

# OISC regulation and clinics

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## Introduction

This resource aims to help you develop and deliver immigration and asylum services. We address the issues of the regulatory framework and share practical experience from some Clinics on the LawWorks network delivering immigration and asylum advice and representation. It is particularly relevant for University led clinics interested in this area of work, and we are grateful to Emma Rehal-Wilde (University of East London Clinic), Frances Trevena (School of Advanced Study, University of London), and Rosie Brennan (University of Plymouth) for taking time to share the experience of their respective clinics.

## Regulatory framework

Section 84 (2) of the [Immigration and Asylum Act 1999](#) (IAA 1999) allows persons to provide immigration advice and services without being regulated by the OISC if they are authorised to practise by a designated qualifying regulator (DQM)<sup>1</sup>. This includes solicitors regulated by the Solicitors Regulation Authority (SRA), as the SRA derives its regulatory authority from the Law Society, a designated qualifying regulator.

Solicitors working in law firms and alternative business structures, and barristers in chambers are likely to be fully regulated by their respective regulatory bodies. They are also generally permitted to supervise non-legally qualified staff to provide immigration advice and services acting on behalf of the regulated organisation.

Any person providing immigration advice and services in the UK who is not already regulated by a DQM, must be regulated by the Office of the Immigration Services Commissioner (OISC). The OISC was established by Part 5 of the 1999 Immigration and

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<sup>1</sup> Designated Qualifying Regulators include the General Council of the Bar, Law Society of England and Wales, Chartered Institute of Legal Executives, Faculty of Advocates, Law Society of Scotland, General Council of the Bar of Northern Ireland, Law Society of Northern Ireland.

Asylum Act and is the statutory regulator of immigration advice and services in the United Kingdom. To provide immigration advice and services while not regulated is a criminal offence and the OISC investigates and prosecutes those who operate when not authorised to do so.

A 'qualified person' under the Act, must be regulated by the OISC in order to provide immigration advice and services, that is those that relate to an application to the UK authorities for any type of leave to enter or remain (including asylum and immigration bail work), applications for British nationality and citizenship and admission to or residence in the UK under EU law. It is important to note that it is the entity that the OISC registers and through the entity, the immigration advisers that provide the advice and services.

Solicitors and barristers working in Law Centres and other organisations defined as 'special bodies' under the Legal Services Act may be regulated as individuals by the Solicitors Regulation Authority or the Bar Standards Board; but the entity in which they work does not have to be so regulated (and is very unlikely to be). Therefore, the entity needs to be registered with the OISC if the regulated solicitors and/or barristers are to supervise non-regulated individuals providing immigration advice and services. This rule also applies to services provided/supervised by regulated solicitors and barristers in clinical legal education.

The OISC advises<sup>2</sup> that if all immigration advice and services are provided in the name of a solicitor which is authorised and regulated by the SRA as an individual, it is likely that they will not need to be regulated by the OISC, even if students assist in research or gathering information that supports a particular application. However, where immigration advice and services are provided by students in the name of the Law Clinic in a University setting, they need to apply to be regulated/authorised by the OISC, which means the clinic itself needs to be regulated.

Advisers authorised at Level 1 can give basic advice and assistance, for example in relation to naturalising as a British citizen or the EU Settlement Scheme. Those authorised at Level 2 can give advice and assistance in relation to more complex issues, for example asylum applications or where the client is an undocumented migrant, Level 3 is the highest level and amongst other things, allows advisers to assist clients with appeals.

**Top tip!** If you are not sure whether your clinic will need to be registered by the OISC, contact them at an early stage at [VSS@oisc.gov.uk](mailto:VSS@oisc.gov.uk). The practitioners we spoke to found the regulator to be helpful and responsive. Law Clinic Directors said: *'I was pleasantly surprised' and 'The OISC were incredibly helpful.'*

## Social context

The OISC was set up in response to concerns about the quality of immigration services providers. The Law Society has developed an Immigration and Asylum Law Accreditation Scheme which is a recognised quality standard for practitioners providing advice under a legal aid contract. Many practitioners continue to report concerns about the poor quality of legal advice which many clients have received. The supply of good quality immigration/asylum advice and representation remains insufficient to meet community need.

