

June 2011

Commentary on the UKCISA/AISA Code of Ethics

Introduction

Since its publication in 2000, the UKCISA/AISA Code of Ethics has been warmly welcomed as a guide for all those finding themselves advising international students, whether or not they have the word adviser in their job title. It has been formally adopted by some institutions and is in use in a great many more as an informal guide. Acceptance of the Code is now a condition of membership of AISA.

This commentary (originally developed in 2002 and significantly updated in 2011) was jointly developed by UKCISA and AISA as a guide to the application of the code. It is intended particularly for those new to working with international students and for those working with international students in institutions with fewer established policies and procedures in relevant areas.

General

1. Although the term “student” is used throughout the code, as representing the adviser’s main client group, the code and this commentary apply equally to anyone else the adviser accepts as a client, such as a student’s spouse, civil partner or dependant, a former student or an academic visitor.
2. Advisers in different situations may be affected by the Code of Ethics in different ways. For example, there may be circumstances where an adviser employed by a university cannot properly represent the interests of the student to the university authorities without creating a potential conflict of interest, whereas such a role may involve no conflict of interest for an adviser from a students’ union.
3. The code applies to the behaviour of the adviser. But it assumes honesty and appropriate behaviour on the part of the student. Advisers are free to refuse advice where a student is behaving inappropriately – for example being drunk, violent or abusive – or clearly withholding information without which meaningful advice cannot be given. The institution may have a code or charter which spells out what is expected of the student in various circumstances or you may want to write your own for users of the advice service.

Immigration and advice services

4. Those involved in giving immigration advice are regulated by, and are subject to, the statutory Code of Standards published by the Office of the Immigration Services Commissioner (the OISC Code). Those involved in giving immigration advice should study it carefully.
5. The role of adviser, in relation to immigration advice, has changed since institutions became sponsors under Tier 4 of the Points-Based System (PBS). There should be a dialogue in all institutions to achieve a balance between Tier 4 licence compliance and the needs of international students. This dialogue should involve all those who might give immigration advice or provide immigration services, especially sponsor licence staff and advisers both within the institution and the Students' Union or Guild (please see, for example, the commentary for paragraph 2e) of the Code) but also including registry and academic representatives. Now that so many parts of the institution are engaged with matters that potentially impact on immigration issues, clear boundaries need to be agreed. Those involved in Tier 4 compliance need to have the institution's duty of care to the student embedded within their work practices and, similarly, those involved in giving immigration advice must consider fully the need to maintain the institution's sponsor status.
6. Institutions need to make their Tier 4 sponsor duties, including circumstances in which the institution might breach confidentiality, clear to students as early as possible as part of the recruitment process, ie detailing student and institutional obligations as part of the process of accepting a place of study and any ongoing communications with the student (this could be at orientation, in bulletins, via the internet). Students need to know what might trigger a report to the Home Office – for example, unauthorised absences or being in breach of the Immigration Rules – and what the institution's processes would be when the need to report might be considered.
7. The OISC Code does not prescribe absolute confidentiality. It demands keeping confidentiality “except where the adviser is compelled to disclose information by reason of a legal or regulatory obligation”.

