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Consultation response: Immigration Plan

Dear Mr Belmore,

The Legal Services Board is the oversight regulator of legal services in England and Wales. Three of the nine regulatory bodies we oversee – the Solicitors Regulation Authority (SRA), Bar Standards Board (BSB) and CILEx Regulation – authorise individuals and entities who may provide legal services to asylum seekers. Of relevance to this topic, we also have some limited oversight responsibilities in relation to the Solicitors Disciplinary Tribunal (SDT).

Our response focuses on one aspect of the Immigration Plan, namely the proposal to:

“Develop a ‘good faith’ requirement setting out principles for people and their representatives when dealing with public authorities and the courts, such as not providing misleading information or bringing evidence late where it was reasonable to do so earlier.”

In summary, while there is some anecdotal evidence of quality problems in asylum legal work, a “good faith” requirement on legal representatives would duplicate existing obligations and is therefore unnecessary. The best way forward may be to focus on improving enforcement of existing rules, as appropriate.

Analysis

We take no view on the underlying policy objectives in the Immigration Plan, which is properly for government to determine. In performing our duties, we have a responsibility to ensure effective regulation of legal services in the public interest with respect to our statutory objectives and the better regulation principles, as enshrined in the Legal Services Act 2007. The regulatory objectives relevant to this topic include: supporting the constitutional principle of the rule of law; improving access to justice; protecting and promoting the interests of consumers; increasing public understanding of the citizen's legal rights and duties; and promoting and maintaining adherence to the professional principles.

We consider that a good faith requirement would duplicate existing obligations on legal representatives and is therefore unnecessary. Section 1(3) of the Legal Services Act 2007 sets out the professional principles, which bind all authorised persons and are reflected in the regulatory bodies' codes of conduct. Overlap with the intent of the proposed good faith requirement, includes that authorised persons must act with independence and integrity, maintain proper standards of work, act in the best interests of their clients, and comply with their duty to the court to act with independence in the interests of justice. These principles sit alongside other relevant general requirements underpinning strong professional standards and ethics, which are set out in the codes of conduct of each of the regulatory bodies.

In the case of asylum seekers, poor legal services can have a grave impact on those who are in situations of extreme vulnerability. We are currently [reviewing](#) how legal services regulators ensure that the legal professionals they regulate remain competent throughout their careers. This work has identified immigration and asylum as being among the high-risk practice areas where there is evidence of actual harm to consumers or an increased likelihood of harm to citizens in vulnerable circumstances. We are planning to consult in the Autumn on new expectations for how legal services regulators should be approaching ongoing assurance of the competence of those that they regulate.

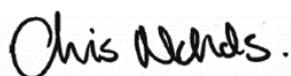
In 2016, the SRA published a [report](#) which explored issues of regulatory concern arising from the conduct, competence and behaviour of solicitors. This includes some solicitors lacking the skills to obtain and record sufficient, relevant information from asylum seekers or lacking knowledge about the law underpinning specifics of cases. In its [submission](#) to our call for evidence on ongoing competence (undertaken in 2020), the SRA said that it is considering sector-specific competence statements or requirements in areas such as immigration and advocacy. Also in 2016, the BSB published its [Immigration Thematic Review Report](#), which found key risks for immigration clients, including failure to provide a proper standard of service and inadequate training and preparation for practice.

While there is some evidence of quality issues in this area, and judicial concern about individual cases has been reported in the press, this is largely anecdotal. We are interested to see any data the Home Office has on the activities of legal representatives and entities causing concern that justifies any new regulatory requirements. The consultation includes data indicating that nearly half of all appeals are upheld. This high rate of success does not in our view seem to indicate an issue with unmeritorious claims at this stage of the process.

In short, the best way forward may be to focus on improving approaches to ensuring compliance with existing regulatory requirements, on which there is already work in progress, rather than creating new rules that may prove difficult to enforce.

If it would be helpful, we would be happy to facilitate discussions between officials and the regulatory bodies to explore these issues in further detail.

Yours sincerely



Chris Nichols
Director, Regulation and Policy