ILPA response to the Legal Services Board consultation on the regulation of immigration advice and services

The Immigration Law Practitioners' Association (ILPA) is a professional association with some 950 members (individuals and organisations), the majority of whom are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous Government, including Ministry of Justice and UK Border Agency, and other, consultative and advisory groups.

Question 1: Do you think we have captured all of the key issues? Do you agree with the sections setting out what qualifying regulators need to do? If not, what in your view, is missing?

No.

In ILPA's view the key issues are:

- Securing high quality advice for clients, including those who may be ill placed to determine the quality of this advice or to complain if they consider that it is of poor quality.
- Ensuring that competent providers of probity are recognised and supported.

The discussion paper identifies the key *problems* as:

- Regulatory architecture – tracing this to the existence of two overlapping statutory regimes;
- Quality and accreditation arrangements – tracing these to regulators inadequate understanding of the market;
- Different complaints regimes.

ILPA identifies the key problems as being:

- Despite an in places onerous regulatory framework, there are problems with the quality of immigration advice and services and clients are not always well-served by their legal advisors;
- Lawyers providing a high quality of service are nonetheless subject to mistrust, leading to, for example, micro-management by the Legal Services Commission in the case of publicly -funded lawyers and to the UK Border Agency's efforts in many instances to minimise or bypass the role of legal representatives;
- Demand for high quality legal services outstrips supply but many clients are unable to pursue their immigration cases unaided;
- The complexity of the law and poor decision-making by the UK Border Agency and in many cases immigration judges can mask that the legal

representative is at fault. Similarly, these can mask good practice by the legal representative, underlying the difficulty of regulation by outcome.

Given the above, we do not consider it helpful to embark upon a detailed critique of the paper but we do take issue not only with the analysis but also with some of the starting points therein and we offer some examples of this below.

Regulatory architecture

There are two overlapping statutory bases for regulation, but there are also two different regimes with which regulators are dealing: qualified lawyers on the one hand and other advisors on the other. The UK Border Agency and the Legal Services Commission tend to treat solicitors and those regulated by the Office of the Immigration Services Commissioner as interchangeable. Many clients do not make a distinction between them (and those coming other than from Commonwealth countries are often unfamiliar with the role of the barrister). As a consequence, clients and others may be confused that the regulatory regimes differ.

However, the assumption that those regulated under the two statutory bases are interchangeable should be questioned. A small community organisation that wishes to assist members of the community may have no ambitions to be, or to be treated on a par with, a firm of solicitors. This is relevant to thinking about what regulatory regime is appropriate.

The Legal Services Commission is in no way a 'regulator by proxy' of the Bar. In the case of publicly funded solicitors, we do not consider that the description is accurate because the Legal Services Commission's activities are limited to saying who can give advice for which they will pay. If the person does not meet their requirements, they will not pay, but neither will they, as far as we are aware, do anything about that person's work for privately funded clients. The Legal Services Commission accreditation scheme is about securing value for the public purse. Moreover, the Legal Services Commission appears to ILPA focused on leaping over regulatory hurdles and ticking the boxes, rather than whether this results in better advice and representation at the end of the day.

The discussion paper shows an inadequate appreciation of the extent to which the legal aid regime creates perverse incentives that militate against quality. For an overview of this, see ILPA's February 2012 response to the Ministry of Justice consultation *Proposals for the Reform of Legal Aid in England and Wales,* available from http://www.ilpa.org.uk/data/resources/4121/11.02.503.pdf . See also ILPA's January 2011 evidence to the Justice Committee on the Government's proposals[1] and to the Joint Committee on Human Rights[2] legal aid *Review of Quality Issues in Legal Advice (measuring and costing asylum work)* produced by the Information Centre for Asylum-seekers and Refugees (ICAR) for Refugee and Migrant Justice, the Immigration

[1] Government's proposed reform of legal aid - Justice Committee, Written Evidence of the Immigration Law Practitioners' Association, http://www.publications.parliament.uk/pa/cm201011/cmselect/cmjust/681/681vw38.htm, 4 April 2011.
[2] The Government's Human Rights Policy, Written Evidence from the Immigration Law Practitioners' Association, http://www.publications.parliament.uk/pa/jt201011/jtselect/jtrights/131/131we03.htm , HL Paper 131, HC 609-I, published 31 March 2011.

