

Delivering immigration advice and services: consultation responses and final position

July 2020

Background

1. On 11 March 2020 we launched a consultation setting out proposals to amend part of our Standards and Regulations that relate to the delivery of immigration advice and services. The consultation closed on 22 April 2020.
2. The proposals focused on regulatory requirements for situations where solicitors, registered European lawyers (RELS) and registered foreign lawyers (RFLs) may wish to provide immigration advice and services to the public from organisations that are regulated by the Office of the Immigration Services Commissioner (OISC).
3. The consultation paper also asked for views about a longer-term focus on the immigration services sector, and activities that might help to improve the experiences of people who access legal advice and representation for immigration matters.
4. This report sets out feedback we received from stakeholders, and our response to that feedback. We also confirm next steps and actions taken following the consultation process.

Our position

5. Following the completion of our consultation process and analysis of the feedback we received, we will proceed to make the proposed amendments to our Standards and Regulations during summer 2020 (subject to approval by the Legal Services Board). We will also continue to work closely with the OISC as we move forwards.
6. The amendments mean that solicitors, RELs and RFLs continue to be able to provide immigration advice and services to members of the public from:
 - SRA-regulated law firms.
 - Authorised non-SRA firms (meaning firms that are authorised by another approved regulator under the Legal Services Act 2007).
 - Law centres and other non-commercial organisations that are authorised by the OISC.
7. They also mean that solicitors, RELs or RFLs who wish to begin providing immigration advice and services to the public from fee charging OISC-regulated organisations will need to be otherwise qualified to do so under the Immigration and Asylum Act 1999, as will any people that they supervise under those circumstances.

8. They can achieve this through a registration with the OISC, and they will then act as an OISC-registered adviser when they undertake immigration work within fee charging OISC-regulated organisations. This does not prevent solicitors from continuing to maintain their SRA practising certificate, and RELs and RFLs will be able to remain registered with the SRA.
9. Following the completion of the consultation we are also developing our programme of activities for the next stage of our work within the immigration services sector. In line with ideas we received from our stakeholders we expect that this will include:
 - Improved information resources for firms and solicitors working in the immigration sector.
 - Further exploration of barriers to complaints faced by immigration service users, and consideration of information and support for those users to help overcome barriers.
 - Thematic investigation work within the immigration sector.

Who did we hear from?

10. We received ten responses. They included the Legal Service Consumer Panel (LSCP), the Legal Ombudsman (LeO), the Law Society of England and Wales (TLS) and the human rights charity JUSTICE, as well as some law firms and individual solicitors.
11. During the consultation period we also held a virtual roundtable meeting with stakeholders where we talked through the proposals and discussed possible impacts in greater detail.
12. We are grateful to everyone who took the time to respond to our consultation and to the organisations that took part in our roundtable meeting. We have reviewed all the comments we received and given each careful consideration.
13. At annex one of this report there is a list of consultation respondents who agreed we could publish their details, alongside details of the roundtable meeting.

Comments on question one

14. Our first question was:

“What do you think about our intended approach to our rules for providing immigration advice and services?”

15. We proposed to amend the provisions in regulations 9.5 to 9.7 of our [Authorisation of Individuals Regulations](#) so that they require solicitors, RELs and RFLs to become a qualified person under the IAA (usually by registering with the OISC) if they wish to provide immigration advice and services to the public from fee charging OISC-regulated organisations.
16. We were pleased that the majority of stakeholders taking part in the consultation expressed strong levels of support for the approach we outlined.
17. Some of this support came from legal professionals, including a law firm which endorsed our consultation position, and groups that represent them. TLS's consultation response was endorsed by the Immigration Law Practitioners' Association (ILPA), and it welcomed the suggested amendments to our Standards and Regulations by confirming that our proposals were "*...pragmatic and sensible*".
18. TLS went on to highlight the anticipated benefits of the proposed amendments, confirming its view that "*Ensuring that any individuals being supervised by solicitors, RELs and RFLs in non-commercial organisations registered with the OISC will need to be authorised directly by the OISC or by a designated qualifying regulator will result in accountability and oversight.*"
19. We heard similar support from consumer-focused organisations. This included the LSCP which commented that it was "*...pleased that the SRA has worked closely with the Office of the Immigration Services Commissioner to develop these sets of proposals which we consider to be reasonable and proportionate.*"
20. The LeO expressed confidence in the consultation proposals, stating in its response that it agreed "*...with the overall approach you are taking, and believe that this should provide members of the public with appropriate protections when seeking immigration advice.*"
21. We also received endorsement from charities linked to the immigration sector. Refugee Action felt that our proposals to maintain the regulatory arrangements for immigration solicitors that had been in place before the introduction of our Standards and Regulations in November 2019 were appropriate, commenting that "*...the status quo sets out the right balance in terms of protecting migrants.*"
22. Some responses to our first question from individual solicitors focused on the potential impacts of the proposals for people who are authorised by the SRA to work as freelance solicitors. One solicitor commented on the extent to which solicitors would be permitted to issue judicial review proceedings for immigration clients if they are working from OISC-regulated organisations and under an OISC registration; another expressed concern about the potential for complications to arise from differences in the accreditation approaches of the OISC and SRA.