THE CODE	COMMENTARY
<p>1. Those advising international students have a general responsibility to:</p>	
<p>a) maintain high standards of professional conduct by actively upholding this code at all times</p>	
<p>b) act in the best interests of the student, while respecting institutional policies, statutory and legal requirements and the legitimate interests of any financial sponsors</p>	<ul style="list-style-type: none"> ▪ acting in the best interests of the student may not be the same as doing what the student wants ▪ anyone advising international students has a duty to be familiar with the formal policies that apply to the student and to the adviser. These may be policies about harassment, appropriate behaviour by students, academic regulations, academic appeals, reporting to the relevant professional body on the student's fitness to practice (eg for nursing placements), payment of fees, the institution's internal operational PBS guidance ▪ statutory and legal requirements include data protection legislation, the statutory provisions governing the provision of immigration advice stemming from the Immigration and Asylum Act 1999 and the institution's sponsor licence duties under Tier 4 of the PBS (see paragraphs 4-7 under <i>Immigration advice and services</i> above) ▪ if the student has any financial sponsors, the institution and the student may have contractual obligations to the sponsor which have to be respected, regardless of the immediate wishes of the student
<p>c) recognise the power of influence that comes with their role as adviser and ensure that it is not used inappropriately</p>	<ul style="list-style-type: none"> ▪ some students may see the adviser as an authority figure and be easily swayed by advice given. In these circumstances it is doubly important to ensure that advice addresses the best interests of the student (subject to any legal requirements) and not the convenience of the institution.
<p>d) be alert to ethical dilemmas and potential conflicts of interest and seek guidance when they arise</p>	<ul style="list-style-type: none"> ▪ there may be circumstances in which an adviser employed by an institution can only ensure that the student understands the policies of that institution and, if they have adverse effects for the student, is informed about where to go for advice from a source independent of the institution ▪ if an ethical dilemma cannot be resolved in consultation with your line manager, colleagues or mentor, advice can always be sought from the UKCISA Policy Committee ▪ on conflicts of interest, see also 2e) and 4e) below
<p>e) share professional knowledge and skills and contribute to the professional development of colleagues</p>	

THE CODE	COMMENTARY
<p>2. In discharging their professional functions, those advising international students shall:</p>	
<p>a) accurately represent their areas of competence, education, training and experience</p>	
<p>b) recognise the boundaries of their qualifications and competence, making appropriate referrals when situations fall outside them</p>	<ul style="list-style-type: none"> ▪ make sure you know what you know and what you don't know, and which colleagues specialise in specific areas, such as fees, housing or immigration. You should also know what your employer's policy is on referring students to local solicitors or law centres or on seeking a second opinion from them (be aware of the need for student consent if seeking a second opinion will involve revealing the student's identity) ▪ see also 4c) below
<p>c) actively seek to promote their professional development and keep themselves informed of current developments in their fields</p>	
<p>d) in particular, keep themselves informed, as may be relevant to their areas of advice, of developments in statutory and case law, regulations, immigration rules and procedures, institutional policies and other codes</p>	
<p>e) work to ensure that there are arrangements in place that will secure objective advice for students from another source where conflicts of interest may arise [see also 4e) below].</p>	<ul style="list-style-type: none"> ▪ you may not be able to give objective advice, for example if a student wants to complain about a friend or colleague of yours or if you are asked to advise both parties to a dispute ▪ some advisers have arrangements with advisers in other departments or institutions to take referrals in cases like this ▪ you may need to consider an appropriate referral to legal support where a breach must be reported to UKBA to meet compliance obligations, for example if student has been in breach of their working conditions ▪ advisers in Students' Unions/Guilds might, in some cases, need to consider whether or not those working for the UKBA would view them as independent of the Tier 4 sponsor ▪ advisers in Students' Unions/Guilds might also, in some cases, need to consider the needs of the student against the needs of international students generally at the institution if advocating for a course of action that might jeopardise the institution's sponsor status

