



IPS RESPONSE TO OFFICE OF THE IMMIGRATION SERVICES COMMISSIONER ADVICE TO LSB ON IMMIGRATION APPLICATION

IMMIGRATION APPLICATION

The Office of the Immigration Services Commissioner (OISC) has met with IPS to discuss the immigration application. The OISC confirms it has no objections to the application, subject to the comments it makes, each of which is dealt with below.

IPS recognises that the OISC adopts a different regulatory methodology to that proposed by IPS. IPS has developed its approach to regulation based on that which is championed by the LSB and the Consumer Panel. Thus IPS has taken a risk based, outcomes focused approach, with proposals which will enable IPS to deliver consumer protection. Part 3 of the application sets out how the regulatory objectives, including protection of the public and consumers, will be met by IPS' proposals.

The aim of the application is to open up the immigration register to Fellows who demonstrate the competencies set out in the application. While there are 7,600 Fellows the number of those who practise in immigration law and can demonstrate the competencies is significantly smaller.

Monitoring / Supervision and quality of work

IPS recognises the importance of monitoring; and that immigration is a high risk area. It requires competence from providers to ensure quality work is delivered to clients.

IPS has already carried out visits to every one of its existing immigration advisors, using the risk framework which is explained at Section D of Part 5 of the application, as part of the work in testing its overall risk based approach. Visits included assessment of the work conducted on files, selected by IPS at random, by immigration advisors to assess the competence and quality of work they had provided. A review sheet was developed and used for each file assessed, and will form part of IPS' usual process. Where matters of quality were identified they were raised with advisors, who were required to take measures to address the issues. IPS monitored compliance with these requirements. The visits identified minor points of quality only.

IPS will achieve effective supervision of those it regulates through its risk based monitoring and annual returns. Part 5 of the application sets out in detail, in paragraphs 175-211, IPS' risk based approach to regulation. This includes an

intelligence function. Intelligence gathering will enable IPS to identify risk triggers in particular practice areas, including immigration: the risk based approach goes beyond monitoring purely on the basis of complaints data. Triggers may include trends in the sector, recurring issues encountered in cases by Immigration Tribunals or the Home Office, impact of legal aid cuts, and other factors.

In addition the new outputs based CPD scheme will, from October 2013, include a mandatory professionalism element for all advisors, enhancing their understanding of quality in the provision of legal services. It will encourage reflective practice and includes sampling of CPD undertaken by IPS' regulated community, providing a further supervisory route.

Disclosure and Barring Service (DBS)

For clarification we will require each Manager of an entity to supply a DBS report. The application at Annex 17 makes reference to a Criminal Records Bureau check, as it then was.

Risk based regulation and desk visits

IPS does not propose to rely on desk based processes alone in the authorisation of an entity. The risk based approach to regulation requires that, where information provided by an entity requires exploration, a visit will be carried out before the assessment process can be completed. Equally IPS recognises that a new entity may have limited information at the point of authorisation and it may therefore require supervisory activity, including a visit, as it develops. All the current entities run by CILEx immigration advisors were visited as part of the testing of the risk framework.

Employees

As part of the authorisation process entities will provide details of their management structure and supervision arrangements. This will include the name, status and professional qualification of employees and the areas of work they undertake. Entities will update this information as part of the annual return. The proposed application form at Annex 17 sets out these requirements.

The IPS regulated community must comply with the Code of Conduct, which includes at Principle 4 an obligation to comply with their legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly and co-operatively. This is set out at Part 6 of the application. Immigration advisors will be left in no doubt of their obligations to comply with the Code and to act with integrity at all times, including when providing information to IPS.

IPS will rely to some degree on self-declaration by entities of information about their practice, including about employees. However, the obligations under the Code of Conduct and triangulation of evidence about employees disclosed by the entity with other information on the form, such as financial information and level of file holding, will enable IPS to identify the true position, or inconsistencies in evidence, as to employee numbers. This element of the monitoring can safely be desk based. Such cross referencing of information sources is needed because even a visit to an entity

may not identify all employees; for example, they may absent themselves on a date of a visit.

IPS is confident that it has the infrastructure in place to meet its obligations as a regulator for new practice areas and, in the case of immigration, extension of the authorisation it already carries out successfully in this area.

Evading regulation

IPS is aware of the particular risk faced by the OISC of advisors evading its regulation by claiming supervision by solicitors. The application form at Annex 17 is designed to obtain information from entities about their employees, the work they undertake and information about management and supervisory structures. IPS will use this evidence base were an advisor to try to evade regulation. The use of such evidence is a standard approach in IPS' enforcement cases.

IPS is reviewing and updating its Memorandum of Understanding with the OISC. This facilitates information sharing, including information on the regulated community. We recognise the importance of working with the OISC and other regulators to ensure information sharing is appropriately addressed. Similar Memoranda are being proposed with other regulators to improve information sharing and checking of records on advisors and employees.

**BB/IPS RESP
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