

Consideration by the Legal Services Board (LSB) of the Solicitors Regulation Authority's (SRA) application for the approval of changes to its regulatory arrangements concerning immigration services.

1. This note sets out the LSB's consideration of the above application, which was granted in accordance with paragraph 21(3) of Schedule 4 to the Legal Services Act 2007 ("the Act") on 19 August 2020.

Background

2. On 23 July 2020, the SRA submitted an application to the LSB for the approval of changes to its regulatory arrangements in respect of how solicitors, registered European lawyers ("REs") and registered foreign lawyers ("RFLs") carry out immigration work and how they are regulated when doing so (the "Application"). These changes would amend Regulations 9.5 to 9.7 of the SRA's Authorisation of Individuals Regulations (the "AIRs"). The current version of these Regulations were approved by the LSB in its decision on the SRA's regulatory arrangements relating to its, "Looking to the Future", proposals in November 2018, which included the SRA's new Standards and Regulations (the "STaRs"). The majority of the STaRs came into force on 25 November 2019.
3. However, following the LSB's decision in November 2018, the Office of the Immigration Services Commissioner (the "OISC") made representations to the SRA and the LSB about its concerns that the immigration provisions (Regulations 9.5 to 9.7) included in the version of the AIRs approved in November 2018 conflicted with the OISC's role as the immigration services regulator and would hinder its ability to carry out its regulatory functions. Following discussions with the OISC, the SRA submitted a further application to the LSB, which included a request for the temporary suspension of Regulations 9.5 to 9.7 in the AIRs. The LSB responded to the application by issuing an Exemption Direction on 21 November 2019 ("ED147"), which resulted in solicitors, REs and RFLs continuing to be authorised to undertake immigration work under the arrangements that were in place prior to 25 November 2018.

Details of previous regulatory arrangements and the changes granted by the Board

4. The SRA has confirmed that the alterations contained within Annex 1 of the Application have been developed in close collaboration with the OISC. They are intended to give effect to the changes to how solicitors can carry out immigration work originally included in its 2018 "Looking to the Future" rule change application, but in a way that ensures the OISC can properly carry out its regulatory duties and functions.

5. Prior to November 2018, and following publication of ED147 by the LSB, solicitors, RELs and RFLs could provide immigration advice and services to members of the public from:
 - (a) SRA-regulated law firms,
 - (b) Authorised non-SRA firms (i.e. firms authorised by one of the approved regulators set out in paragraph 2 of Schedule 18 to the Act), and
 - (c) Law Centres and other non-commercial organisations authorised by the OISC.

They were also able to provide immigration advice to their employers when working in-house for other organisations not falling into these categories.

6. The suspended AIRs could have additionally enabled solicitors to work in fee-earning OISC regulated firms without having to register with the OISC. The OISC raised concerns that this may have limited its ability to require that solicitors adhere to the OISC's rules or submit to the OISC's disciplinary procedures. The new regulations seek to ensure that the OISC maintains control over who it authorises to provide immigration services within the commercial firms that it regulates.
7. The new regulations provided within Annex 1 of the Application accordingly delete the suspended version of Regulations 9.5 to 9.7 of the AIRs and replace them with a revised version, Regulations 9.5 to 9.7B. The revised regulations are intended to address the OISC's concerns by placing the following requirements and restrictions on how solicitors, RELs and RFLs can work in OISC-regulated organisations:
 - (a) Any solicitors, RELs and RFLs who undertake immigration work in non-commercial advice services registered with the OISC or otherwise qualified under the Immigration and Asylum Act 1999 ("IAA"), or when working as in-house solicitors, must undertake immigration work personally and not allow another person to do it on their behalf unless that person is a qualified person under the IAA (i.e. registered with the OISC). Such persons are accordingly unable to rely on section 84(2)(e) of the IAA which ordinarily permits qualified persons to supervise unqualified persons to carry out immigration work (Regulation 9.6).
 - (b) Any solicitor, REL or RFL who undertakes immigration work for a fee-earning OISC regulated organisation will be required to register as an individual with the OISC (Regulation 9.7).
 - (c) When a solicitor, REL or RFL undertakes immigration work as set out in (b) above, then in the event of any conflict between the SRA's regulatory requirements and the OISC's, the OISC's requirements will prevail (Regulation 9.7A)