THE CODE	COMMENTARY
<p>3. In their dealings with students and colleagues, those advising international students shall:</p>	
<p>a) act in good faith and with fairness, consideration and objectivity</p>	
<p>b) recognise their own cultural and value orientations and be aware of how those orientations affect their interactions with people from other cultures</p>	<ul style="list-style-type: none"> ▪ most advisers will benefit from training in cross-cultural awareness. We all bring a baggage of prejudices of various sorts to our interactions with others. Training can help one to stand outside one’s personal reactions and develop self awareness and an appropriate professional standpoint
<p>c) be aware of, and show appropriate sensitivity to and respect for, other cultures and value systems</p>	<ul style="list-style-type: none"> ▪ the key word here is “appropriate”. This paragraph does not mean that any behaviour can be justified by reference to the culture of those involved. One would not use a reference to British culture as an argument for ignoring football hooliganism, for example. Some client behaviour will simply be unacceptable.
<p>d) not discriminate, or tolerate discrimination on the part of others, on the basis of ethnic or national origins, gender, sexual orientation, religion, disability or age</p>	
<p>e) refrain from unjustified or unseemly criticism of other advisers or other institutions and seek to resolve any conflict of advice directly with the other adviser concerned in a professional manner</p>	
<p>f) maintain the confidentiality and integrity of information about students and of communications with students, complying with data protection law, the institution’s responsibilities as a Tier 4 sponsor and any policy of the adviser’s employing organisation on confidentiality and record keeping. Ensure that information about any circumstances in which information may be disclosed to UKBA or the police without prior authorisation is available to students</p>	<ul style="list-style-type: none"> ▪ a code of ethics cannot spell out the detail of a confidentiality policy. The adviser or the institution must have such a policy, which must be available to the student. The adviser must be aware of it and remind the student of it when appropriate ▪ every institution needs its own policy, but an example of a policy is attached ▪ note that confidentiality does not normally mean confidentiality between you as an individual adviser and the student. Your policy should make clear that there is a “circle of confidentiality” within the advisory service or relevant office and that information will only be disclosed outside that circle as provided for in the policy ▪ students should be clearly informed, at all appropriate stages, of the institution’s policy and procedures for complying with their reporting responsibilities as a Tier 4 sponsor, including the extent to which the advice service would be involved in those procedures (see paragraph 6 above)
<p>g) do nothing to support or encourage illegal actions.</p>	<ul style="list-style-type: none"> ▪ care must be taken – if advising a student on their options, the adviser must not actively support or encourage any illegal actions while ensuring that the student knows what their range of options might be, the legality or otherwise of each of them, and the possible consequences of each of them ▪ this paragraph does not affect your duty to try to ensure that a student is appropriately treated within the law or to challenge an interpretation of the law on behalf of the student if you think it appropriate to do so ▪ if you have reason to believe a student is lying to you, for example about their financial means, you may not be able to continue to advise

THE CODE	COMMENTARY
<p>4. In their dealings with students, those advising international students shall:</p>	
<p>a) be clear to all parties about their role and boundaries as an adviser and limit advice to matters consistent with that role and its boundaries</p>	<ul style="list-style-type: none"> ▪ an adviser advises an individual student, or in some cases a group of students who seek advice jointly (eg on a housing issue). Being an adviser is not the same as being a mediator. A mediator is someone whom the parties to a dispute – eg two students, or a student and a landlord – would jointly agree to invite to act impartially to help them resolve the dispute ▪ if your job description includes mediation, make sure you have received appropriate training and are able to discharge the role ▪ mediation services may be available locally ▪ if a student asks you for help in resolving a dispute you may as an adviser be able to accompany a student to a meeting to take notes or to act as a cultural interpreter ▪ consider your duties as an employee of a Tier 4 sponsor licence holder, eg regarding disclosure of a student working in breach of the Immigration Rules or who has not complied with a direction to register with the police ▪ If your job description includes operational aspects of PBS, ie the adviser would be the same individual who would use the SMS to make a report to UKBA, then this must be declared
<p>b) provide students with information they need to make informed choices or decisions and not withhold relevant information</p>	<ul style="list-style-type: none"> ▪ if advising on progression to university, for example, it would be unethical to withhold the fact that some universities under consideration paid your college a commission for students received and others did not ▪ if you have a combined role as both an adviser and an officer with Tier 4 sponsor licence duties, make this clear at the outset including clarification of your reporting duties ▪ if advising on immigration applications, be clear with students about any institutional PBS policy, for example process and policy for issuing Confirmations of Acceptance for Studies (CAS)
<p>c) be aware of the difference between information, advice and counselling and be able to recommend qualified counselling assistance to students who may benefit from it</p>	<ul style="list-style-type: none"> ▪ students who present with, for example, a housing or immigration problem on which you are competent to advise may also have personal problems which might benefit from counselling. Even if you are a counsellor, do not turn an advice session into a counselling session, but let the student know that a counselling service is available if they want to use it ▪ the above does not mean that if you are competent to do so you should not use counselling techniques if appropriate, for example in the way you interview a student in distress, in order to help you to advise them
<p>d) consider when it is appropriate and reasonable to advise a student. If it is not, for example where there is any conflict of interest, refer to 2e) above</p>	
<p>e) be aware of circumstances in which the adviser as an individual may not be able to be certain of giving objective advice or of being thought to be objective and be prepared to secure such advice for the student by appropriate referrals</p>	<ul style="list-style-type: none"> ▪ see comment on 2e) above