The Legal Aid Sentencing and Punishment of Offenders Act 2012 removed most areas of immigration law from scope, and whilst asylum remains in scope (subject to means and

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<sup>2</sup> 'Immigration University Clinics and Regulation: A Working Case Study', Frances Ridout, Deirdre Gilchrist and Jeremy Dunn 2018 (see 'Useful Resources' below for more information).

merits tests), it can be extremely difficult or even impossible to find a legal aid provider able or willing to take on a particular case.

Clinics cannot meet the extent of unsatisfied need; but they can make an extremely valuable contribution to access to justice in their local communities. Clinic Directors stressed how important they felt it is to work in partnership with other professionals and community organisations with relevant expertise.

The University of East London is conducting a research project on how the COVID pandemic is affecting the BAME community. The legal clinic, which focuses on people with no recourse to public funds, hopes to contribute to the evidence and raise the profile of the issue in a wider context.

The University of Plymouth works in partnership with the Refugee Family Reunion and Refugee Services teams in the Red Cross locally. The University Clinic Director said:

*‘Our long-standing collaboration with the British Red Cross team in Plymouth builds a strong connection to the local community and enables positive reciprocal working.’*

The University of London assists both adults and young people who have exhausted all appeal rights and need to make fresh asylum claims. They receive referrals from e.g. Refugee Action and Young Roots.

## Application process

### 1. Consider whether you need to be regulated

The OISC’s [guidance](#) says you only need to be regulated by the Commissioner if you provide advice or services that are defined as [Relevant Matters](#) under the 1999 Immigration and Asylum act.

If your clinic will give advice or help a client to complete a visa application, make representations to the Home Office to allow them to enter or to extend their stay in the UK, or assist them in an application to gain British citizenship, complete an application or make representations to the Home Office to allow a family member to join your client or extend their stay with your client in the UK, then you are likely to require registration with the Commissioner.

If your organisation only wishes to provide a very specific service to clients - for example you only want to assist clients in making an application to amend the conditions attached to their leave (for example the condition that they have no access to public funds) and as such you are concerned about having to demonstrate much wider competence, then you should e-mail the OISC at [VSS@OISC.gov.uk](mailto:VSS@OISC.gov.uk). In your e-mail set out what services you want to provide and the OISC will direct you to what Level or Category you should apply for and what you will need to do to demonstrate sufficient competence.

**Top tip!** The more upfront you can be with the OISC, the better. The OISC will be able to provide guidance if you get in touch at an early stage.

### 2. Making an initial application

If your clinic needs to apply for registration, you will need to:

- Meet fitness standards defined in the Commissioner’s Code of Standards. You may already comply with a number of these due to processes and procedures you already have in place.

- Meet Fitness Standards for Advisers and Owners, usually requiring DBS checks.
- Meet competence standards for Advisers, usually requiring applicants to provide a written competence assessment.
- Complete an online application.

The OISC has a helpful [FAQ document](#) which deals with some common queries.

**Top tip!** Consider using the OISC's model documents for your application. However, you may need to adapt them to your circumstances as they focus solely on OISC requirements and do not include e.g. the Legal Ombudsman's requirements in relation to complaints information and SRA requirements in relation to client care letters. You are likely to need to do additional work around data protection and GDPR.

**Top tip!** Don't send the OISC documents they don't need. This may delay your application.

**Top tip!** You may find the process easier if you have someone who has already held OISC registration at a previous organisation.

**Top tip!** If the OISC seems to have made a mistake, don't be afraid of pointing it out. You may need to be persistent, but you can get it corrected.

## Models

### Advice and services delivered by a clinic

**University of East London** was approached by a local Councillor whose constituents' immigration status included the routine condition that they had no recourse to public funds. This was causing considerable hardship. The Councillor's view was that in some cases an application could be made to lift this condition; but the people affected would not be able to do so without legal assistance. The University Legal Advice Centre is managed by two qualified Solicitors and has access to immigration specialists. They could see the opportunity to support the local community and offer students valuable clinical experience.