Rationale for and effects of these changes

8. The SRA's Standards and Regulations enabled, for the first time, individual solicitors, RELs and RFLs authorised by the SRA to provide unreserved legal services to the public from organisations that the SRA does not regulate. The new regulations within the Application enable solicitors, RELs and RFLs to offer immigration services from all firms regulated by the OISC (i.e. fee earning as well as non-commercial), and this is consistent with the changes approved by the LSB in November 2018 and implemented by the SRA in November 2019.
9. However, unlike other unreserved services, immigration services are subject to regulation under the IAA and by the OISC, so there is a need to ensure that any changes which allow solicitors to provide immigration services from OISC-regulated firms do so in a way which ensures they comply with the IAA's requirements and enable the OISC to fulfil its regulatory duties and functions.
10. These latest proposed changes seek to do this by ensuring that all solicitors working in OISC-regulated fee-earning firms are registered with the OISC, ensuring that the OISC has control over who is authorised to provide immigration advice and services to the public. These solicitors will need to comply with the OISC's Code of Standards and regulatory requirements when providing immigration advice and services, as well as the SRA's Individual Code of Conduct. In respect of immigration work, should there be a conflict between the SRA's Code and the OISC's, the OISC requirements will prevail.

Key issues considered

11. The LSB's assessment of this application focussed on the areas outlined below.

Redress

12. The SRA's application confirmed that OISC-registered solicitors, RELs and RFLs who are registered with the OISC and providing immigration services from an OISC-regulated organisation will, as part of their compliance with the OISC's regulatory regime, be subject to the OISC's complaints scheme. Should a complainant be dissatisfied with the way the Immigration Services Commissioner has dealt with their complaint, they may seek to raise their concerns with the Parliamentary and Health Service Ombudsman (PHSO).
13. During our assessment, we sought further clarification on how redress would work in practice for consumers. In its response, the SRA confirmed that the OISC's complaints scheme would be the primary route for managing complaints about solicitors providing immigration advice and services to the public from commercial OISC-regulated organisations. This would also be the case for clients of solicitors offering immigration services from non-commercial OISC-registered

organisations, whether or not the solicitor is personally registered with the OISC. This position reflects the principle in section 54 of the Act, that entity regulation overrides individual regulation.

14. The SRA also explained that the OISC will share relevant information about solicitors' performance arising from complaints via its established protocols and channels of communication with the SRA. The OISC and LeO are also working on complaint handling processes and information sharing.

Evaluation and monitoring

15. The application included information on how the SRA would evaluate and monitor the impact of these changes, if approved. The LSB sought further clarification on the scope and timing of its planned monitoring activity.

16. The SRA confirmed that it will evaluate the impact of these changes as part of its wider evaluation process of the Standards and Regulations. The SRA has started this process and intends to deliver a full evaluation of the impact of the Standards and Regulations in 2022. The LSB is closely monitoring the SRA's progress in this regard through our regulatory performance framework.

17. In addition, the SRA confirmed that towards the end of 2020, it will be undertaking a thematic review of immigration advice and services which will use a sample of firms and focus on supervision, competence and the reporting of poor behaviour.

Effective collaboration with OISC and LeO

18. A number of respondents to the SRA's consultation noted that for these changes to benefit both consumers and providers of immigration services, the SRA, the OISC and LeO will need to work closely together to ensure that:

- (a) consumers understand how their immigration services provider is regulated and how they can complain about poor service; and
- (b) service providers, particularly those solicitors who become OISC-regulated immigration advisers, understand the regulatory regime they are operating under and their obligations under it.

