

# **RESPONSE OF ILEX PROFESSIONAL STANDARDS LTD TO TRIENNIAL REVIEW OF THE OFFICE OF THE IMMIGRATION SERVICES COMMISSIONER**

## **INTRODUCTION**

1. ILEX Professional Standards Ltd (IPS) is the regulatory body for members of the Chartered Institute of Legal Executives (CILEx) and individuals authorised by IPS to provide reserved and regulated legal services. The provision of immigration advice and services is a regulated legal service within the terms of the Legal Services Act.
2. CILEx is a designated qualifying regulator under the Legal Services Act. It was a designated professional body under the Immigration and Asylum Act 1999.
3. The IPS scheme of regulation for immigration advisors authorises Chartered Legal Executives who can demonstrate competence to provide immigration advice and services. IPS' competence requirements include skills, experience and knowledge to Level 6, which is honours degree standard.
4. The Office of the Immigration Services Commissioner (OISC) was set up under the Immigration and Asylum Act 1999 to regulate immigration advisors who are not regulated by a designated professional body. It is overseen and partly funded by the Home Office, unlike other legal services regulators who are subject to oversight regulation by the Legal Services Board (LSB), under the Legal Services Act. Besides CILEx, the Law Society and the Bar Council are also designated qualifying regulators. IPS has a Memorandum of Understanding (MoU) with OISC to facilitate regular communication and information sharing. It includes a provision for disclosure of information about the conduct of advisors on a case by case basis.

## **REGULATION OF ADVISORS**

5. IPS believes that the regulation of immigration advisors is necessary to protect the public and consumers. This view is supported by its experience of regulation of immigration advisors, the risks that it has dealt with in the sector and the service and misconduct matters that regulators encounter in respect of immigration advisors. It is important that consumers have access to redress and can complain about service and conduct matters that they encounter.

## **THE CURRENT REGULATION OF IMMIGRATION**

6. IPS believes that the current regulatory system for immigration advisors is fragmented and is not effective for a highly vulnerable group of individuals who

use immigration advisors. This group will usually have a limited understanding of the legal system and may have basic or no understanding of the English language. The current system of regulation requires vulnerable individuals to navigate through a complex system to obtain justice. As set out below the fragmentation leads to different routes of redress and outcome depending on the legal services provider and their regulator.

7. The triennial review of OISC provides an opportunity for the advantages and disadvantages of the current regulatory system to be considered and a view taken whether new arrangements should be established which are fair, easier for vulnerable consumers to navigate and pose less risk for them and the public.
8. IPS also believes that the oversight of the OISC by the Home Office embodies significant conflicts of interest which compromise the independence of the OISC in carrying out its regulatory functions. The work of its regulated community involves challenge and review of Home Office decisions. The OISC annual accounts disclose that it generates income of £1,090,000 against expenditure of £4,099,000, with the shortfall subsidised by the Home Office. There is a clear conflict of interest where the Home Office is funding the organisation that regulates immigration advisors who are acting for clients against them. The responsibility for making up the shortfall ultimately falls on the tax payer.
9. The Review needs to consider carefully whether the regulatory approach and costs of the current model are justifiable. A model in which the oversight and funding of a contentious area of regulation, where individual rights and liberty are at issue, needs to be clearly independent of government. Consideration needs to be given to why the safeguards which are provided for regulation by the LSB under the Legal Services Act would not better serve the public interest, both as a matter of principle and from the point of view of cost.

## **INCONSISTENCY IN CONSUMER PROTECTION AND REDRESS THE CURRENT SYSTEM**

10. The OISC deals with service and conduct matters relating to immigration advisors registered with it. However, service matters relating to those authorised to provide immigration advice and services by the designated qualifying regulators are referred to the Legal Ombudsman. This leads to different routes of redress depending on legal services provider and creates a complicated regulatory maze for vulnerable individuals. Consumers will benefit from the availability of a single organisation to deal with service matters as it provides clarity, independence and consistency in the manner in which complaints are dealt with and in the outcomes available.

11. There is also disparity between the level of consumer protection provided by the OISC and the legal services regulators falling under the Legal Services Act. The latter must have compensation arrangements in place, which the OISC does not have. Therefore individuals who use OISC regulated advisors are substantially prejudiced in obtaining compensation if they suffer loss or detriment from the misconduct of their advisor.
  
12. The Immigration and Asylum Act 1999 provides the power to prosecute an unregulated person providing advice and services relating to immigration and asylum matters in the UK. This power rests with the OISC. There is a similar provision in the Legal Services Act which makes it a criminal offence to provide reserved legal services unless authorised to do so. Bringing the prosecution powers into a single provision would provide consistency and clarity as to what provisions apply.

**November 2014**