

Consultation response

LSB: Regulation of immigration advice and services

Overview

1. **This consultation document addresses issues of fundamental importance to those who use and need immigration advice and services. The fact that users can be among the most vulnerable in society underlines the need for the proper safeguards to be in place.**
 2. **The impact of the decline in funding of legal aid and cuts to third sector advice both have an impact on access to justice in this area. These developments may also have an impact on consumer protection as the controls put in place by the Legal Services Commission will no longer be there unless replicated by the qualifying regulators.**
 3. **It is of great concern that the LSB has assessed there is likely to be significant consumer detriment because the qualifying regulators are not regulating in a way that is consistent with the requirements of the Legal Services Act. The LSB's analysis also raises concerns about the OISC regime, although there is also opportunity to share good practice.**
 4. **We are not convinced the qualifying regulators are doing enough to regulate quality of work. The tiered authorisation regime used by OISC is an example of activity-based regulation which qualifying regulators could follow.**
- Similarly, the absence of a requirement for solicitors or barristers providing immigration advice and services to conduct immigration-related CPD is concerning. One possible remedy for the short-term is to require membership of the Law Society's accreditation scheme, although this would need to be improved so that it meets the good practice standards identified by the Panel in our report on Voluntary Quality Schemes.
5. **The Legal Ombudsman should be able to consider complaints about OISC regulated entities and individuals as this body does not have redress awarding powers. Switching on the voluntary jurisdiction is one option, but this would only work if OISC made participation mandatory as a code requirement, as the worst providers are unlikely to submit to the scheme of their own accord.**
 6. **There is a need for research to begin to understand the needs and experiences of consumers of immigration advice and services. There is a danger that risks are being missed and the absence of data undermines the legitimacy of regulation.**

The proposals

7. On 1 April 2011, the Legal Services Board (LSB) became the oversight regulator for immigration advice and services in England and Wales. The Solicitors Regulation Authority (SRA), Bar Standards Board (BSB) and ILEX Professional Standards (IPS) are the three 'qualifying regulators' under this regime. The LSB has undertaken an assessment of whether the qualifying regulators are managing appropriately the risks in the provision of immigration advice and services, and in a way that is consistent with the regulatory objectives in the 2007 Act and the better regulation principles. It also sought to understand whether there were issues of wider concern to the public interest in the qualifying regulators' approach.

The Panel's response

8. This consultation document addresses issues of fundamental importance to those who use and need immigration advice and services. This is also an area of advice that is fast changing and evolving. The impact of the decline in funding of legal aid and the traditional dependency on not for profit involvement, now vulnerable to the economic climate, both have an impact on access to justice in this area. The last two years has seen the closure of both Refugee Migrant Justice and the Immigration Advisory Service who were estimated as between them covering 20,000 cases.
9. One theme which underpins our 2012-13 work programme is equality of access. Users of these immigration advice and services are diverse, but vulnerability is a key consideration. Although it is right to separate asylum and immigration advice in

terms of the potential consequences for consumers, certain risk factors, for example English not being someone's first language, means that vulnerability is an ever present factor. The fact that clients can be among the most vulnerable underlines the need for the proper safeguards to be in place.

10. Some of the questions are specifically targeted at the approved regulators; we will therefore focus on responding to questions where the Panel can add most value. In doing so, we have drawn on the findings of previous Panel reports, including those relating to Voluntary Quality Schemes.

Q1. 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?

11. Below, we briefly examine the three areas highlighted in the consultation document.

Regulatory architecture

12. Our starting point is that consumers should be afforded sufficient protection irrespective of who provides immigration advice and services. It is of comfort that all service providers are regulated, but each regulator should exhibit key minimum ingredients. The changes in legal aid funding means the checks and balances deployed by the Legal Services Commission will no longer apply, thus putting greater importance on the effectiveness of the qualifying regulators and the Office of the Immigration Services Commissioner (OISC).
13. Therefore it is a cause of great concern that the LSB has assessed there is likely to be

significant consumer detriment because the qualifying regulators are not regulating immigration advice and services in a way that is consistent with the requirements of the 2007 Act. The LSB's consultation also raises concerns around the design of the OISC regime, for instance around redress and powers to shut down firms, although the scope of the exercise means this is a limited analysis. Any review of OISC is a matter for the Home Office, but in the absence of this there are opportunities to share good practice and look to harmonise approaches where appropriate. In a world of competition between regulators, the LSB must guard against a race to the bottom.

14. In our response to the LSB's consultation on the scope of regulation, we suggested your role should be to promote competition between diverse providers within a regulated market place. Therefore, we welcome the commitment to ensure continued consumer choice and access to justice through a wide range of properly authorised and regulated individuals and entities, rather than to exclude any category of provider from the market through a system based on regulation by title.
15. We are pleased that the consultation acknowledges the impact of the economic climate and wider changes to legal services. People need access to affordable legal advice now more than ever. Much is being asked of civil society to step into the breach but it too faces significant funding pressures. Non-commercial providers which offer reserved activity services are due to become subject to regulation in future. The Panel will respond to the separate consultation on this in due course, but

users of these providers should not be any afforded less protection than legal services consumers engaging commercial businesses.