Our response

23. We were pleased to receive such positive feedback, as well as strong buy-in for our consultation proposal and draft rule amendment. Some respondents highlighted the importance of collaborative working with the OISC, and we agree that this should continue to be a priority as we move forward.
24. We also agree with the views of some respondents that the proposed amendments to our Standards and Regulations should bring greater clarity for solicitors, OISC-regulated organisations, and members of the public that use immigration services, as well as helping to assure appropriate regulatory oversight for the OISC.
25. We welcomed the feedback from individual solicitors. Our Standards and Regulations do not authorise SRA-regulated freelance solicitors to provide immigration services to the public, and for this reason we are not anticipating that this community of solicitors will be impacted by our amendments.
26. However, we will review their comments with the OISC to consider whether we need to clarify some of the practical considerations for solicitors, RELs and RFLs who may be interested in working within a fee charging OISC-regulated organisation. For example, these might include:
- Exploration of the requirements for anyone being supervised to do immigration work in those circumstances to also be qualified individuals under the IAA.
 - Confirmation that the OISC's code and regulatory requirements must be followed in those situations.
 - Information about handling complaints from immigration clients where the OISCs complaints scheme applies.
27. This could also be helpful in confirming how the two systems of regulation work alongside each other. We will continue to work closely with the OISC in this regard.

Comments on question two

28. Our second question was:

“Do you agree with the impacts we have identified for our approach to how we authorise solicitors to provide immigration advice and services? If not, please explain why.”

29. We described some of the potential impacts of our proposed approach, including the requirements being introduced for solicitors, RELs and RFLs (and people they may supervise) to be suitably qualified under the IAA in order to do public immigration work from fee charging OISC-regulated organisations, and some of the ways in which this might also impact members of the public.
30. Organisations taking part in our consultation roundtable meeting agreed that the impacts of the proposals we had identified in the consultation paper were appropriate.
31. Some of the consultation respondents added further backing to this in their responses, including TLS. Some also went on to comment on specific impact areas in their response to question three.

Our response

32. We had categorised impacts into a number of headings in the consultation paper, including impacts for consumers, for the OISC and OISC-regulated bodies, and for solicitors. We welcomed the confirmation from our stakeholders that the categories were the right ones, and that we had focused on the main risks and impacts.

Comments on question three

33. Our third question was:

“Are there any other potential impacts you think we need to take into account?”

34. Some of the consultation respondents described other impact areas that they recommended to be included in our assessment process, and factored into our post-consultation approach.
35. JUSTICE felt that there were additional considerations in terms of members of the public. In particular it highlighted the importance of immigration service users being able to understand which regulator to contact for help if something went wrong, and the need for caution to avoid impacts that might increase reluctance amongst those users to complain at all about the quality of immigration advice and service that they receive. JUSTICE went on to call for lines of communication between the OISC and the SRA to be assured so that information coming in from people who use immigration solicitors is properly recorded from the outset and shared securely between the regulators as required.
36. JUSTICE also urged the SRA to be certain that the progress of investigations of immigration solicitors would not be impacted by the rule amendment, and

suggested that further development of online resources could also be helpful for people who use immigration services, including the SRA's Solicitors Register which JUSTICE felt could be used to indicate situations where solicitors are also registered with the OISC.

37. TLS recommended that we also consider impacts associated with situations where solicitors supervise other people to do immigration work from SRA-regulated organisations, stating that *"Whilst it is encouraging that supervision has been considered in the case of OISC-regulated organisations, we believe that the SRA must take responsibility for implementing equivalent regulations for their own members."*
38. An individual responding to the consultation meanwhile cast doubt on the extent to which the rule amendment might have positive impacts for people who use immigration services, referring to other factors existing in the immigration sector, including their view that *"There are currently real issues with poor quality advice from solicitors taking private fees and (the rule amendment) is unlikely to change that."* They recommended instead that mandatory accreditation be introduced for all immigration solicitors.