THE CODE	COMMENTARY
<p>f) refrain from becoming involved in personal relations with individual students when such relationships might result in undue influence on the adviser, or a likely perception of undue influence</p>	<ul style="list-style-type: none"> ▪ most institutions will have specific rules about sexual relationships between staff and students, of which you should be aware ▪ but other close personal relationships with particular students may also put an adviser at risk of accusations of partiality ▪ remember that a professional friendliness of manner when mixing with students socially can be mistaken for more by those who do not understand the professional context in which you work
<p>g) accept only gifts (including hospitality) of nominal value and only where they do not seem intended to influence the manner in which professional responsibilities are exercised, while remaining sensitive to the varying significance of gifts in different cultures. Comply with any institutional policy on the acceptance or recording of gifts. Seek guidance from a more senior manager in any circumstance where it may seem appropriate to accept a gift of more than nominal value.</p>	
<p>h) ensure that students are fully advised of the procedures for them to follow to pursue complaints or to seek redress, or to defend themselves, and secure appropriate referrals where the adviser's role precludes support/representation for the student in any formal procedures.</p>	<ul style="list-style-type: none"> ▪ in this context you need to look also at your own internal complaints policy within the advice service. It may be covered by a general institutional policy, but if not you should probably develop your own ▪ there might be a conflict of interest, for example, if a student was in dispute with a landlord you had vetted for the institution's approved list

UNIVERSITY OF BARSETSHIRE

STUDENT ADVICE SERVICE

CONFIDENTIALITY POLICY

1. Confidentiality Statement

We are committed to providing a confidential service to our users which

- meets statutory and legal requirements
- respects user's rights and interests and
- acts as a safeguard for the service provided by the adviser

We will not release the information you disclose to us to anyone else without your permission, except in the circumstances noted in section 3 below.

2. Definition of Confidentiality

We define confidentiality as a 'circle of confidentiality' within which relevant Advice Service staff members (as defined within our policy) may discuss information. We will hold any such discussions in an appropriate environment to ensure that confidentiality is respected.

3. Disclosure

There are occasions when we need to disclose information without first obtaining consent from the user, for example

- meeting compliance obligations for immigration authorities or the police for reporting requirements under the Points Based System or
- where we considered there to be a risk to the user or the wider community

We will inform you when we record information that release of information may be required for legal compliance.

If we disclose information, it will be done in accordance with our service and institutional policy, details of which can be found at **.

Sponsors' Tier 4 duties can be found at

www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance/

9-17 St Albans Place
London N1 0NX
T +44 (0)20 7288 4330
F +44 (0)20 7288 4360
www.ukcisa.org.uk

UKCISA is a company limited by guarantee registered in England and Wales (Company Number: 4507287) and a charity registered with the Charity Commission for England and Wales (Charity Number: 1095294). Its registered office is at 9-17 St Albans Place London N1 0NX.

This document and the Code of Ethics can be downloaded from
www.ukcisa.org.uk/code-of-ethics