

Response to the Legal Service Board

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# Call for evidence on the regulation of immigration advice and services

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The logo for the Legal Ombudsman features the word "LEGAL" in a bold, pink, sans-serif font. A large, elegant, pink cursive flourish is positioned above the letters "L", "E", and "G". Below "LEGAL", the word "OMBUDSMAN" is written in a black, all-caps, sans-serif font.  
LEGAL  
OMBUDSMAN

# Introduction

The Legal Ombudsman welcomes the Legal Services Board's (LSB) call for evidence on the regulation of immigration advice and services as part of their wider work scrutinising regulatory risk in different areas of law.

As you are aware, the Legal Ombudsman is a creation of the Legal Services Act 2007. We were established by Parliament to simplify the system of redress by resolving complaints independently and informally in a changing world of legal services. Our role is two-fold: to provide consumer protection and redress when things go wrong; and to feed the lessons we learn from complaints back to the profession, regulators, and policy makers to encourage development and improvement.

The Legal Ombudsman handles complaints about immigration advice and services but only if they are provided to the consumer by an authorised person or entity. These are individuals and firms regulated by qualifying regulators, such as the Solicitors Regulatory Authority, the Bar Standards Board and the Institute of Legal Executives Professional Standards.

Non lawyers can also provide immigration advice and services but these Individuals and entities are regulated by the Office of the Immigration Services Commissioner (OISC). OISC was established under the Immigration and Asylum Act 1999 and, as a regulator, does not have the same powers to assist in complaint handling and enforcing decisions as the Legal Ombudsman. We cannot currently receive complaints about individuals and firms regulated by OISC.

In responding to this consultation we have drawn from our case data, research and experience handling complaints. We have passed over the questions aimed at the regulators and focussed on the issues surrounding redress as this is where our experience lies. The LSB's research suggesting that qualifying regulators are failing to comply with the regulatory objectives is concerning but as a lay organisation it is not something we can comment on. This paper focuses on the uneven availability of redress for consumers who have sought legal advice through authorised persons and those who have used OISC regulated practitioners.

It is desirable for consumers that providers of immigration advice and services are regulated, as they are under the current system, through OISC or through qualifying regulators. However, the different statutory bases for immigration services and reserved legal services mean that there is a concerning discrepancy in the redress available to those who access immigration advice and services through OISC regulated providers and authorised persons or entities. The legal sector is going through rapid change and we need to ensure that consumers, particularly vulnerable people, are protected. We will be observing the outcome of this review with interest. We also feel we may be in a position to assist in closing some of those gaps and welcome working with the LSB on this.

## **What our case data tells us**

Immigration and asylum cases comprise a small percentage of our overall workload. In the last financial year, 3.3% of the cases resolved related to immigration or asylum, almost all of them were about solicitors.

The complaints we receive about immigration advice and services are very similar to the figures for all areas of law combined. Conduct issues and accusations about lawyers failing to release files or papers are slightly more likely to be complained about in immigration cases and complainants are marginally less likely to complain to us about delays.

Due to the comparatively low number of immigration cases we handle, and therefore small sample sizes, it is difficult to provide accurate statistics on how complainants hear about our service. However, our figures so far suggest that customers complaining about immigration advice and services are less likely to learn about us through the internet and more likely to learn about us through word of mouth. Again, with similar caveats concerning data quality, we can say that the vast majority of immigration cases which come to us are privately funded.

## The LSB's concerns

The LSB have highlighted three issues which have arisen from their investigation into the regulation of legal advice and services:

1. The regulatory architecture and overlapping statutory bases for regulation
2. A perceived lack of understanding by qualifying regulators of the market in which immigration advice is provided, and
3. Unequal access to redress for those who use OISC and those who access immigration advice through a lawyer

We have no information to either support or oppose the conclusions from the LSB's research which found that the qualifying regulators are failing to comply with the regulatory objectives. However, if this is the case, we share their concern.

Our emphasis in this response focuses on the availability of redress for consumers as this is where our experience and expertise lies. When practitioners make a mistake, which is inevitable from time to time, there should be consistent redress available regardless of who their regulator is. The different statutory bases for immigration advice and services regulation means that OISC has different powers and is unable to provide the same level of redress as the Legal Ombudsman.

