



Amending the OISC's Code of Standards – Response Form

Please provide any comments with respect to each of the sections of the Code. These are listed below in the order in which they appear in the document. You can give general comments and/or specific comments on the codes or parts of a code that appear in that section and also advise if you think anything requires amendment, deletion, addition or would benefit from an accompanying Guidance Note. Please also include any comments on any range and scale of costs, benefits and risks associated with any specific section or generally. If the latter, please include these in the separate box located at the end of the response form.

We would find it very helpful if respondents would give the reasons for their comments and suggestions for improvement and/or clarification. If you think a code requires amendment or a new code is required, it would be helpful if you would include in your response to that code suggested drafting or alternative wording.

The separate box at the end of the response form may be used for any other comments you may wish to make.

N.B. If responding using the Word format of this document, the response boxes are expandable to fit the size of your comments. You may also continue your comments on a separate sheet.

Section	Comment
General Codes (Codes1to16)	<p>The BSB introduced a new Handbook in 2014 that set out 10 high level 'core duties.' The OISC seem to have adopted a similar approach with the 'general codes' but the status of these codes is unclear. For example the BSB's handbook provides guidance on the status of the core duties and specifically sets out that they are not presented in any order of importance. The guidance also highlights where some core duties might take precedence over others. The OISC may wish to consider whether it would be useful to provide something similar in their Code.</p> <p>Some aspects of the general Code also appear to be quite detailed and mirror other provisions. For example code 13 is very</p>

	<p>prescriptive and also contains what is already set out in the other general codes i.e. the requirement for an organisation to provide a member of the tribunal staff, immigration judge and others confirmation of their authorisation to provide immigration advice or services would already be covered by code 8 – that an organisation must ensure that no unauthorised person provides immigration advice or services. Similarly the requirement in Code 13 for organisations not to mislead the Commissioner, government departments or any other statutory body could be covered by the general obligation for an organisation not to mislead under code 11.</p>
<p>Provision of immigration advice and services online (Codes17 to18)</p>	<p>An increasing number of business models are emerging that provide legal services online. The OISC may wish to consider including in codes 16 and 17 a general provision that sets out that, the same ethical obligations apply to conduct in an online environment as they would otherwise. As codes 16 and 17 are also very high-level, the OISC may wish to consider whether there are any specific risks posed to consumers by an online model that wouldn't otherwise be present - this could then be further dealt with in guidance.</p>
<p>Conflict of interest (Code19)</p>	<p>The BSB's Handbook sets out detailed rules and guidance on conflicts of interests. Specifically rc21 of the Handbook highlights the circumstances in which barristers should not accept instructions when there is:</p> <ul style="list-style-type: none"> a. A conflict of interest between the barrister's own personal interests and the interests of the prospective client in respect of the particular matter or; b. There is a conflict of interest between the prospective client and one or more of the barrister's former or existing clients in respect of the particular matter, unless all of the clients who have an interest in the particular matter give their informed consent to the barrister acting in such circumstances. <p>Guidance also accompanies this. Conflicts of interest can sometimes give arise to complicated questions around whether an</p>

	<p>adviser should or shouldn't act in a particular matter. Whilst it is not possible to provide detailed guidance or rules around every scenario that may arise, this is an area that could perhaps benefit from some guidance.</p>
<p>Client care letter (Codes 20 to 23)</p>	<p>The BSB has no comments on codes 19-21 of the client care letter. However code 22 seems highly prescriptive in comparison to the rest of the code. If guidance will be accompanying these provisions in any event, the detail of what goes into the client care letter could be contained within the guidance.</p>
<p>Confidentiality (Codes 24 to 25)</p>	<p>The rules on confidentiality are very broad, as this area is complex this maybe another part of the Code that could usefully benefit from guidance. The BSB's rules on confidentiality can be found at rc15.5 and there is also accompanying guidance.</p>
<p>Interpreters and translators (Code 31)</p>	<p>The BSB has no comments on this.</p>
<p>Obtaining additional advice, opinions and professional services (Codes 32 to 34)</p>	<p>The BSB has no comments on this.</p>

Outsourcing work (Codes 35 to 36)	The OISC may wish to consider the BSB's rules on outsourcing. They can be found in section C5 of the Code of Conduct, specifically rc86.
Temporary inability to work (Code 37)	The BSB has no comments on this.
Termination of instructions by the client (Code 38)	The BSB has no comments on this.
Withdrawing from a case (Codes 39 to 41)	The OISC may wish to include more detail on this point. Stating that an organisation must not withdraw from a case except for 'good reason' is quite vague. Although there will be guidance accompanying this Code the OISC may wish to consider whether there should be a defined set of