Advisory Service and Asylum Aid. ILPA was represented on the Advisory Group for the research.

Qualified regulators' understanding of the market.

As to the qualifying regulators having an inadequate understanding of the market, we are unpersuaded that this accurately states the problems. Evidence for the proposition is lacking. The qualified regulators are described together without provision of evidence that would justify saying the same thing of the Bar Standards Board and the Solicitors' Regulation Authority.

It is unclear to us that regulators' inadequate understanding of the "market" is at the route of the problem of too much poor advice and representation in this field.

We are unpersuaded that the Legal Services Commission is well informed about those with whom it contracts. It collects substantial amounts of information but our experience of the Civil Contracts Consultative Group and the (now defunct) Immigration Representative Bodies Group that sat under it and many years of meetings on tenders is that the Commission does not collate or interrogate very much of this data. A tender for work in immigration removal centres, commenced in July 2008, collapsed in March 2009.[3] The 2010 tender resulted in contracts that differed vastly from what the Legal Services Commission has said that its modelling led it to expect, although ILPA and others had questioned its predictions at the time.[4]

We consider that the energies of the regulators can usefully be put ensuring good relationships with migrant and refugee community groups and MPs' caseworkers etc. so that concerns on the ground are known. Those regulated, who see cases of persons who have had poor quality representation, are also valuable sources of intelligence. The law in this area is so complex and the UK Border Agency is so chaotic, that can be time-consuming and difficult for the regulator to ascertain whether the advice on both the substantive law and on tactics is/was good and resources need to go into ensuring that these investigations are carried out by persons able to judge quality. We do not consider that the energies of the regulators would be best employed in collecting general data about 'the market' and starting from scratch when there is considerable intelligence/means of gathering intelligence, of which they could be making more use.

We highlight, as examples of our comments above, a couple points of detail:

Re paragraph 33 of the paper: huge swathes of visa applicants (who will include tourists and those visiting family and friends) will not use a lawyer or other advisor.

Re paragraph 34: while very many persons seeking asylum are eligible for legal aid, some of them pay for legal advice, because they cannot find a legal aid lawyer, or cannot find one near them, because they do not have confidence in the legal aid

[3] *Immigration Removal Centre advice bid round terminated*, Legal Services Commission, 10 March 2009 http://www.legalservices.gov.uk/civil/tendering/8449.asp#immigration_removal

[4] A history of the tender is set out in the judgment in *Hereward & Foster LLP et anor v Legal Services Commission* [2010] EWHC 3370 (Admin)

lawyer who has capacity to take on their case, or because they have confidence in someone else. They may also pay because a legal aid lawyer has held that they fail the merits test, including at short notice when they have not had time to find another representative.

Complaints

A regulator should use complaints information but reliance on complaints alone is inadequate in this field.

Complaints come too late to assist those who face grave violations of their human rights.

Complaints do not provide a clear picture of quality. Migrants often do not complain: because they are removed before a complaint could be made or processed; because of the nature of the rights/legal subject matter there is no redress so no point in complaining; because they are afraid to complain. Paragraph 51 of the discussion paper says that the Board has not seen any evidence supporting the anecdotal evidence that immigration clients tend not to complain. We do not know what it expects to see. It observes that complaints about immigration constitute 3.4% of cases closed but, as set out in paragraph 52, this figure without more is not meaningful. We suggest that the evidence dismissed as anecdotal comes from reliable sources (lawyers who have urged clients to make a complaint where clients have declined) and accords with what is known about the capacity of legal aid lawyers and small refugee and migrant community organisations to assist people to complain and it should therefore form the basis of a working hypothesis unless there is evidence to the contrary.

Where, as is often the case in immigration there is a shortage of other providers this inhibits third parties, such as non-governmental organisations from complaining. It is very difficult for a client accurately to identify whether a different provider would produce a better service. One of the most important things regulators can do is make clear their willingness to accept information other than from clients. While they may not be able to report back to organisations or MPs' caseworkers who present evidence of a pattern of concerns, they should investigate where reliable information is presented to them. We realise that there is a risk of malicious use of this scheme but consider that the regulator ought to be able to work to identify where there are matters meriting further investigation.

