



**A RESPONSE BY**

**THE CHARTERED INSTITUTE OF LEGAL  
EXECUTIVES**

**AND**

**ILEX PROFESSIONAL STANDARDS LIMITED**

**REGULATION OF IMMIGRATION  
ADVICE AND SERVICES**

**DATE: 24 MAY 2012**

## **Introduction**

1. This response to the Legal Services Board's (LSB) consultation on the regulation of immigration advice and services presents the joint views of The Chartered Institute of Legal Executives (CILEx) an Approved Regulator under the Legal Services Act 2007 (the 2007 Act), and ILEX Professional Standards Limited (IPS), the regulatory body for 22,000 members of CILEx. The LSB's consultation paper was separately considered. The outcomes of those respective considerations were exchanged and with no significant difference of opinion between the two organisations, a joint response is tendered. For the purposes of this response, 'we' is used to mean both CILEx and IPS unless the context suggests otherwise
2. CILEx and IPS promote proper standards of conduct and behaviour among members of CILEx. We aim to ensure CILEx members are competent and trusted legal practitioners who are fully aware of their obligations to clients, colleagues, the courts and the public. We aim to ensure practitioners maintain proper standards and improve throughout their careers and to ensure the public recognise the quality of work Chartered Legal Executives can provide.
3. We welcome the opportunity to comment on proposals put forward by the LSB on the regulation of immigration advice and services. We hope the responses to questions below may be of value to the LSB and help to inform its approach.

## **Executive summary**

4. CILEx and IPS agree with the main proposals within the paper that qualifying regulators should develop robust regulatory arrangements for the immigration advisors they regulate. Qualifying regulators must assure technical competence at entry and on a continual basis, possibly through accreditation, reaccreditation and CPD. Qualifying regulators will also have to assure that good quality advice and service is provided by immigration advisors through on-going monitoring and supervision.
5. We believe that a robust regulatory system should include quality assurance systems that can be relied on by private and; until the scope changes to legal aid come into play in April 2013 publicly funded clients alike. This is particularly key in areas where the consumer is vulnerable, such as immigration. IPS appears to be the only qualifying regulator embarking on a scheme specifically to regulate immigration practices and accredit/assess competence of immigration advisors. The aim is to produce a framework demonstrating specific areas of competence or excellence that ensures consumers are provided with a quality service by competent advisors.

6. We do appreciate the differences between existing schemes of regulation and quality assessment administered through qualifying regulators, the OISC, the Legal Services Commission and the Law Society's Immigration Asylum Accreditation Scheme. We will ensure that our scheme leads to an assurance to consumers that immigration advisors regulated by IPS are and remain competent to practise. Through the scheme IPS is developing it aims to ensure that members of the public can be confident that the provider of immigration advice has been subject to rigorous quality assessment.
7. The main proposal in the paper is that qualifying regulators must, by the end of 2012, implement coherent, evidence-based approaches to manage risks to consumers and the public interest in the provision of immigration advice and services. This work is necessary to address a gap in the regulation of immigration advice and services. IPS had already recognised the issues identified in the consultation paper and started work in 2011 to address the regulatory gap. Despite having already begun this work, the timescale suggested by the LSB is tight. The LSB may find that the deadline date of the end of 2012 is unrealistic, particularly taking into account the research, development and consultation work that is required, not to mention the LSB's own timescale to approve any changes to regulatory arrangements. IPS is working towards submitting its proposals to the LSB by October 2012. Thereafter whether it can meet the 2012 timeline depends on the application and consideration process.
8. The proposals in the paper, do not address the continued fragmentation of regulation of immigration advice and services. The public interest is not being served by the regulatory maze that exists. The current regulatory maze makes it difficult for consumers to assess quality of services. Thought should be given on consolidating the regulation of immigration and services if the activity becomes a reserved legal activity, especially as Schedule 18 of the Legal Services Act 2007 creates an anomaly preventing the aim to move away from regulation by title.
9. The regulation of immigration advice and services should focus on a commitment to drive quality for the consumer and avoiding undue barriers to entering the legal profession or limiting the market. Quality must be the responsibility of the providers, with a role of a responsible regulator to set and assure minimum standards, together with the provision of a framework demonstrating specific areas of competence.
10. The following is a correction to the last sentence of paragraph 24 of the consultation. There are 27 immigration advisors on our immigration register. Some are Chartered Legal Executives, but there are others who are Affiliate, Associate and Graduate members of CILEx. This has influenced the approach we will take when developing our immigration regulation and accreditation scheme. Our scheme focuses on authorisation by competence rather than

regulation by title. This approach is consistent with the LSB's proposed principle to reservation at paragraph 19 of the consultation, in which it states:

*"in so far as we would ever decide to recommend the creation of a new reserved legal activity, we would only consider reservation to appropriately regulated entities and individuals, rather than on the basis of a specific legal title".*

11. We look forward to hearing what approach the LSB will take when recommending reservation but also when approving the schemes developed by existing qualifying regulators.

