

Regulation of Immigration Advice and Services - Consultation Response from Central Law Training (CLT)

The Consultation paper published by the Legal services Board sets out the issues surrounding the regulation of those who provide immigration advice and services. The focus of the consultation document is risk management.

The current concerns are problems created by two overlapping bases for regulation; the qualifying regulators' inadequate understanding of market which in turn results in a lack of understanding as to whether good quality advice and representation is being provided to the consumer; an over reliance of the legal Services Commission to manage risk; differences in access to redress and whether there is in fact a means of redress.

The LSB theorise that the qualifying regulators are currently unable to assess the quality of advice and services due to a lack of appropriate data; an absence of mechanisms for assessing quality of provision; the difference in powers between the qualifying regulators and the OISC.

In this context, the LSB consultation paper sets out seven questions to which it seeks responses:

Question 1: Do you think we have captured all of the key issues? Do you agree with the sections setting out what qualifying regulators need to do? If not, what in your view, is missing?

Broadly, the paper has captured the key issues. However, the Bar is by and large ignored other than a brief discussion of those members of the Bar who carry out public access work/direct access work.

The paper does not consider the impact of the Law society's Immigration & Asylum Accreditation Scheme other than in the context of those working for practices that have contracts with the LSC. The Scheme has successfully assured a minimum standard of quality in the provision of immigration advice and services and the quality assurance data is easily obtainable in relation to those who participate in the Scheme. The paper fails to identify that this is a potential means of objectively and proactively managing risk within the entire immigration advice and services sector.

Given the numbers of OISC regulated practices, insufficient attention is paid to whether the OISC scheme provides a minimum standard of quality amongst advisers. It should also be noted that a small number of OISC providers are either solicitors not on the Roll or non-practicing barristers. Consumers often do not understand the importance of a solicitor being on the Roll or the significance of the fact that a barrister is non-practicing (and who may not have completed pupillage or practiced at the Bar). Consumers can often proceed to instruct an OISC registered representative in the mistaken belief that

they are instructing a practicing solicitor or practicing barrister. This is a particular issue amongst BME communities in which there are low rates of literacy.

A single system that accredits ALL providers to the same minimum standard would be a more appropriate and objective way of managing risk and ensuring that the consumer has access to good quality advice and representation regardless of where they are geographically or the type of adviser (OISC/Solicitor/Barrister/Legal Executive) instructed.

Question 2: Our review focussed on private individuals (legally aided or not), rather than small and medium size enterprises or other businesses. However, we consider the findings are likely to be relevant to those groups as well. Do you agree or do you have evidence to suggest otherwise?

Agree.

Question 3: Do the tables on pages 21 to 24 cover all of the risks to each consumer type? What other risks should qualifying regulators be concerned about actively managing?

The tables identify appropriate risks but see comments in response to question 1 regarding solicitors and non-practicing barristers who work under the OISC umbrella.

Question 4: Do the tables on pages 21 to 24 ask the right questions of qualifying regulators? What other information should the qualifying regulators collect to demonstrate that they are able to effectively manage the risks posed in the regulation of immigration advice and services?

The tables identify appropriate questions. However, the premise here is that if there is no complaint from the consumer then it logically follows that a good quality service is being provided. This assumption is inherently wrong. An additional question to focus on for regulators would be: how do we determine that an adviser has provided high quality, appropriate advice and representation regardless of the outcome of the case (even where the adviser is already accredited in some way).

Question 5: Applicable to qualifying regulators only.

Question 6: What further action should the LSB and qualifying regulators, jointly or individually, be undertaking on this issue?

The LSB should either jointly or individually implement a single, unified and robust system of accreditation applicable to all individuals and organisations providing immigration advice and services. An appropriate model to consider is the Law Society's IAAS. This should be supplemented with an annual minimum of six hours immigration specific CPD.

An alternative to this is that qualifying regulators run their own accreditation schemes. However, if this course is followed, there must be measures that ensure parity between all of the accreditation mechanisms in terms of ensuring that an agreed minimum standard is met by those accredited.

Question 7: What are your views on the desirability and practicality of introducing voluntary arrangements so that that the Legal Ombudsman can consider complaints about OISC regulated entities and individuals?

This is highly desirable and should be compulsory. The current situation is unsatisfactory for consumers.

Central Law Training (CLT)

CLT has been the sole provider of the Law Society Immigration and Asylum Accreditation Scheme since 2004.

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