

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	11 July 2012	<b>Item:</b> Paper (12) 48

<b>Title:</b>	Regulation of immigration advice and services - response to consultation
<b>Workstream(s):</b>	A: Regulator performance and oversight
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<b>Status:</b>	Protect

<b>Summary:</b>
<p>This paper provides the response to the Board's recent discussion document on the regulation of immigration advice.</p> <p>The discussion paper sought views on the issues and risks that the Board had identified in the way in which immigration advice is currently regulated and set out requirements for qualifying regulators (those approved regulators that regulate immigration advices and services) to implement a coherent, evidence-based approach to manage risks to the consumers and the public interest in the provision of immigration advice and services. It also sought feedback on the desirability and practicality of introducing arrangements so that the Legal Ombudsman can consider complaints about entities and individuals regulated by the Office of the Immigration Services Commissioner (OISC).</p> <p>The response document makes clear that we were not entirely satisfied with the responses to the consultation that we received from the qualifying regulators, most notably the Bar Standards Board (BSB). We will therefore monitor qualifying regulators' progress in this area carefully and will formally request that by the end of 2012, they each provide us with an action plan setting out how, and the timescales within which they will consider the issues we have highlighted and how they will each ensure that they are achieving the following outcomes for consumers:</p> <ol style="list-style-type: none"> <li>1. The immigration advice that consumers receive is provided by practitioners who are technically competent and provide good quality advice and client care; and</li> <li>2. Consumer detriment is minimised by quick and effective intervention against those advisers who do not meet minimum standards.</li> </ol>

<b>Recommendation(s):</b>
The Board is invited: (1) To provide comments on the proposed approach. (2) Subject to those comments, delegate authority to the Chairman and Chief Executive to agree the final version of the paper in advance of publication later in July.

<b>Risks and mitigations</b>	
<b>Financial:</b>	N/A
<b>Legal:</b>	N/A
<b>Reputational:</b>	Immigration advice and services is a politically sensitive area. We may see our reputation damaged if we get our approach wrong.
<b>Resource:</b>	Outcome of the work is likely to have an impact on our 2012/13 programme.

<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>	<b>X</b>		Comments received from Steve Green, which have been reflected in the draft response at Annex A.
<b>Consumer Panel:</b>		<b>X</b>	The Consumer Panel responded to the consultation paper and its views have been incorporated into the response.
<b>Others:</b>			

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
Annex A	Section 22 – draft of a document intended for future publication.	N/A

## LEGAL SERVICES BOARD

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### Regulation of immigration advice and services - response to consultation

#### Background

1. In March we issued a discussion paper for consultation on the regulation of immigration advice and services. This highlighted our concerns about the risks to effective regulation in this area and our views about the way in which those approved regulators who regulate immigration advice and services (the qualifying regulators<sup>1</sup>) manage those risks.
2. The discussion paper set out requirements for qualifying regulators to implement a coherent, evidence-based approach to manage risks to consumers and the public interest in the provision of immigration advice and services. We also sought feedback on the desirability and practicality of introducing arrangements so that the Legal Ombudsman can consider complaints about entities and individuals regulated by the Office of the Immigration Services Commissioner (OISC).
3. We received 15 responses to the consultation, which closed on 24 May. All bar one, which requested to remain anonymous, have been published on our website.
4. The LSB's draft response is attached at **Annex A**.

#### Summary of responses

5. The qualifying regulators responded to varying degrees about the extent of their work in regulating immigration advice and services and the necessity of any further work. In summary:
  - The SRA considers that it will be able to implement coherent, evidence-based approaches to manage the risks to consumers and the public interest in the provision of immigration advice and services, in the context of its wider, risk-based regulation of legal services providers and considers itself to already have that capacity. It provided the most comprehensive response to the questions we posed in the consultation paper of qualifying regulators.

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<sup>1</sup> The qualifying regulators are: The Law Society, The Bar Council and the Chartered Institute of Legal Executives which delegate regulation of immigration advice and services to the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and ILEX Professional Standards (IPS) respectively. Any approved regulator under the Act may apply to the Board to become a qualifying regulator for immigration advice and services.