	<p>circumstances in which an organisation could withdraw. The BSB at rC26 sets out the circumstances in which a barrister may cease to act and return instructions. This is then further supplemented by guidance in the Handbook which the OISC may wish to refer to. It is difficult to properly assess whether the OISC's provisions in relation to this area are sufficient without also seeing the guidance that will accompany the Code.</p>
<p>Transferring the client's file (Code 42)</p>	<p>The BSB has no comments on this.</p>
<p>Ending of a client's case (Codes 43 to 44)</p>	<p>The BSB has no comments on this.</p>
<p>Referral fees (Codes 45 to 46)</p>	<p>The OISC should consider producing guidance on this subject. This has been a contentious and complicated subject for the Bar and the BSB has produced detailed guidance to supplement a high-level rule. The rule (rC10) simply states that 'you must not pay or receive referral fees.' The BSB has defined a referral fee as 'any payment or other consideration made in return for the referral of professional instructions by an intermediary. For the avoidance of doubt, a payment for the provision of a particular service or for some other reason, and not for the provision or referral of professional instructions is not a referral fee for the purposes of this definition.'</p>

	<p>As well as guidance in the Handbook the BSB has further guidance on its website which can be found at the following link:</p> <p>Guidance on Referral and Marketing Arrangements for Barristers Permitted by the BSB</p> <p>This guidance was drafted as the BSB recognises there are certain circumstances in which referral and marketing arrangements would be permitted by the rules and that there are a variety of possible payment arrangements which would not give rise to prohibited referral fees. The OISC may also similarly wish to consider whether there are any situations that may arise (for example in the sphere of marketing) where further guidance may be beneficial.</p>
<p>Running the organisation (Codes 47 to 50)</p>	<p>The OISC may wish to consider the BSB's rules and associated guidance on administration of chambers, which can be found at rC89.</p>
<p>Supervision of a person operating above their Level or category (Code 51)</p>	<p>The BSB has no comments on this.</p>
<p>Records and case management (Codes 52 to 55)</p>	<p>The OISC may wish to consider specifically referring to confidentiality in this Code. For example the BSB has guidance in the Handbook to accompany a rule that sets out</p>

	<p>that there must be proper arrangements in place to ensure the confidentiality of clients' affairs. The guidance goes onto state that this duty would include:</p> <ul style="list-style-type: none"> • Putting in place and enforcing adequate procedures for the purposes of protecting confidential information; • Complying with data protection obligations imposed by law; and • Taking reasonable steps to ensure that anyone who has access to such information or data in the course of their work, complies with these obligations
<p>Fees and accounts (Codes 56 to 67)</p>	<p>Barristers are not permitted to hold client money so, although we have some rules on fees (see rC88) they are not as detailed as the OISC's. The BSB has no further comments on this Code.</p>
<p>Display and use of the OISC registration number, OISC logo and OISC certificate of registration (Codes 68 to 70)</p>	<p>The BSB has no comments on this.</p>
<p>Business promotion (Codes 71 to 77)</p>	<p>Rather than specific rules on advertising and business promotion, the BSB has general rules on not misleading clients and</p>