It is intended that students will be providing basic advice and assistance, so would need to be registered at OISC level 1. The clinic sent an email asking the OISC's advice on the process they should follow and received a helpful reply within 24 hours. Since the clinic would be supervised by a Solicitor who is authorised and regulated by the SRA, the process would be relatively straightforward. As they were not going to charge fees, there would be no registration fee to pay. At the time of writing the OISC had not been able to provide a timeframe for the application to be dealt with; but the University was confident that it would be straightforward.

**University of London - School of Advanced Study** is co-ordinating a project across 10 University of London institutions to enable asylum seekers, (both young people and adults) who have exhausted all appeal rights, to submit fresh claims. Students from 9 institutions may be involved. The clinic also benefits from non-specialist legal volunteers through partnerships with two city law firms. Whilst legal aid is theoretically available for such cases, the level of fees compared to the amount of work required means that few practices are prepared to accept such cases.

As the work is carried out in the name of the clinic, and students are supervised by a Barrister with a practising certificate, it needs to be registered by the OISC. The OISC has registered the clinic at level 3.

## Advice and services delivered with a partner organisation

**University of Plymouth's** advice clinics are coordinated by students and supervised by legally qualified staff. In addition to immigration law, they provide advice and assistance in family and employment law and tenancy advice for students.

In 2014, the Law Clinic set up an OISC Level 2 regulated service concentrating on Refugee Family Reunion and running in partnership with the local office of the British Red Cross, which now also has a specialist legal advisor at Level 2. Students work with vulnerable individuals, many of whom are struggling with mental health issues and facing destitution, while being forcibly separated from immediate family members and facing significant obstacles to reunite with them. Given the capacity gap in immigration and asylum advice in the city, the Clinic is planning to broaden its work to support those with fresh claims for asylum, victims of domestic abuse and applications to change conditions

In 2020 Plymouth Law Clinic and Red Cross partnership won the LawWorks and Attorney General Pro Bono Award for Best contribution by a team of students. The Clinic also won the Access to Justice Foundation Award for its collaborative work in the city.

**Working in partnership with private practice** Some Universities work in partnership with private practices. Immigration advice and services are delivered by the private practice and are covered under their supervision arrangements and insurance.

The OISC provides [guidance](#) on how its regulatory regime applies to solicitors. Where a solicitor holds a current practising certificate and is working in a traditional law firm or an SRA regulated Alternative Business Structure (ABS), both the individual solicitor and the organisation are regulated by the SRA.

In such case neither the organisation, nor the individual solicitor or any non-solicitor advisers who are supervised by the solicitor (whether or not under a contract of employment), need apply to the OISC for regulation. This is confirmed by SRA [guidance](#).

**Top tip!** Law Clinic Directors commented that it is important to connect to sources of professional support, for example, a private practice firm which has an immigration department, and/or becoming a member of the Immigration Law Practitioners Association. <https://ilpa.org.uk/>

**Top tip!** LawWorks can put you in touch with other immigration/asylum pro bono clinics.

## Useful resources

- Guidance for the Community and Voluntary Sector registering with the OISC as well as information on the new EU Settlement Scheme registration <https://www.gov.uk/government/publications/guidance-for-the-community-and-voluntary-sector>

**Resources include:** A three step guide to regulation; Key Steps; Frequently asked questions and answers.

- Guidance published by the Bar Standards Board <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/new-guidance-public-and-professionals-immigration-and-asylum>

**Summary:** This guidance is aimed at anyone who works with people needing legal help with their immigration and asylum status. It will enable you to better advise those you work with to access the services they need by explaining: who can help and how; the differences between providers; what a client should expect from their provider; fees, legal aid and how clients can be charged; what a client should do if something goes wrong; where you can signpost your clients for information, advice and support.

- 'Immigration University Clinics and Regulation: A Working Case Study' *Frances Ridout, Deirdre Gilchrist, Jeremy Dunn – International Journal of Clinical Education, Vol 25 No 3 (2018).*

**Abstract:** This paper seeks to introduce readers to the regulation of immigration advice, and how this can work in practice in clinical legal education. The case study of Queen Mary Legal Advice Centre demonstrates that although the statute does not ideally seem to fit with the regulation of university law clinics, it is possible to be compliant. Far from being a negative aspect, regulation in these unique legal advice settings can actually provide a rich ethical learning environment and produce well rounded future lawyers.