

To:	Board
Date of Meeting:	25 January 2012
Item:	Paper (12) 07

Title:	Regulation of immigration advice and services – a discussion document
Workstream(s):	2A – Developing regulatory standards
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Status:	Protect

Summary:

On 1 April 2011, the LSB became the oversight regulator for immigration advice and services in England and Wales provided by persons authorised by the Solicitors' Regulation Authority (the **SRA**), the Bar Standards Board (the **BSB**) and the Institute of Legal Executives Professional Standards (**IPS**). This followed the commencement of Schedule 18 to the Legal Services Act 2007 (the **2007 Act**), which transferred the oversight function from the Office of the Immigration Services Commissioner (**OISC**). OISC is a non-departmental public body of the Home Office, and it continues to regulate immigration advice and services provided by those who are not persons authorised by SRA, BSB or IPS. The SRA, BSB and IPS are known as "qualifying regulators" when they regulate immigration advice and services.

In view of the transfer of oversight responsibility to the LSB, we undertook an assessment of whether the qualifying regulators are appropriately managing the risks in the provision of immigration advice and services. In particular, in a way that is consistent with the regulatory objectives in the 2007 Act and the better regulation principles, and whether there are other issues of wider concern to the public interest. The review focused on private individuals rather than on businesses. Our review has shown that:

- a) There are significant problems with the overall regulatory architecture governing the provision of immigration advice and services. This stems from the fact that there are two overlapping statutory bases for regulation.
- b) The qualifying regulators have an inadequate understanding of the market(s) in which immigration advice and services are provided. This means that there is little understanding of whether lawyers are providing good quality advice and a reliance on the Legal Services Commission (the **LSC**) for managing this risk in legal aid, even though legal aid covers a very small percentage of the overall immigration advice and services market.
- c) Access to redress differs: consumers who use a lawyer regulated by a qualifying regulator can take their complaint to the Legal Ombudsman; those regulated by OISC have no access to a similar scheme.

The combination of these three issues means that it is likely that there is significant, avoidable detriment to consumers. As a result, we consider that the qualifying regulators must, by the end of 2012, implement coherent, evidence-based approaches to manage risk in the provision of immigration advice and services. We

have therefore set out our concerns in the discussion document attached at **Annex A** for consultation. Dependent on the responses we receive to it, we may consider it appropriate to conduct a statutory investigation under the 2007 Act into whether immigration advice and services should be made a reserved legal activity.

Recommendation(s):

The Board is invited to:

- (1) note the findings of the review of the regulation of immigration advice and services;
- (2) note and comment on the discussion document at Annex A; and
- (3) delegate to the Chairman and Chief Executive agreement of the final document in advance of publication.

Risks and mitigations

Financial: N/A

Legal: N/A

Reputational: Immigration advice and services is politically sensitive. We may be open to accusations of seeking to introduce further regulation to an already heavily regulated area.

Resource: N/A

Consultation	Yes	No	Who / why?
Board Members:	√		Steve Green reviewed and provided comments on an earlier version of this paper.
Consumer Panel:	√		Elisabeth Davies, Consumer Panel Chair, and Steve Brooker, Consumer Panel Manager, have been briefed on the work and taken through our key findings.
Others:			<p>We have spoken to a wide range of organisations in the development of this work including:</p> <ul style="list-style-type: none"> • the qualifying regulators (the SRA, BSB and IPS) • representative groups (such as the Immigration Law Practitioners Association) • other government bodies, such as OISC and the Legal Services Commission (LSC) • individual immigration practitioners and providers, for example the Refugee Council and Bail for Immigration Detainees (BiD) • The Law Society.