ILPA supports the notion that all service complaints should come within the jurisdiction of the Legal Ombuds. The current scheme is bewildering for clients.

That the decision on whether the Office of the Immigration Services Commissioner be given more redress powers is one for the Home Office is in itself a matter of concern and part of the confusion as to different regulatory regimes stems from different Government departments having oversight of the regulator.

We are unclear how different complaints about a provider are brought together to build up a picture of the broader concerns and this would merit further work.

What is needed

The paper appears to start from the assumption that regulation can protect clients and secure high quality advice.

We do not consider that that regulation alone can step up to this onerous task. High quality advice and representation also depends upon:

- Less complex immigration laws that are drafted to comply with obligations under domestic and international law, rather than in reliance on 'breach of human rights' exceptions when they fall foul of such obligations.
- Timely, consistent decision-making in immigration cases. This would make poor quality advice and representation more visible.
- Respect for persons under immigration control and community groups that support them, so that they feel able to voice concerns and complaints and so that these are heard, taken seriously and investigated.
- An adequate supply of high quality advice at prices those in need of such advice can afford.

If regulation endeavours by itself to compensate for shortcomings in all these areas, it is likely to end up being very costly and/or heavy handed.

Quality protects. If the structures within which immigration advice is given protect competent representatives of probity and the provision of high quality advice and representation at a price clients can afford then there is less room for those providing poor advice to flourish. A regulatory regime that deters competent advisors of probity from practising in immigration, or burdens them so that they cannot work effectively puts clients at risk because it reduces the supply of high quality advice. Although we do not consider that the Legal Services Commission is regulating by proxy, we do consider that it has demonstrated these deterrent effects and not only does not compensate for them but creates perverse incentives that risk driving down quality, as discussed in the documents mentioned above.[5]

Subject-based regulation alone will not address the need to improve the quality of professional client care to immigration clients. The conduct and accountability of representatives is too often inadequate. It is an acceptance of mediocrity and poor practice rather than corruption or major incompetence that can lead to poor standards in the quality of advice and representation.

Question 2: Our review focused on private individuals (legally aided or not), rather than small and medium sized enterprises or other businesses. However, we consider the findings are likely to be relevant to those groups as well. Do you agree, or do you have evidence to suggest otherwise?

See above for our comments on the findings.

[5] ILPA's February 2012 response to the Ministry of Justice consultation *Proposals for the Reform of Legal Aid in England and Wales,* available from http://www.ilpa.org.uk/data/resources/4121/11.02.503.pdf . See also ILPA's January 2011 evidence to the Justice Committee on the Government's proposals and to the Joint Committee on Human Rights legal aid *Review of Quality Issues in Legal Advice (measuring and costing asylum work)* produced by the Information Centre for Asylum-seekers and Refugees (ICAR) for Refugee and Migrant Justice, the Immigration Advisory Service and Asylum Aid.

Businesses do not form a homogenous group and the distinctions are not limited to size. That findings are relevant in some way to some businesses does not mean that they are relevant to all. UK businesses as sponsors of migrant workers find themselves in a quasi-enforcement role, checking their employees' permissions to work and charged by the UK Border Agency with reporting transgressors, while at the same time striving to meet their obligations under employment and equalities law and to protect valued staff members. A multi-national corporation is not vulnerable to exploitation in the same way as an individual. However, small businesses with owners from ethnic minorities appear to have been particular targets of the UK Border Agency's enforcement activity against sponsors[6] while an entrepreneur or self-employed person of "exceptional talent" is a person subject to immigration control.

The complexity of the law and arbitrary decision-making are problems that affect businesses as they affect individuals.

Out-sourcing immigration control to employers is high risk. UK Border Agency staff are bound by the civil service code of conduct. The culture of the Agency has come in for considerable scrutiny and targets have distorted the way in which it works, but it is possible to aspire to an Agency that works simply to upholding the law and beyond that has no stake in whether a decision is a grant or a refusal. Not so for an employer. An employer works to commercial pressures or those imposed by the constitution of the organisation and is likely to be risk averse when it comes to falling foul of the requirements of the UK Border Agency's sponsorship regime. In-house lawyers may be subject to pressures differing from those on a lawyer retained by a company. Either may be under pressure to protect the commercial aims of the company at the expense of the rights and entitlements of a person under immigration control.

