

10th October 2011

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Dear Mr Mackay,

ENHANCING CONSUMER PROTECTION, REDUCING REGULATORY RESTRICTIONS

1. I am grateful for the opportunity to contribute to the discussion the Legal Services Board (LSB) is leading on the scope of legal services regulation in England and Wales. Rather than addressing the specific questions posed by the discussion document directly, I am confining my comments to the regulatory regime for which I am responsible.
2. It is quite proper for the LSB to include immigration within this exercise – and highly appropriate that you should describe it as a ‘special case’. Indeed, I believe that my Office is a model of *‘simple and accessible regulation that helps providers deliver imaginative and consumer focussed services while giving consumers confidence that regulation helps them without burdening them with costs or preventing them from accessing services in the way that suits them best’*, and demonstrates the inappropriateness of a ‘one-size-fits-all’ approach.
3. Immigration regulation plays a vital part in securing the public interest. My Office – which regulates the provision of immigration advice and services throughout the United Kingdom in accordance with the requirements of the Immigration and Asylum Act 1999, as amended – constitutes an essential element in realising the nation’s strategic immigration policy and ensuring that the system is not abused. Not only does my Office effectively concern itself with the fitness and competence of its directly regulated advisers, but it also provides an essential service in identifying, deterring, and, where necessary, personally bringing prosecutions against those who seek to operate illegally. At an individual level, the regulatory regime provides access to justice regardless of legal or ethnic status or the ability to engage effectively with the administrative system. The great majority of the just over 1,800 OISC regulated organisations are small and medium sized BME organisations, and these play an important role in their respective communities.

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4. The UK's regulatory framework for immigration advice and services has developed in a uniquely consumer focussed way, ensuring a good freedom of choice. Consumers of immigration advice and services are often among the most vulnerable – and even disadvantaged – members of society. Under the current system they have the opportunity to obtain advice and services not only from any of the three levels of advisers regulated by my Office (working in both the for-profit and the not-for-profit sectors), but, alternatively, in England Wales from solicitors, barristers and members of ILEX. Further, an important feature of the regulatory arrangements – which may provide a useful model for other sectors – is that non-practising legal professionals (who are thus not regulated by their respective professional bodies) who wish to provide immigration advice or services in the UK, would need to apply, and be admitted into, the OISC scheme, before being able lawfully to do so.

5. Consumers using OISC regulated advisers can take advantage of the comprehensive protection available under the existing regulatory regime. First, my Office ensures that all OISC regulated advisers are fit and competent to provide advice and services at the appropriate level. Specifically, applicants are tested and their organisations examined before being allowed entry into the regulatory scheme or moving up to a higher advice level within it; their work is subject to regular audits (the frequency of which is determined according to Better Regulation Principles by an assessment of risk to clients and the public); and they are required to meet annual continuing professional development requirements. Second, I operate a Complaints Scheme which allows me to investigate allegations made by clients and others of improper behaviour by an OISC regulated adviser be it relating to service or conduct, and the conclusions of such investigations are an important part of my sector monitoring tools. Increasingly, I am encouraging OISC advisers to resolve complaints from clients themselves using their organisation's OISC approved complaint schemes in order to reduce the regulatory burden. Third, I have the power to curtail those advisers who are found to be working in contravention of the OISC regulatory scheme by removing their organisation's authority to operate or by laying a disciplinary charge against them before the First Tier (Immigration Services) Tribunal.

6. My Office embraces both the letter and the spirit of Better Regulation Principles. We constantly seek to act proportionately in the regulatory burdens that we place upon the regulated sector, whilst ensuring that a robust enforcement regime is deployed. Although my Office ensures that due process is always observed, we are able, because of our close, but arms length and independent relationship with the United Kingdom Border Agency (UKBA) and other parts of Government, to be acutely sensitive to policy developments in this area that will impact on advisers and the timeliness of the advice they give.

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7. Inevitably there is scope for the regulatory regime over which I preside to be strengthened, but only in respect of introducing additional safeguards to the existing legislative framework. A public consultation undertaken in 2009 by the UKBA confirmed that, not only should the OISC continue, but its statutory powers should be enhanced. It is hoped that the Government will be able to find a suitable legislative vehicle during the term of this Parliament.

8. In the meantime my Office is constantly adjusting the balance of its activities to address areas of greatest concern. We are placing increasing emphasis on identifying and preventing unregulated, illegal activity in the provision of immigration advice and services. There are two distinct strands to this: one relates to individuals deliberately seeking to circumvent legislative requirements; the other to people who may genuinely be unaware of the requirement to be regulated. In connection with this I am keen to raise greater awareness of the OISC regulatory regime and the role we play in the sector. among advisers, potential clients and the public generally,

9. The OISC Investigations and Intelligence Team seeks out and prosecutes with the support of other law enforcement bodies and on its own those who flout the law. I see this as important field of activity, and I am looking to optimise its effectiveness by introducing strategies to enhance identification and targetting.

10. In conclusion, I stand ready to provide the LSB with such information as it requires, and I look forward to holding further, constructive discussions with you . However, I would commend the LSB and other interested parties to study my 2010/11 Annual Report where full details of the current OISC regulatory regime are explained. This will confirm that both outputs and outcomes are being delivered by my organisation in a highly efficient manner making optimal use of the resources available to us. Furthermore, it will demonstrate not only that the OISC's aims and operation are fully in line with the LSB's Regulatory Objectives, but that the existing regime remains fit for purpose in delivering effective regulation of that part of the immigration advice and services sector not operating under the professional bodies to the benefit of consumers and society more generally.

Yours sincerely,



Suzanne McCarthy
Immigration Services Commissioner