Freedom of Information Act 2000 (Fol)

Para ref	Fol exemption and summary	Expires
Annex A	Section 22 – intended for future publication	N/a

LEGAL SERVICES BOARD

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Regulation of immigration advice and services – a discussion document Executive Summary

Background

- (1) Schedule 18 to the Legal Services Act 2007 was commenced in April 2011. This made a number of amendments to the Immigration and Asylum Act 1999 and provided for the Board to take on oversight of the SRA, BSB and IPS (the ‘qualifying regulators’) in their regulation of immigration advice and services¹ from the Immigration Services Commissioner. Additionally, other legal services approved regulators may apply to the LSB to be designated as qualifying regulators, in order to regulate the provision of immigration advice and services.
- (2) OISC remains responsible for oversight regulation of immigration advice and services in Scotland and Northern Ireland and direct regulation of advisers who are not solicitors, barristers or authorised by IPS.
- (3) In the *Final Business Plan 2011/12*, we say that we will use thematic reviews to scrutinise areas that appear to present regulatory risk and that we may initiate a review in response to a range of factors, including following up on regulatory changes (Section 2A: Developing regulatory standards). In view of transfer of oversight functions for immigration advice and services to the LSB, it was necessary for the LSB to undertake an assessment of the risks that the regulation of immigration advice and services poses.
- (4) During summer 2011 we sought views from a range of organisations and regulators involved in immigration advice and services and undertook an analysis of the publicly available data about the sector. This work led the SMT to decide at its 31 August 2011 meeting that further work was required to ensure that the regulation of immigration advice and services by the qualifying regulators is in line with the regulatory objectives. The Board was updated on this decision at its meeting on 14 September 2011 (Paper (11) 64 refers).
- (5) We have now developed a discussion document for publication (**Annex A**) which, based on the Oxera approach to segmenting legal services, sets out

¹As defined by the Immigration and Asylum Act 1999: a claim for asylum; an application for: or for the variation of, entry clearance or leave to enter or remain in the United Kingdom; an immigration employment document; unlawful entry into the United Kingdom; nationality and citizenship under the law of the United Kingdom; citizenship of the European Union; admission to member states under community law; residence in a member state in accordance with rights conferred by or under community law; removal or deportation from the United Kingdom; an application for bail under the Immigration Act or under the Special Immigration Appeals Commission Act 1997; an appeal against, or an application for judicial review in relation to any decision taken in connection with a matter referred to above.

the key concerns that we have about the way in which immigration advice and services are regulated currently.

- (6) We have concluded that 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.
- (7) In addition, the complex regulatory architecture that exists for the immigration advice and services market presents the additional risks of gaps and overlaps in regulation, differences in approach (for example for intervention powers and accreditation schemes) that are not justified by evidence and an overall lack of data and information about the market as a whole.

Key findings

- (8) Three key issues, which are explored in further detail in the paper at Annex A, were of concern to us. These were:
 - Regulatory architecture: there are significant problems with the overall regulatory architecture governing the provision of immigration advice and services. These stem from the fact that there are two overlapping statutory bases for regulation.
 - Quality and accreditation arrangements: the qualifying regulators have an inadequate understanding of the market(s) in which immigration advice and services are provided. This means that there is little understanding of whether lawyers are providing good quality advice and a reliance on the LSC's requirements.
 - Complaints: access to redress differs - consumers who use a lawyer regulated by a qualifying regulator can take their complaint to the Legal Ombudsman; those regulated by OISC have no access to a similar scheme.

What the discussion document recommends

- (9) The document recommends that the qualifying regulators must, by the end of 2012, implement coherent, evidence-based approaches to manage risk in the provision of immigration advice and services.
- (10) We will consider our next steps once we have received responses to the discussion paper and during the consultation period. However, our current view is that our options are:
 - that the qualifying regulators must, by the end of 2012, implement coherent, evidence-based approaches to manage risk in the provision of immigration advice and services;

- we conduct a statutory investigation under the 2007 Act into whether immigration advice and services should be made a reserved legal activity;
- we consider in more detail with relevant parties during the consultation period the policy desirability and practical options for introducing voluntary arrangements under section 163 of the 2007 Act so that the Legal Ombudsman can consider complaints about OISC regulated entities and individuals.

Next steps

- (11) Subject to the Board's views, Annex A will be published for discussion in early February, with a view to the paper being open for consultation for 12 weeks and our response being published in early summer.
- (12) We will undertake a targeted approach to the consultation and meet those individuals and groups with a particular interest in this work, but who would not necessarily be our usual consultees, to take them through the paper.

Recommendation

- (13) The Board is invited to:
 - note the findings of the review of the regulation of immigration advice and services
 - note and comment on the discussion document at Annex A
 - delegate to the Chairman and Chief Executive agreement of the final document in advance of publication.

16.01.12