We observe in passing that there are confusions whereby it appears that under the Office of the Immigration Service's Commissioner regime employers can advise their own Tier 2 staff,[7] but not their staff in the UK under Tier 1 or Tier 5. This is outside the remit of the board but provides an example of the pitfalls in designing a scheme and that these may then not be addressed for years.

Question 3: Do the tables on pages 21 to 24 cover all of the risks to each consumer type? What other risks should qualifying regulators be concerned about and actively managing?

No. The picture is one of considerable complexity and while the effort to reduce it to tabular form is interesting, we doubt that it can be so tidily managed.

The risks we identify include:

- Advisors who are a) incompetent/negligent or b) corrupt. There is a need to distinguish between those advisers competent to apply the correct law to the

[6] See ILPA response to the National Audit Office on the Points-Based System, October 2010, see http://www.ilpa.org.uk/data/resources/13012/10.10.505.pdf

[7] The Immigration and Asylum Act 1999 (Part V Exemption: Relevant Employers) Order 2003, SI 2003 No. 3214

client's facts from the well-meaning and sympathetic who are nonetheless not competent to apply the correct law to the facts of the client's case and advise accordingly.

- Poor advice from advisors who acting beyond their competence in attempting to do the occasional case in this complex area of law.
- The effect of perverse incentives. The consultation paper's discussion of the legal aid scheme fails to recognise the extent to which the Legal Aid scheme contains measures that risk driving down quality, such as fixed fees, key performance indicators, matter start limits which can lead to cherry-picking of cases or to a focus on at least a proportion of simple cases, as well as measures designed to police quality. Regulators need to be aware what effects these may have on quality in different types of firm and organisation
- A firm/organisation being setting up and setting internal targets and goals in such a way that quality is downgraded and supervision is not ensured and audited.
- The perverse incentives of the structure of the legal aid contract as it effects different types of firm and organisation:
- Unregulated advisors based outside the jurisdiction. Immigration applicants are all over the world. Anyone can give advice on UK immigration law beyond the shores of the UK and make applications to an entry clearance post overseas are not regulated. Even if a regulatory scheme purported to reach them, it is difficult to see how it would be enforced. Lists of acceptable representatives held by consular posts are likely to result in assistance being given by a broader range of advisors, and paid for, but not mentioned on the application form. The discussions we understand that the Immigration Services Commissioner has had about reciprocal arrangements with schemes in other countries do not hit the spot, as the countries with OISC-style schemes are not the main sources of problems or indeed of migrants at risk of exploitation.
- Unregulated advisors based within the jurisdiction who take money and get clients to sign their own names to applications and lean on them not to reveal that they had an adviser at all.
- Use of inadequately supervised paralegals to carry out complex work and with inadequate supervision. Currently this not audited other than in legal aid except by analysing complaints.
- Risks created by UK Border Agency poor decision-making and incompetent administration which itself creates a climate in which it is hard to distinguish good from bad practice on the part of legal representatives, and creates an environment in which poor advice can flourish**.** For example, long delays in determining cases lead to client distrust of good providers, pointless changing of providers, etc. and an inability to distinguish the representative doing their best from the representative doing nothing. Poor decision-making means that especially complex applications can be a lottery, and a good adviser will have difficulty in advising a client on their chances of success. A good adviser in a fee paying /for profit environment cannot easily predict the costs of the client's case, because the UK Border Agency often refuse meritorious applications, forcing clients to appeal. Nor is it always the case that the quality of the initial decision is demonstrated by the Agency's success rate on appeal; the tribunal too can be a lottery.
- Risks created by a focus on outcomes based regulation. The new Solicitors Regulation Authority Code of Conduct makes it difficult to understand the standards to which solicitors are supposed to be working.