Quality

16. The Panel is concerned about inconsistent approaches to regulating quality across the qualifying regulators. There appears an opportunity to learn from quality assurance mechanisms used by the Legal Services Commission including requirements on providers to report against performance indicators and conduct audits of case files.
17. An advantage of OISC being a specialist regulator is that it has designed a specific authorisation regime for individuals and entities wishing to provide immigration advice and services. It is thus closer to the activity-based system of regulation which the LSB is encouraging the approved regulators to adopt across the market. OISC uses a tiered approach whereby authorisation is granted according to the level of complexity of case. This is broadly mirrored by the Law Society's voluntary accreditation scheme. We hope that the Legal Education and Training Review will result in activity-based authorisation. But there remains an urgent need for the qualifying regulators to demonstrate that they are only authorising individuals and entities who are competent in this field.
18. This also applies to post-authorisation requirements. We note that OISC requires its advisors to take CPD training specific to immigration advice and services. Yet the SRA and BSB do not specify that CPD should be related to areas of practise.

19. We welcome reference to our report on Voluntary Quality Schemes (VQS). The Panel sees the potential for VQS as a 'choice tool' for consumers, empowering them to make informed choices and encouraging lawyers to compete on quality. Currently these schemes are used by some large purchasers of legal services, but rarely by individual consumers. If this is to change, consumers need to be confident that VQS are credible signals of quality, as research indicates that people are confused about what quality schemes signify and worry these are industry marketing ploys rather than genuine guarantees of quality.
20. The report included an assessment of the Law Society's Immigration and Asylum Accreditation Scheme (IAAS) against a set of good practice standards developed by the Panel. These standards have not been challenged by VQS operators. We gave a mixed assessment on the IAAS; there was good practice in respect of entry standards and reaccreditation, but concerns in relation to ongoing quality assurance, lay input in governance and lack of consumer-facing information about the scheme. The Law Society is in the process of reviewing all its schemes and we have been encouraged by its initial positive response to our report.
21. The Panel's report discussed the possibility of accreditation of VQS by approved regulators. This offers an intriguing option for the qualifying regulators in this area, at least as an interim measure: they could require membership of a suitably reformed IAAS as a condition of providing immigration advice and services. Importantly, membership of the IAAS is already available to non-solicitors.

Complaints

22. We agree that complaints are problem area but we address this under Question 7.

Q2. Our review focused on private individuals (legally aided or not), rather than small and medium sized 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?

23. The Panel represents all consumers who lack buying power in their dealings with lawyers, which include small businesses and small charities. We have no evidence about the needs and experience of these consumers in this area, but equally we have no reason to believe the findings would not be relevant to these groups as well. For example, a small business may need legal advice to obtain a work permit for an employee – this may be a rare event (creating vulnerability) or a more common occurrence depending on the size and nature of the business. Government is increasingly placing more responsibility on businesses to ensure their employees have the relevant permissions to work in the UK; this may increase demand for legal advice from this consumer group.

Q3. 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 and actively managing?

24. The Oxera framework provides a useful starting point and we welcome the explicit focus on the risks facing different consumer

types. However, there are dangers in seeking to apply labels to groups which are not homogenous in make-up. Consumer vulnerability is a key consideration in this area of law and should be a central focus. We are actively encouraging the sector to adopt the new British Standard on inclusive services (BS 18477), which is designed to be used alongside existing policies to help organisations better understand vulnerability and to deal with consumers in a fair way.

25. It is right to draw a distinction between immigration and asylum as the vulnerability of the latter group and the potential consequences of being ill served cannot be over-emphasised. Under asylum/legal aid, we would include an additional risk around changes in the not for profit sector as a result of changes to legal aid funding with its implications for access to advice.

Q4. 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?

26. The tables ask the right questions of those providing legal services, but it is crucially important to find out about the consumer experience of immigration advice and services. We are aware of no recent robust research either by Government, OISC, qualifying regulators, professional associations, consumer bodies or anyone else that addresses this need. This gap means that key risks could be missed, but it also undermines the legitimacy of decisions as those people who are meant to benefit

from regulation have taken no part in the design of the regulatory regime.

27. The questions in the table need to take account of future proofing, not least as changes to the voluntary sector make this far from a static policy landscape.

Q5. For qualifying regulators, can you answer the questions we have asked in the tables on pages 21 to 24? What information do you use to actively manage the risks posed to each type of consumer? What about the risks to the public interest?

28. This question is for the qualifying regulators to respond to.

Q6. What further action should the LSB and qualifying regulators, jointly or individually, be undertaking on this issue?

29. As suggested above, there is an urgent need to commission consumer research. The Panel would be pleased to assist in such an exercise.

Q7. What are your views on the desirability and practicality of introducing voluntary arrangements so that the Legal Ombudsman can consider complaints about OISC regulated entities and individuals?

30. The Panel is already committed to working alongside the Legal Ombudsman to switch on the voluntary jurisdiction built into the Legal Services Act. This step would enable certain unregulated businesses wishing to signal a strong commitment to consumer protection to resolve complaints through the scheme. We would be pleased to see the Legal Ombudsman consider complaints about OISC regulated entities and

individuals since OISC does not have redress awarding powers. However, the key issue is making participation mandatory as there is the obvious risk that providers – especially the worst performing ones – will opt not to submit to the scheme. We suggest that OISC should make this a code of conduct requirement for all its providers.

31. Agencies in the not for profit sector should also be brought within jurisdiction. The Panel will come back to the regulation of non commercial bodies when responding to the LSB's consultation on this issue.
32. The benefits for consumers in terms of getting access to redress are self-evident; this would also assist the qualifying regulators in raising standards. Such a step would also address issues of confusion identified by the Legal Ombudsman. People currently expect they have a right to redress and so are choosing immigration providers now based on a false sense of security.
33. Access to redress is particularly important in the context of consumer vulnerability. Our research shows that many consumers, especially those from lower socio-economic and some ethnic groups, lack confidence to complain when things go wrong. It is vital to understand and erode the barriers that discourage complaints. In this sector, there are additional barriers, including language issues and the possibility that individuals may not be living in the UK.

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