Although only a relatively small proportion of our cases relate to immigration and asylum law, we appreciate the importance of making sure that quality immigration advice and services are available as the users of these services can be vulnerable. Over recent years there has been a lot of research demonstrating the vulnerability of asylum seekers for whom there is often very little support available from professional services<sup>1</sup> and who may have experienced trauma and are unfamiliar with the British justice system<sup>2</sup>. These problems can be exacerbated by further issues; for example, if English is not the complainant's first language or if they experience changes in address.

Research commissioned by us, undertaken by the Centre for Consumers and Essential Services at the University of Leicester, revealed that consumers often find accessing legal services and redress confusing.

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<sup>1</sup> Burchill, J (2011) Safeguarding vulnerable families: work with refugees and asylum seekers. *Community Practitioner*. Vol. 84, No. 2 Feb 2011 pp. 23-26(4)

<sup>2</sup> Refugee Action (2011) response to legal aid consultation.

The report describes how the legal market has developed in the UK so that non-reserved legal services can be provided by non-lawyers. The research found that consumers are often confused and surprised to find that they cannot complain to the Legal Ombudsman. These inconsistencies are particularly undesirable when they apply to vulnerable groups, and therefore reform should aim at making redress easier to navigate.

We would welcome improvements to the existing system to make access to redress consistent and proportionate for consumers. However, as the LSB point out, any changes would need to ensure continued consumer choice and current categories of providers should not be removed from the market by a change in the regulatory arrangements. We would not wish to reduce the level of provision of immigration advice by introducing excessive restrictions but if it was decided that complaints should be dealt with through the Legal Ombudsman – either as a voluntary scheme or from legal advice and services being reserved – we would be keen for such a scheme to be as similar as possible to our existing service.

### **Voluntary scheme**

A scheme where OISC voluntarily signed up to have their complaints dealt with by the Legal Ombudsman could address the problems caused by the two overlapping statutory bases in terms of the lack of redress currently available for those who use OISC regulated practitioners. Although voluntary for OISC, such a scheme should be mandatory for OISC practitioners and included practitioners' terms and conditions for membership.

To do this section 164 of the Legal Services Act 2007 would need to be "switched on" and this would require an order by the Lord Chancellor. We are currently looking into the possibility of creating a voluntary scheme which would accept complaints about non-reserved legal services and we would be happy to conduct further work with the LSB to look into creating such a scheme for immigration advice and services as well as other areas. Our Board is due to consider proposals for a voluntary scheme in July 2012.

If it was decided that membership to our voluntary scheme was appropriate for OISC members, work would have to be done regarding the issues around Devolution, given immigration is not a devolved matter.

## Reserving immigration advice and services

If sufficient evidence was provided, the Legal Ombudsman could support a move towards reserving immigration advice and services but only if assurances were made that consumer choice would continue and categories of providers would not be removed from the market. It would not be desirable to limit access to immigration advisors as it can be difficult to find a lawyer who will provide immigration advice through legal aid.<sup>3</sup> It is important that all possible steps are taken to ensure that access to redress and good quality services is increased without limiting access to immigration advice overall.

A voluntary scheme would be an appropriate initial stage in the process of reservation of the activity, given the length of time these matters can take. It would ensure a level of service delivery that accords with other reserved areas. Complaint cases about both OISC qualifying regulators' practitioners, could assist in potential analysis and provide an evidence base to see if there is any evidence to increase the level of regulation further. This stepped approach would support the LSB's core vision which says that regulatory obligations should be at the minimum level to deliver the regulatory objectives.

Thank you again for the opportunity to respond to this consultation paper. If you would like to discuss in more detail any of the issues raised here, please contact Laura Wigan, Policy and Research Associate, Legal Ombudsman at [laura.wigan@legalombudsman.org.uk](mailto:laura.wigan@legalombudsman.org.uk)

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<sup>3</sup> Refugee Action (2011) response to legal aid consultation.