A regulatory regime that purports to deliver quality must do so; otherwise the false comfort it provides to clients may be more dangerous than its absence. In our experience, peer review by persons qualified to undertake this is the way to determine whether advice is of good quality. An effective scheme cannot be based on outcomes alone. Decisions by the UK Border Agency and in many cases the tribunal, are not of sufficiently high quality. The complexity of the law and changing personal and country situations mean that the merits of a case may change over the time it takes for it to be decided. *In legal aid, fixed fees may lead to „cherry-picking" of cases as described in the Review of quality issues in legal advice: measuring and costing asylum work (June 2010) produced by the Information Centre for Asylum* Seekers for Refugee and Migrant Justice, the Immigration Advisory Service and Asylum Aid.

Before the Immigration and Asylum Act 1999 and the creation of the Office of the Immigration Services Commissioner, anyone could provide immigration advice and services. Solicitors, barristers and legal executives were regulated; others who provided immigration advice and services were not regulated at all. ILPA advocated for many years for independent regulation and supports the principle independent regulation. Not only the deliberate provision of a poor service to exploit or make money, but also well-meaning incompetence, can create disastrous problems for persons under immigration control.

Question 4: Do the tables on pages 21 to 24 ask the right questions of qualifying regulators? What other information should the qualifying regulators collect to demonstrate that they are able to effectively manage the risks posed in the regulation of immigration advice and services?

See response to question 1: what is needed, above. We doubt that regulators can demonstrate that they can effectively manage the risks given the wider framework and therefore we doubt that they will be able to collect evidence to demonstrate this.

Question 5: For qualifying regulators, can you answer the questions we have asked in the tables on pages 21 to 24? What information do you use to actively manage the risks posed to each type of consumer? What about the risks to the public interest?

N/A; ILPA is not a regulator.

Question 6: What further action should LSB and qualifying regulators, jointly or individually, be undertaking on this issue?

By this issue we understand "the regulation of immigration advice and representation."

This question starts from the wrong place. The question is how clients and the quality of advice they receive are best protected. As per our response to question 1 above, we do not consider that regulation alone can deliver this.

Making immigration a reserved activity would not be a panacea for all ills. Immigration status is relevant across many areas of law: public law more broadly, crime, family, community care, welfare and housing, to name just some. No tidy line can be drawn around lawyers doing immigration and those not. Among those who are not qualified lawyers, the OISC scheme makes immigration a reserved activity. Within the pool of OISC advisors there are good advisors and poor ones.

Audit and peer review are at the heart of what any regulatory regime can add to protection for clients. There should be published and publicly respected standards, a published audit programme, with an element of peer review of closed and open files.

The current Legal Services Commission approach is worst of all worlds. It is onerous to get into scheme. But the Commission has no confidence that those it lets in are any good/scrupulous so it micromanages firms after entry. The burden of this falls most heavily on the most scrupulous who have to fill in a multitude of end codes that are then not even monitored. Effective auditing should include, but not be limited to, some box-ticking compliance tests. Published standards for a basic short list of what a well-run file should contain allow an initial check to be carried out which may in some cases reveal very quickly the need for more intensive scrutiny.

As to matters currently meriting attention by regulators:

The ending of legal aid for immigration when the relevant provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force will result in persons who will be left without legal aid for their immigration or asylum support cases and those with asylum cases who, while their cases remain within scope, cannot find a legal aid lawyer. The legal aid cuts increase the already present risk that persons subject to immigration control go to advisors who are not regulated at all and operate outside the framework of the law, with the assistance they have given clients rendered invisible because the client submits an application in their own name, as though they had had no assistance at all.

There is a desire to help those who cannot obtain free legal advice in this field. This may result in pro bono and other schemes which raise new and different problems of the quality of the advice given. Here goodwill is not in doubt, but ensuring quality may be.

The Minister for Immigration, Mr Jonathan Djanogly MP was questioned during the passage of the Legal Aid, Sentencing and Punishment of Offenders Act as to how persons who will no longer quality for legal aid will get any advice when this can only be given by a person regulated by the Bar Standards Board, Solicitors Regulation Authority, ILEX or Office of the Immigration Services Commissioner. He indicated that one option being considered was the exemption of local authorities from OISC regulation. He has since reiterated this in correspondence with ILPA and others. This raises the spectre of advice being given by persons who are not regulated at all. In the case of, for example, a local authority advising a separated child, one of the examples he has given[8] there are questions of conflict of interest. Even absent such

