

Immigration Advice: Awareness, Boundaries and Good Practice

Advice Boundary Exercise – Answers

Over the page is a record of an imaginary conversation between an unregulated adviser working for a small refugee community organisation and a client who drops in to enquire about claiming asylum, broken down in to 10 numbered sections. Look at each numbered section and consider:

- Does it amount to advice?
- Does it relate to a ‘particular individual’?
- Is it about a ‘relevant matter’?

Questions:

1. At what points do you think this advisor may be committing a criminal offence?
2. What would you do differently to ensure you do not commit an offence?
3. Imagine a scenario where it is obvious to you that the client should make an asylum claim, but the client does not know about asylum. How would your approach change?

1. **Adviser:** How can I help you today?

Client: I want to claim asylum.

Adviser: Okay, I'm not sure I can help you...

Client: I just need to know how to claim – I don't know where to go or what to do. I tried going to a police station, but they just sent me here.

The adviser hasn't given any advice as yet. However, the client has clearly identified himself as belonging to a group of people with a particular advice need: people who want to claim asylum. This can be dealt with by providing general information relevant to that group.

It would be sensible to explain the boundary issue at the beginning of the interview – for example: “Unfortunately, it would be a criminal offence for me to give you advice on immigration and asylum issues because I am not regulated to do so. I may be able to give you some general information, but I cannot answer any questions about your particular circumstances.” This would hopefully discourage the client from asking too many questions, however you might need to remind the client of this if they do ask questions.

[Note: If a client is unaware of the possibility of claiming asylum and wants to know how to regularise their status, then the adviser would need to use his knowledge of eligibility for asylum (e.g. the definition of a refugee) to identify that this is an appropriate course of action, and this would constitute immigration advice. In these circumstances it would be necessary to signpost or refer the client to a regulated adviser, preferably at Level 2 or above, rather than give any advice or information.]

2. **Adviser:** Okay, I think I can give you some information on that. Give me a minute to find what you're looking for.

[Adviser googles 'claiming asylum in the UK', locates the [relevant pages on GOV.UK](#) and prints out all the information pages except the one on 'if you are under 18' because the client has previously given his age as 35.]

Adviser: Here we go. Here is some information I found on the government website. It tells you how to register your claim and a little bit about the process.

[Adviser gives printouts to client]

This relates to a ‘relevant matter’, but it does not relate to a ‘particular individual’ and so does not fall within the definition of ‘immigration advice’ in the 1999 Act.

The adviser is using a source of information that should be reliable and up-to-date, namely the government website.

Choosing to omit the information on minors is not an issue since the client has clearly identified themselves as being over 18.

3. **Client:** I’m sorry – I can’t read English very well, can you read it to me?

Adviser: Okay

[Adviser commences reading from the beginning, but is interrupted by the client]

Reading the leaflet is fine if the client cannot read. It would also be acceptable for an interpreter to translate the leaflet into the clients own language. Ideally the adviser would read and the interpreter would translate line by line, so that the adviser can be sure that the interpreter is not adding, explaining or omitting information.

4. **Client:** Sorry – I don’t need to know all of this. Can you just tell me what I have to do in order to claim?

[Adviser looks through the printouts, then begins reading from the section headed ‘Register your claim’ until the client interrupts again]

This is still okay – the client is merely directing the adviser to the information he needs.

5. **Client:** What does it mean by “if you become eligible”? How do I know if I’ve become eligible?

Adviser: The purpose of an asylum claim is to give the authorities the opportunity to work out whether or not you are eligible for asylum – I think they just put that there to put people off claiming when they

haven't got a case. Shall I continue, or do you want me to read the section on eligibility first?

Client: No – it's okay. Carry on.

[Adviser reads down to the end of the section on 'how to make an appointment']

The adviser has made a general statement that does not relate to a particular individual. However, while this is not an offence, the adviser is on dangerous ground. The adviser is giving his own spin on the information and it is not clear what knowledge or experience this is based upon. In other, similar circumstances the adviser could be putting the client at risk by providing them with inaccurate information on which to base decisions. A more appropriate response to the question would be "There is a section on Eligibility – would you like me to read it?"

6. **Client:** Can I be detained while I'm claiming asylum?

Adviser: It says: 'unless you've been detained' on the next page, so it's definitely possible. I know of a few former clients who were detained, but it doesn't happen very often. If you're worried about this, you could try speaking to a solicitor.

This is still not technically advice in relation to particular individual. The adviser is on dangerous territory and may be painting an inaccurate picture based on limited experience – a picture which could affect the decisions the client makes.

7. **Client:** I went to a solicitor, but I only spoke to the reception person who said they couldn't see me unless I had already claimed asylum. Do you think I will be detained?

Adviser: I'm not sure. What's your nationality?

Client: I'm from India.

Adviser: Hmm... I think that's a white list country. Is it just you claiming, or do you have family?

Reference to India being on the white list in this context could be conceived by some as giving immigration advice and therefore a criminal offence.

8. **Client:** Yes, I'm here with my family – my wife and my son. He's going to be 3 next week.

Adviser: I think it's very unlikely that you will be detained – they don't normally detain families with children.

Here the adviser is using facts about the client to determine the likelihood of detention – so the advice is definitely 'in relation to a particular individual.' The advice is on the risk of detention when making an asylum claim, and so would be advice on a relevant matter, namely 'a claim for asylum.' The unregulated adviser has committed an offence. The adviser is also using his own knowledge and experience, which may or may not be up to date.

9. **Client:** Okay. Can you call them to make an appointment for me?

Adviser: No, I'm sorry, according to our policy I'm not allowed to do that.

Client: I don't have credit on my phone and I've not got any money...

Adviser: You could make the phone call from this phone, but you will have to speak to them yourself. Do you want to do that?

Client: Yes, if that's okay.

[Adviser picks up the handset, dials the number and hands the phone to the client. Client has a conversation for about 5 minutes and then hangs up]

This is good. Speaking to the Home Office on behalf of a client could be construed as 'the making of representations on behalf of a particular individual' and so fall within the definition of 'immigration services' – which are also prohibited. However, since the client has signalled their intention to make an appointment, there is nothing wrong with allowing

the client to use the phone to make a call themselves, or with dialling the number for the client.

10. **Client:** Can I have a piece of paper? I just need to write down details of the appointment.

Adviser: Of course, here you are...

Client: Thank you. Can you give me a map of where I need to go? It's in Croydon – I think it's the address you read out to me.

Adviser: Yes, of course.

[Adviser wraps up interview, giving the client a map and the previously printed material. Client leaves.]

This is fine – it is acceptable to give a client a map showing them where they need to go if they have identified the need to go there themselves.