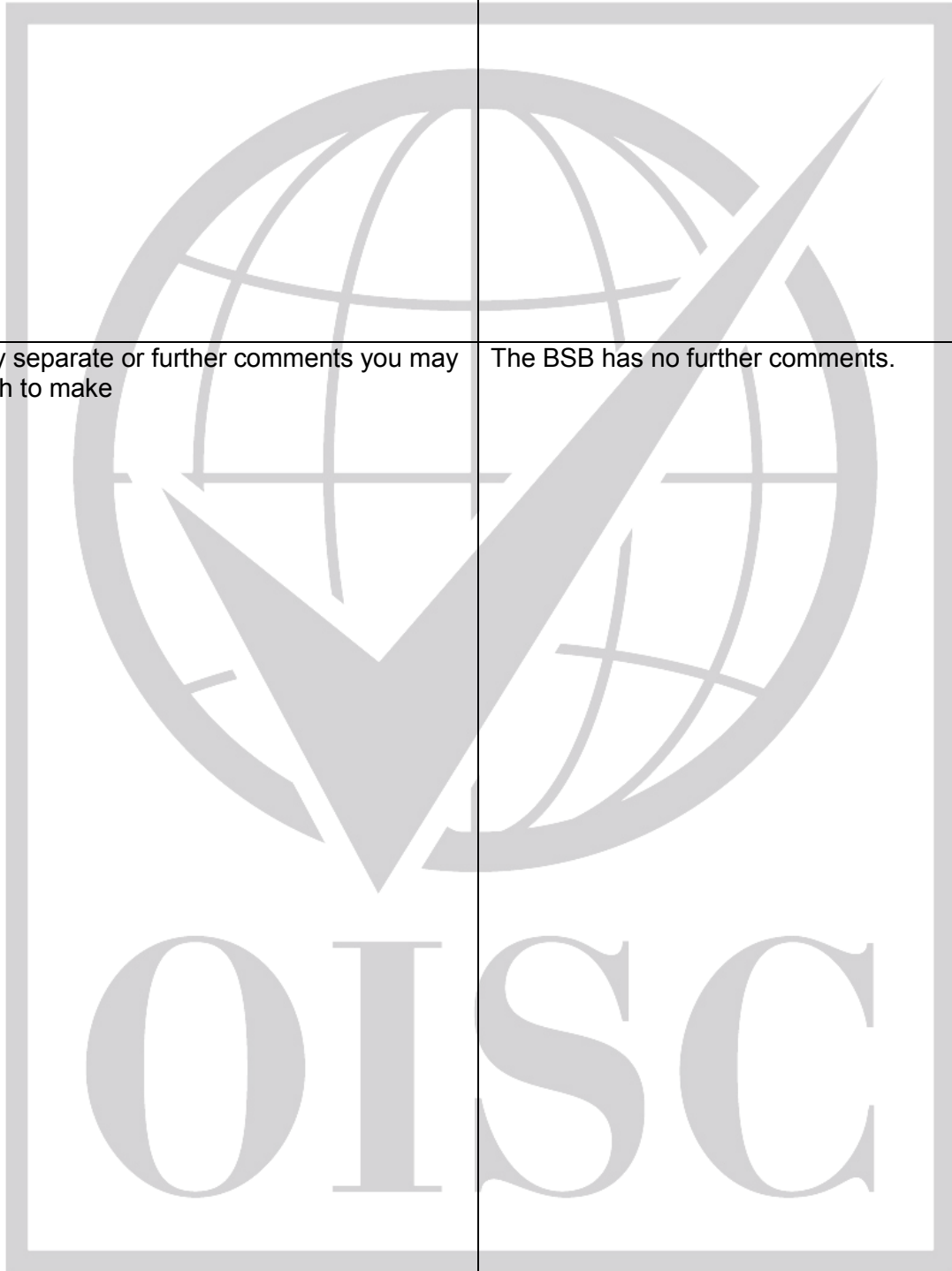
	<p>potential clients. This is supplemented by specific guidance which states that knowingly or recklessly publishing advertising material; which is inaccurate or likely to mislead could also result in breach of the misleading clients rule. The guidance goes on to state that barristers should be particularly careful about making comparisons with other persons as these may often be regarded as misleading. The OISC may wish to consider whether some of the rules in this section may be better placed in guidance.</p>
<p>Complaints (Code 78)</p>	<p>The BSB has no comments on this.</p>
<p>Notifications to the Commissioner by organisations and advisers (Codes 79 to 83)</p>	<p>In addition to what is contained in these Codes, the OISC may wish to consider whether they should include a general obligation for organisations to co-operate with their regulator. The BSB has this enshrined as a core duty. This is further supplemented by high-level outcomes and rules in section C4 of the Handbook.</p>

Request for exemption from the Code's provisions (Code 84)

The BSB has no comments on this.

Any separate or further comments you may wish to make

The BSB has no further comments.



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About You

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes, primarily the Freedom of Information Act 2000 and the Data Protection Act 1998.

If you want all, or any part, of your response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the OISC.

The OISC will process your personal data (name and address and any other identifying material) in accordance with the Data Protection Act 1998, and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Please tick if you want us to keep your response confidential.	<input type="checkbox"/>
Reason for confidentiality:	<input type="text"/>

Are you responding to this consultation (please select **one** answer only) in an official capacity (e.g. on behalf of an organisation or company)?

If so, are you (please select **one** answer only):

- Public sector body
- Private sector body
- Voluntary/not for profit organisation
- An OISC regulated REGISTERED body
- A representative/professional body
- Other

If you answered 'other' please specify below:

- Or as a member of the public (these are your personal opinions)

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Please tick if you are responding on behalf of an organisation	<input checked="" type="checkbox"/>
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