[8] Jonathan Djanogly MP, Parliamentary Under Secretary of State for Justice to Alison Harvey, General Secretary, ILPA, 8 May 2012. Correspondence on file at ILPA.

questions, there remain questions about the quality of advice given the complexity of the law

When an investigation does take place it can take a very long time and we should welcome closer examination of the existing mechanisms for suspending individuals, firms and organisations pending completion of an investigation where there is a clear case to answer. We are interested in how rapidly it is identified that there is such a case. In these circumstances and If a criminal prosecution is taken against a firm/individual, there has to be a process of dealing with the current clients and of securing their files, and ensuring they can get alternative advice & representation.

There is a need to consider the status of the Law Society accreditation schemes and their place in any regulatory scheme. The Immigration and Asylum Accreditation Scheme is run by the Law Society, rather than the Solicitors Regulation Authority (by whom it was run for a period). This may be understandable given that it is a voluntary scheme. However, in practice it does not operate as a voluntary scheme as the vast majority of members are persons required to be members of the scheme by the Legal Services Commission. ILPA's primary interest in voluntary schemes is that anything recognised as a badge of quality must truly denote quality, otherwise it provides false comfort to clients just a compulsory scheme can do. While ILPA is represented on the Technical Board for the scheme and has endeavoured to engage with it, in practice the limited circulation of some papers and very tight deadlines for comment have made it difficult for us adequately to canvass the views of members on specific proposals. The level of interest is very low when one moves beyond the legal aid practitioners who must engage with the scheme. ILPA and the Legal Aid Practitioners' Group put to The Law Society a proposal for reaccreditation by structured training, called 'CPD-Plus' in 2010 but have not so far succeeded in getting this debated. As we understand it, the Law Society's primary interest is in voluntary schemes covering a much wider range of solicitors (and only solicitors).

The question of rights of audience is of concern. That a barrister called to the Bar in England and Wales cannot, as a barrister, provide representation before a Tribunal in Scotland or Northern Ireland, while an advisor regulated by the Office of the Immigration Services Commissioner can, and a Scots barrister can provide representation before a tribunal in England and Wales, is anomalous. This is due to amendments to Part V of the Immigration and Asylum Act 1999 as made by the Legal Services Act 2007 with effect from 1 April 2011 which mean that a barrister called to the Bar of England and Wales would be committing a criminal offence as per 1999 Act, s 91(1) by providing immigration services (making representations to a tribunal in the UK in connection with an asylum claim and appeal: 1999 Act, s 82(1)&(2)) in Belfast because only a qualified person may provide immigration services (s 84(1)) and the only basis on which s/he is a qualified person within the meaning of the 1999 Act is because s/he is a barrister in England and Wales and am thus authorised to provide immigration services by the General Council of the Bar (Bar Standards Board).[9]

[9] See the Legal Services Act 2007 (Commencement No. 10) Order 2011, SI 2011/720 commencing Schedule 18 (Parts 1 & 2 only) to the Legal Services Act 2007. Part 2 (paragraph 13) of the Schedule amended Part 5 of the Immigration and Asylum Act 1999 by removing The Law Society, the Institute of Legal Executives and the General Council of the Bar from the list of designated professional bodies in section 86 of the Immigration and Asylum Act 1999. Part 2 (paragraph 14) also created, by introducing new section 86a created a new concept – "designated qualifying regulators" being the

The barrister called to the Bar of England and Wales has two options: to be called to the Bar in the other jurisdictions or to be opt for OISC regulation. An EEA lawyer with equivalent registration (see s 84(2(c)(i) of the Immigration and Asylum Act 1999) can advocate throughout the UK.