- Similarly, the BSB considers its overarching work on its new Handbook, which will include its approach to risk management, means that it does not consider immigration advice and services to require a separate tailored regulatory approach. It stated that it does not currently have any evidence to suggest that this area of work is in practice generating problems which would justify giving it priority over other areas of the BSB's work. However, somewhat to our surprise, the BSB response did not make any assessment about whether the potential growth of public access services in immigration altered its assessment of risk;
  - IPS, which responded jointly with CILEx, was able to point to its plans to develop a scheme aimed at regulation of its immigration providers specifically and introduce arrangements for accrediting and assessing the competence of its immigration advisers.
6. While our discussion document did not specifically seek views on reserving immigration advice and services, many respondents commented on the desirability of doing so.
  7. There was general agreement that the quality of immigration advice and services needed to improve, although varying views as to how this might be achieved, from reservation to extension of The Law Society's accreditation scheme.
  8. Almost all respondents were in favour of the possibility of the Legal Ombudsman considering complaints about OISC advisers being explored further, initially on a voluntary basis. Of those who were against this suggestion, it tended to be due to the fact that reservation (which would automatically bring immigration with the LeO jurisdiction) was their preferred route to achieving the better outcomes for consumers than a voluntary ombudsman scheme would provide.
  9. Only OISC was entirely against transferring its complaints to the Legal Ombudsman, suggesting that the better route would be for it to have greater powers of redress for complaints. More generally, OISC considered that a solution to the problems identified by the LSB was for it to assume full responsibility for the regulation of all immigration advice and services, regardless of the adviser's status, thus placing regulation of immigration advice and services outside the Legal Services Act.

### **What the LSB response recommends**

10. The response paper considers the approach that qualifying regulators have stated they will take to regulation of immigration advice and services in their

responses to the discussion document, as well as the desirability of other changes to regulation of this area.

11. We consider that the focus of the qualifying regulators (preferably working with OISC) must be to identify quickly what needs to be done to ensure satisfactory quality across the board by all those who provide immigration advice and services. That must be combined with effective mechanisms for identifying and stopping advisers who provide unsatisfactory levels of quality. This process must identify key risk areas and take action on them. At the very least we expect it to include the following:

- a. Liaison with agencies such as UKBA, the Immigration and Asylum Tribunal and the prisons estate, etc to obtain information about performance, problems and issues;
- b. Discussion with service provider and representative groups (eg ILPA) to obtain **evidence** of performance problems and issues;
- c. Gathering evidence (from a wider base than consumer complaints) about consumers' experience of immigration advice and services;
- d. Liaison with LSC where performance issues are identified, in particular where it has taken action, for example contract termination;
- e. Consideration of:
  - Specific authorisation to provide immigration advice;
  - Consistent accreditation schemes;
  - Targeted CPD requirements;
  - Peer review of quality and consistency of advice;
  - Use of feedback to drive up quality and identify those who should not be allowed to provide immigration advice and services.

12. We will therefore formally request that each of the qualifying regulators provides us by the end of 2012 with an action plan setting out how, and the timescales within which, they will consider these issues.<sup>2</sup>

13. Ultimately the LSB has enforcement powers in relation to immigration advice that it can use if it considers that the acts or omissions of an approved regulator (including in its role as a qualifying regulator) has had, or is likely to have a prejudicial effect on the regulatory objectives. If the LSB considers that a designated qualifying regulator is failing to provide effective regulation of relevant authorised persons in their provision of immigration advice or

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<sup>2</sup> Post-meeting note: during the discussion of this item at the 11 July meeting, the Board did not accept this recommendation and instead agreed that qualifying regulators should take immediate action to mitigate the risks to consumers in the provision of immigration advice and services and that the LSB would monitor their progress over the next 12 months. See the final response document at [www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk) for further details.

immigration services, it must make a report to this effect to the Secretary of State and the Lord Chancellor. This can be the ultimate sanction as, with the approval of the Lord Chancellor, the Secretary of State can remove that qualifying regulator from the list of designated qualifying regulators. It is likely that any such recommendation would need some form of joint decision-making between MoJ and the Home Office. It *would* be possible to remove qualifying regulator status without withdrawing approval as an approved regulator, although clearly any such recommendation would inevitably raise broader issues of competence.

14. On reservation, we have said that we do not consider that it would be proportionate to launch an investigation into immigration advice becoming reserved at this stage. Immigration is already heavily regulated and indeed it is an offence to provide immigration advice without authorisation from a qualifying regulator or OISC. Yet this has not prevented the issues that we have identified from materialising.
15. However, in reviewing the wider question of whether general legal advice should be reserved, we will consider whether immigration advice should be included in any such investigation.
16. We also encourage the Legal Ombudsman and OISC to further discuss the possibility of the Legal Ombudsman establishing a voluntary scheme for hearing complaints about OISC regulated entities and individuals.

### **Recommendation**

17. The Board is invited to:

- note and comment on the LSB's response to its discussion document about the regulation of immigration advice and services at Annex A
- delegate to the Chairman and Chief Executive agreement of the final document in advance of publication.

29.06.12