## Questions

**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?**

12. The LSB has identified, through its research, the main issues with the regulation of immigration advice and services, namely that there are problems with the overall regulatory architecture, the qualifying regulators have inadequate quality and accreditation arrangements in place and access to redress differs between qualifying regulators and the OISC.
13. The overall regulatory architecture presents a regulatory maze of different approaches to regulation, powers of intervention and access to redress. This, has to a large extent, been created by a piecemeal approach by Parliament to this area of legal work. The regulatory maze is further complicated by the contractual requirements imposed by the Legal Services Commission on firms that provide legal aid immigration and asylum services.
14. The current regulatory architecture fails to ensure that all immigration advisors are qualified, skilled in the area of work in which they practise and are insured; and that their consumers have access to an independent complaints body. This can be addressed by requiring that immigration advice services are regulated in line with the regulatory objectives. We recognise that OISC regulated businesses do not have regulatory objectives set out.
15. We refute the LSB's findings that qualifying regulators have an inadequate understanding of the market in which immigration advice and services are provided and therefore little understanding of whether good quality service/advice is being provided. As mentioned above, IPS is developing an accreditation and regulation scheme for immigration advisors. IPS will be taking an evidence and risk based approach to regulating immigration advisors. This requires an in-depth understanding of the immigration advice and services market.

16. We welcome the intention to make the legal framework clearer, more streamlined and easier for the public to understand. A key part of ensuring consumers are able to access high quality services is providing information to allow the consumer to make informed choices. The differences in access for redress of consumer complaints between qualifying regulators and the OISC is a key issue that should be addressed. As identified in the paper, giving the OISC more powers of redress is an issue for the Home Office to consider, furthermore giving the Legal Ombudsman (LeO) jurisdiction over OISC registered immigration advisors, is a matter for LeO to consider with the OISC. This discrepancy in access to redress is evidence of why the regulation of immigration advice and services should be rationalised. Furthermore there is no clear rationale why immigration advisors regulated by the OISC are subject to different regulatory expectations than those regulated by qualifying regulators.
17. In order to have a comprehensive immigration regulatory scheme in place, the LSB proposes that qualifying regulators need to consider what information they need to collect to regulate immigration advice and services effectively and identify the risks to consumers and take proportionate action to mitigate those risks. IPS has already started this process by embarking on a data collection exercise to quantify the main risks in this area. This will feed into a risk framework whereby risks are mitigated proportionately.
18. The LSB also proposes that qualifying regulators consider whether they are satisfied that current arrangements provide an acceptable level of quality and technical standards for all those they regulate. IPS will be addressing this by closely considering the proposals made in the LSB's consultation 'Approaches to quality' and the report prepared by Vanilla Research for the Legal Services Consumer Panel 'Quality in Legal Services'. IPS believes that through its work to develop a robust strategy to monitor services and advice quality in all areas of law, the quality of immigration advice and services provided by CILEx registered immigration advisors will improve.
19. In relation to the LSB's proposal that qualifying regulators need to use complaints information about the organisations providing immigration advice and services, better data collection and information sharing from the LeO with qualifying regulators needs to exist.

**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?**

20. The findings are likely to be relevant to small and medium sized enterprises but to a different extent than individuals. This is because the detriment to small and medium sized enterprises will be different in nature, than those

experienced by individuals. Businesses are more sophisticated clients, have better buying and negotiating power and tend to require routine transactions, as opposed to individuals. Businesses, regardless of their size, are less likely to require immigration advice and assistance in certain immigration matters.

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

21. The tables provide a range of risks to different consumer types. Many of the risks identified apply to all sectors of practice.
22. In the table the LSB has identified the risks to BME firms undertaking legal aid work. There may be a risk to BME firms generally as BME practitioners and lawyers are more likely to undertake immigration advice and services and any changes to the regulatory architecture or regulatory approach will disproportionately impact on them.
23. The LSB has identified a risk that different requirements of LSC and SRA lead to inefficiencies. We seek further clarification from the LSB as to what the differences and inefficiencies are.
24. As well the risk of organised crime, qualifying regulators should be concerned about risks of border tax fraud. Wider risks include poor quality advice resulting in applicants pursuing cases when there is little hope of success and as a result wasting public resources and reducing public confidence in the immigration system.

**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?**

25. On the whole the tables ask the right questions of qualifying regulators. Qualifying regulators need to collect data from all entities and individuals they regulate in this area of law to ensure continual competence of providers and quality of advice and services.
26. The tables focus on service and practice management issues. There is no emphasis on competence assessment within the tables. The questions include success rates for work. IPS questions whether regulation should be looking at success or the quality of advice.

**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?**

27. IPS will be in a position to address all questions once its work on developing an immigration regulation and accreditation scheme has completed. Some of the questions require data collection which IPS has begun.
28. One question asks qualifying regulators know or need to know the success rates for the work. We feel that when answering this question allowances will have to be made for instances when the client's case is weak.
29. The question asking whether there is sufficient information to identify and risk assess individuals who move between regulators can be answered through interrogation of qualifying regulators registers. The reality is that there may be little movement between qualifying regulators and more, but not significant movement between qualifying regulators and the OISC.

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

30. Immigration advice and services is a high risk area of law, it is therefore important that qualifying regulators and Legal Ombudsman (LeO) share information and intelligence to enable robust regulation.

**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?**

31. Introducing voluntary arrangements so that LeO have jurisdiction over OISC regulated entities and individuals would provide consistency within the legal sector. It is beneficial that consumer outcomes and redress are the same regardless of who the immigration advisor is regulated by. A one-stop complaints scheme, through LeO will allow complaints data to be analysed better.

**CILEx/IPS**