19. We sought further information on the SRA's plans in this regard. The SRA has informed us that it will be working to deliver the commitments it made in its July 2020 consultation response document over the coming months. From a consumer perspective, this will include discussing information remedies with the OISC, consistent with representations made by the Legal Services Consumer Panel, and exploring what other consumer guidance and information it can provide in

relation to immigration advice and services. From a provider perspective, the SRA will be working with the OISC on reviewing its guidance for solicitors providing immigration services. We will expect to see swift progress on both of these fronts by the end of the year and will be following up on this through our regulatory performance oversight.

20. Linked to the above, there is a clear imperative for the SRA, the OISC and LeO to cooperate proactively and effectively not only in developing this additional material, but also in the sharing of information about providers' performance and in responding to any substantive and regulatory issues which may arise.

Clarification as to the drafting of the new regulations

21. The LSB sought clarification from the SRA as to whether its new regulations, as drafted, would implement the policy intention set out within the Application, and restated above at paragraphs 8-10. This was particularly in respect of the following:

- (a) whether the new regulations achieve the policy of ensuring that the OISC retains control over who it may authorise to carry out immigration work within OISC regulated firms; and
- (b) which of the applicable regulations authorise solicitors, RELs and RFLs to be able to carry out immigration work within fee-earning OISC regulated firms.

22. The SRA provided assurances that the policy intention - as set out in its application and recorded in this note - is achieved through the drafting of the proposed regulations. It acknowledges that guidance, which it is currently drafting, will have an important role to play in providing further clarification on the meaning of regulations and their interaction with the IAA. The LSB will expect the SRA to share a copy of this guidance when it is ready, to provide assurance that the regulations and supporting guidance provide sufficient clarity. In the event that there remain any concerns as to the clarity of the drafting, some technical drafting revisions may need to be considered.

Conclusion

23. Overall, the LSB concluded that changes do not meet the refusal criteria in the Act.

24. **Annex A** to this document contains the regulatory arrangements that have been granted in accordance with paragraph 21(3) of Schedule 4 to the Act.

Annex A

SRA Authorisation of Individuals (Immigration work) (Amendment) Regulations [2020]

Regulations made by the SRA Board on 22 June 2020

Made under sections 2, 13, 28 and 31 of the Solicitors Act 1974 and section 89 of, and paragraphs 2 and 3 of Schedule 14 to, the Courts and Legal Services Act 1990.

Regulation 1

Delete regulations 9.5 to 9.7 of the SRA Authorisation of Individuals Regulations and replace with:

“9.5 If you are a *solicitor*, an *REL* or *RFL* you may undertake *immigration work*, provided that such work is undertaken:

- (a) through an *authorised body*;
- (b) through an *authorised non-SRA firm* that is a qualified person under the Immigration and Asylum Act 1999;
- (c) as an employee, for your employer or work colleagues; or
- (d) through a non-commercial advice service which is registered with the Office of the Immigration Services Commissioner or otherwise qualified under the Immigration and Asylum Act 1999

9.6 Where you undertake work under regulation 9.5(c) or (d) above, this must be undertaken by you personally and not by another person on your or your employer’s behalf unless such person is a qualified person under the Immigration and Asylum Act 1999 other than under section 84(2)(e) of that Act.

9.7 If you undertake *immigration work* through a body which is registered with the Office of the Immigration Services Commissioner or otherwise qualified under the Immigration and Asylum Act 1999 other than as permitted under regulation 9.5(d), you must be registered as an individual with the Office of the Immigration Services Commissioner or otherwise qualified to do so under the Immigration and Asylum Act 1999 and will undertake such work in that capacity.

9.7A Where you are undertaking work under 9.7 above, in the event of any conflict between the *SRA’s regulatory arrangements* and any requirements placed on you by the Office of the Immigration Services Commissioner, the latter shall prevail.

9.7B Nothing in regulations 9.5 to 9.7A restrict you from undertaking *immigration work* if you fall within section 84(6) of the Immigration and Asylum Act 1999.”

Regulation 2

These regulations come into force on 1 September 2020, or the date on which they are approved by the Legal Services Board, whichever is the later.