

22 July 2013

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Dear Chris,

Response to Request for Advice: Application from the Chartered Institute of Legal Executives (CILEx)

Thank you for your letter of the 29 May regarding the application made by CILEx to alter its regulatory arrangements for authorising and regulating those of its members who provide immigration advice and services.

We have considered the application, and, in so doing, members of my staff have met with Ian Watson, CILEx Chief Executive and Head of Professional Standards, and Baljeet Basra, CILEx Professionals Standards Manager. I can confirm that, subject to what is said below, the OISC has no objections to CILEx's application. I am, however, conscious that the LSB and its Consumer Panel continue to have concerns over the risks posed by firms and individuals providing immigration advice and services, and are not yet satisfied that qualifying regulators have done enough to ensure consumer protection in this area – particularly in respect of vulnerable clients.

At present, only those CILEx members who are specifically listed by CILEx are authorised by CILEx to be able to give immigration advice and services. This list was closed in 2004, and only those that were members of CILEx before April 2001 and registered as immigration practitioners before April 2004 were allowed entry onto the list. The list currently contains the names of 27 persons, of which only three are not CILEx Fellows. We understand that CILEx wishes to re-open this list so that other CILEx Fellows can be authorised to practise immigration work. We understand that there are between 7,000 and 8,000 Fellows.

CILEx has set out in its application the process by which a CILEx Fellow would be authorised to provide immigration advice and services. I am particularly re-assured that this includes passing a competency based test. I understand that the sequence of events would be for an applicant to apply to come into the scheme as an immigration practitioner and then set up a practice. Further, CILEx has explained in its application how it will risk assess practices and advisers. However, I am not sure whether CILEx will be able effectively to monitor the quality of work done as it appears that monitoring will only be done on a complaint data basis. The number and type of complaints received is not always a complete or clear indicator of risk since the vulnerability of many immigration clients prevents them both from complaining or recognising when they are receiving poor advice and/or service.

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We understand that CILEx intends to rely on self declarations made by applicants and does not plan to carry out checks with the Disclosure and Barring Service (DBS) or ask applicants to provide a DBS report with their application. In contrast, the OISC requires all new applicants to include a standard DBS check with their application, and we think this is essential in determining fitness.

Further, my staff have advised CILEx of the challenges of making risk assessments based solely on desk based audits. It is often the position that there is little information on a new practice and thus self reporting may not highlight concerns. Further, from our experience, a "low risk" grading of an organisation does not always mean it requires minimum regulation. I understand and appreciate the Legal Services Consumer Panel's concern regarding consumer protection of those seeking immigration advice. I am not convinced that CILEX's proposed reliance on annual returns and self declarations will deliver this.

Further, under CILEx's proposals Fellows will be able to supervise other employees. CILEx says that it is confident that it will always know who is being supervised in a practice as it will receive annual practice returns and do a yearly review. However, this may be inadequate considering that the CILEx's process is heavily reliant on self declaration.

One of OISC's major concerns is that CILEx Fellows will be able to supervise OISC advisers. It is not clear how CILEx will make itself aware of the background of those OISC advisers who are being supervised. Further, I am not convinced that CILEx's 'outcome focused approach' will adequately capture work undertaken by supervisees.

The LSB has previously drawn attention to the problems created where there is inadequate supervision, and no doubt you will wish to ensure that the CILEx system does not repeat such problems.

The OISC has a particular interest in supervision. It has happened on several occasions that one of our prosecutions has been derailed by the adviser charged claiming that they were not giving unregulated advice and this acting unlawfully as they were being "supervised." Further, it is often the case that OISC advisers about whom I have concerns have evaded my regulation by coming under the supervision of a solicitor.

Given the above, I think it is important for CILEx both to obtain the disciplinary records of supervisees and be able adequately to assure itself of the quality of work being done in those practices where persons are working under supervision.

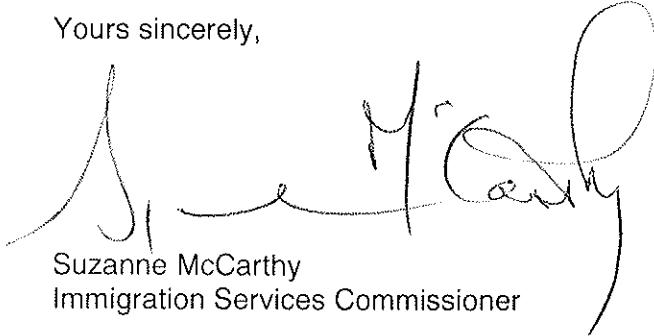
Finally, in light of CILEx's application, I am pleased to say that my office is working closely with both Ian and Baljeet to update our joint Memorandum of Understanding to enhance our already good working relationship.

In summary, I hope that the comments above will help you to ensure that CILEx's proposal does indeed include sufficiently robust mechanisms to protect consumers by preventing advice of an unsatisfactory quality from being provided.

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Please do not hesitate if you or your Office wishes to discuss the contents of this letter further or requires any additional comment from us on CILEx's application.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Suzanne McCarthy'. The signature is fluid and cursive, with a large loop at the end of the last name.

Suzanne McCarthy
Immigration Services Commissioner