Our response

39. We welcomed the suggestions made by consultation respondents. We work closely with the OISC during investigations taking place within the immigration services sector and we have well-established engagement channels and information sharing protocols in place, all of which allow us to work closely together. For those reasons it was helpful to hear JUSTICE reinforcing the importance of this collaborative approach. However we agree that there are likely to be opportunities to further improve these channels, and to consider the ways in which information received from immigration service users is best handled and shared between our organisations. We will continue to explore this with the OISC.
40. We will assess and monitor the impacts of the rule amendment, as part of our wider evaluation process for our Standards and Regulations. We will also take account of the other possible impact areas suggested by the consultation respondents in the next phase of our work, including those highlighted above relating to solicitor supervision and opportunities for new guidance. There is further detail about this in the next section of this report.

Comments on question four

41. Our final question was:

“Are there other areas you think we should focus on? If so, what are they?”

42. We received a number of suggestions from stakeholders taking part in the consultation process. One area of focus receiving strong support from respondents centred around information for people who use immigration services.
43. Some suggestions related to information that people who use immigration services might rely on to help them to properly understand the status of their legal adviser. The LSCP called for a standardised information remedy, agreed collectively by the SRA and the OISC, which would require solicitors working in fee charging OISC-regulated organisations to explain to their immigration clients that they are acting as an OISC-registered adviser. It felt that any such information remedy must be tested with consumers, commenting that *“...communication around issues such as how to make complaints and any available consumer protection should be set out clearly, with both regulators working on the content, format, as well as how the information should be presented to consumers.”*
44. The LeO also highlighted the importance of this area of focus. It commented that *“...it would be helpful to work together on providing better information for users of immigration services to reduce the number of potential ‘silent sufferers’ in this area of law.”*
45. JUSTICE recommended a programme of work to build on initial discussions around barriers faced by immigration service users and in particular asylum seekers in making complaints, and seeking help if they experience problems with their legal adviser. During our virtual roundtable meeting we also heard support for this from Refugee Action, the OISC and the LeO.
46. TLS suggested that our next steps should include a focus on guidance and resources for legal professionals working in the immigration sector. One of the suggested subjects was information that might help to better inform professional indemnity insurance (PII) brokers about the level of work carried out by an individual law firm relating to immigration cases compared to other legal work. Another suggested focus was on situations where solicitors supervise other people to work on immigration cases. TLS felt that this could include updating existing guidance resources so that they reflect the realities of supervision in the immigration sector.
47. JUSTICE was also interested in solicitor supervision arrangements and how these might be included for consideration in our work package. It highlighted the conclusions of the [‘Immigration and Asylum appeals – A Fresh Look’](#) report from 2018, which had noted that these arrangements can be used *“...as a loophole for incompetent and dishonest persons to provide immigration advice and services to the public under the radar, even if they have previously been suspended or*

barred from practising by a regulator.” JUSTICE recommended we liaise with the Bar Standards Board regarding their approach towards this issue.

48. A further area of focus identified by JUSTICE was our commitment to carry out thematic exploration and investigation activities within the immigration services sector, building on our previous work in that area. This had been welcomed by many stakeholders during our virtual roundtable meeting, and JUSTICE felt that we should be engaging with other organisations and regulators to build their perspectives into the work, and potentially also with people who had used immigration services. It concluded that “...*this would enable the SRA not only to report back on immigration solicitors, but immigration solicitors within the context of the sector as a whole.*”

Our response

49. The suggestions made by our stakeholders to inform the next stage of our focus on the immigration sector are extremely welcome. We were particularly pleased to receive endorsement for our proposed thematic work with solicitors and firms actively working in the immigration sector, and we agree that engagement with other organisations in that sector should inform this,

50. We agree that the next stage of our work should include a focus on support and information for immigration solicitors, and that it is important we consider approaches towards the risks identified by JUSTICE concerning solicitor supervision arrangements.

51. We also welcomed the ideas and suggestions relating to improved information for members of the public who use immigration services, and the commitment from other organisations to be part of this workstream. We will be discussing this further with our stakeholders, and during discussions with the OISC we will consider the LSCP’s suggestions for standardised information remedies.

Annex one: list of respondents / participants in our virtual roundtable meeting

Publish the response with my/our name	Respondent type
Immigration Law Practitioners’ Association	Representative industry group
JUSTICE	Other

Delivering immigration advice and services: responses to our consultation

Legal Ombudsman	Other
Legal Services Consumer Panel	Representative consumer group
Refugee Action	Other
The Law Society of England and Wales	The Law Society
Publish the response anonymously	
Anonymous	Law firm or other legal services provider
Anonymous	Law firm or other legal services provider
Anonymous	Individual
Anonymous	Individual

Participants in our virtual roundtable meeting - 30 March 2020
Immigration Law Practitioners' Association
JUSTICE
Legal Ombudsman
Legal Services Consumer Panel
Refugee Action
The Law Society of England and Wales
The Office of the Immigration Services Commissioner