The regulator may monitor whether a person adheres to a particular standard. But there is a question as to whether that standard is adequate. ILPA has long expressed concern that it is too easy to become accredited at OISC level 1, for example, especially given the range of work that one can do at that level.[10] We consider that further work needs to be done on the Office of the Immigration Services Commissioner currently not within the remit of the Legal Services Board. We have highlighted concerns that the OISC Code of Standards is enforced, with particular reference to the obligation to store client files for six years. When this issue arose when the Immigration Advisory Service went into administration, the OISC indicated that as soon as the organisation went into administration it had no powers to ensure that the files were stored in accordance with undertakings given in the Code of Standards. The Immigration Services Commissioner wrote to the General Secretary of ILPA on 20 December 2011 in the following terms:

> "*As you may recall, we have previously discussed and corresponded about this issue and I have advised you that current legislation gives the OISC no jurisdiction over client files once an organisation ceases to be regulated by my Office. When an organisation leaves the OISC scheme we provide clear instructions that it should arrange for its client files to be transferred to another approved advice provider. Unfortunately, once an organisation is outside of my scheme, I have no powers of enforcement. The OISC ceased to regulate the Immigration Advisory Service on 2nd August 2011.*
>
> *I continue to have discussions with the Home Office /UKBA about introducing changes to the 1999 Act including on this issue and hopefully a suitable legislative vehicle will be found during this Parliament. While I appreciate your concerns about*

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three bodies removed from the designated professional bodies list. The effect of this is to remove barristers and solicitors in England and Wales from the scope of section 84(2)(c) of the 1999 Act. Section 84(2) provides (c)he is authorised by a designated professional body to practise as a member of the profession whose members are regulated by that body, or works under the supervision of such a person. That provision (as with the remainder of section 84(2) in its original form) has no geographical restriction within the UK. Instead, Part 2 (paragraph 12) inserts a new category: 12(ba) a person authorised to provide immigration advice or immigration services by a designated qualifying regulator. The new category is limited in geographical scope because Part 2 (paragraph 12) also inserts into section 84, new subsection (3A). This means that since 1 April 2011 a barrister's qualification as per s 84(1) is under s 84(2)(ba) (and not anymore under s 84(2)(b) – see the amended s 86 and the new s 86A). Where the Bar Council was a Designated professional body (ss 84(2)(b) & 86) it is now a Designated qualifying regulator (ss 84(2)(ba) & 86A). However s 84(3A) now states: (3A) A person's entitlement to provide immigration advice or immigration services by virtue of subsection (2)(ba) — (a) is subject to any limitation on that person's authorisation imposed by the regulatory arrangements of the designated qualifying regulator in question, and (b) does not extend to the provision of such advice or services by the person other than in England and Wales (regardless of whether the persons to whom they are provided are in England and Wales or elsewhere). Thus whereas a Scottish advocate and barrister called in Northern Ireland (both of whom are still qualified persons as per ss 84(2)(b) and 86) can provide immigration services including Tribunal advocacy throughout the UK, English barristers can only do so in England and Wales.

[10] ILPA response to the Office of the Immigration Services Commissioner consultation on the Guidance on competence 28 January 2010.
http://www.ilpa.org.uk/data/resources/13037/10.01.530.pdf

this issue generally and specifically in relation to this former OISC regulated body, given the limits of the legislation, I do not feel that I have any standing in this matter and therefore can do anything further."

This is unsatisfactory for all the reasons ILPA set out in its witness statements for the purposes of the court proceedings In the matter of the Immigration Advisory Service (In Administration) and in the matter of the Insolvency Act 1986, No 5980 of 2011. This is a matter we have previously raised with the Legal Services Board.

Question 7: What are your views on the desirability and practicality of introducing voluntary arrangements so that the Legal Ombudsman can consider complaints about OISC regulated entities and individuals?

By 'voluntary arrangements' ILPA understands that the Office of the Immigration Services Commissioner would opt in to regulation by the Ombuds with the consent of the latter and that individual advisors would thereby find that complaints could be made against them to the Ombuds.

ILPA considers that as matters stand it is desirable that the Legal Ombuds be able to consider complaints against individuals regulated by the Office of the Immigration Services Commissioner. This would be less confusing for clients. It would also give the Legal Ombuds a better overview of this area of advice giving and might assist in identifying trends and problems. The Legal Ombuds has worked to ensure ease of complaining etc. which could assist clients.

However, see our response to question 1: the regulatory architecture. Seeing that a person is regulated by the 'Legal' Ombuds would tend to shore up the perception, which many clients already have, that an advisor regulated by the Office of the Immigration Services Commissioner is a lawyer and further to elide two separate regimes.

The obvious practical consideration is whether the Ombuds is given the resources to do this work.

ILPA

24 May 2012