore an '[Application for continued registration](#)' needs to be completed once a year in order for an organisation to maintain its registration. It is relatively straightforward, but needs to be signed by all owners and all advisers. **Therefore it is highly advisable to complete this form some months before registration expires**, to avoid a situation where advisers, trustees and/or chief executives cannot be easily contacted when the form is due for submission. This is particularly the case for larger organisations.

James Conyers | Legal Officer | Frontline Immigration Advice Project Coordinator

E-mail: JamesC@refugee-action.org.uk

Telephone: 020 7952 1519