

SRA response

"Regulation of immigration advice and services", Legal Services Board consultation

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Introduction

1. The Solicitors Regulation Authority (SRA) is the independent regulatory arm of the Law Society of England and Wales. We regulate solicitors, the firms in which they practise and all those working with them. We are also a licensing authority for alternative business structures (ABSs) operating within the legal services marketplace. We regulate in the public interest.
2. We welcome this opportunity to debate the possible future approach to the regulation of immigration advice and services.

Summary of our position

3. Our regulatory approach is outcomes focused and risk based. It is targeted at achieving the right outcomes for clients and is in the public interest. We refer to this approach as "outcomes-focused regulation" (OFR). The SRA Handbook contains the ten key Principles, the mandatory Outcomes of our Code of Conduct, and other requirements which underpin OFR. The Handbook provides the basis for the regulatory functions which we carry out in the public interest. These cover the full spectrum of regulation, including:
 1. education, training and qualification (we set the standards for qualification, monitor organisations that provide legal training, and set requirements for continuing professional development (CPD));
 2. authorisation (we consider suitability to join our regulated community and determine applications to do so);
 3. supervision (we provide risk-based oversight of our regulated community); and
 4. enforcement (we take preventative and proactive action to mitigate unacceptable risks).



4. These regulatory safeguards apply to the provision of immigration advice and services by our regulated community, whether by firms or by individuals.

Risks

5. We identify and monitor emerging risks which affect clients and the general public interest within the immigration services sector, and take appropriate regulatory action. Our approach is similar in all other areas of practice.
6. We do, however, appreciate that the nature of certain sectors of the legal services market can mean that consumers who use those particular services may be especially vulnerable. We are aware of the higher potential risk of disadvantage associated with certain (but not all) consumers who require immigration advice and services, and in particular those seeking legal assistance with asylum matters.
7. Any increased vulnerability might be attributed to the nature of each client's personal circumstances – e.g. the individual may be in detention; may not be able to communicate adequately; may be ill and may not understand the legal process.
8. As part of our risk identification process, we are keenly aware of developments across the marketplace that might increase this potential for consumer vulnerability. In the case of immigration work, a key risk is the Government's decision to remove public funding from much of this area of work. We also note that, as a consequence, the involvement of the Legal Services Commission (LSC) as a purchaser will diminish. We would be interested in receiving evidence as to the extent (if at all) the LSC has acted as "a regulator by proxy" as the LSB has asserted. We are naturally willing to work with all stakeholders (including the LSC) to uphold standards legal services delivery. We are also aware that there is unmet need in the immigration sector, particularly following the collapse of some voluntary providers.

Requirements on providers

9. Consumers seeking immigration advice and services from SRA-regulated firms and individuals are entitled (as are all other clients) to receive appropriate outcomes, and OFR provides the regulatory mechanisms to ensure this happens.
10. Our approach allows the firms and individuals we regulate the flexibility to manage the risks which relate to each individual client. For example, SRA Principle 4 requires



solicitors (and all those who work with them) to act in the best interests of each client; and Principle 5 sets down a requirement for those we regulate to provide a proper standard of service to their clients. This includes an expectation they will exercise competence, skill and diligence to take into account the individual needs and circumstances of each client for whom they work.

11. Chapter 7 of our Code of Conduct contains requirements concerning the management of businesses. For example, there is a requirement (Outcome 7.6.) that firms train individuals working in the firm to maintain a level of competence appropriate to their work and level of responsibility; and (Outcome 7.7) that firms comply with the statutory requirements for the direction and supervision of reserved legal activities and of immigration work. Outcome 7.8 requires firms to have a system for supervising clients' matters, to include the checking of the quality of work by suitably competent and experienced people.
12. It should be noted that solicitors (and those with whom they work) must also have regard to the public interest—for example, they are bound by the requirements of Principle 1, to uphold the rule of law and the proper administration of justice, and Principle 2, to act with integrity. These requirements may be particularly pertinent to immigration advice and services where there are risks, e.g., regarding the involvement of organised crime.

Clarity for consumers

13. We recognise the complexities for consumers, regulators and practitioners presented by the existing regulatory structures for the provision of immigration advice and services. The complex patchwork involving the approved regulators, the Office of Immigration Services Commissioner (OISC), the LSC and specialist panel accreditation (currently administered by the Law Society), coupled with the impacts of different legislative and regulatory requirements for different providers, all suggest that this review by the LSB is both timely and needed.
14. We believe that all consumers of legal services should enjoy broadly equivalent protections. The current arrangements do not achieve this outcome—for example, OISC do not have equivalent powers to the SRA to enable them to close down a failed business in an orderly way putting consumers' interests at risk.



15. If it were determined that the provision of immigration advice and services should become a reserved legal activity, the SRA is well positioned, and would welcome the opportunity, to extend our regulatory reach to those immigration service providers who are currently regulated by OISC.

LSB's concerns

16. The LSB sets out various concerns regarding the extent to which existing legal services regulators currently understand the market for immigration advice and services, and their capacity for regulating immigration work.
17. We have reviewed the LSB's concerns along with the specific stated expectations for the SRA and for other regulators. In respect of our regulated community, we will be able to implement coherent, evidence-based approaches to manage risks to consumers and the public interest in the provision of immigration advice and services, in the context of our wider, risk-based regulation of providers of legal services. Indeed, we consider that we currently have such capacity. The scope of any such work will be dependent on our assessment of the totality of risks we face across all or our regulatory activities, and the prioritisation of resources against those risks.
18. We address the LSB's apparent concerns about the SRA's capacity to regulate this sector in our responses to the consultation questions. First, we summarise some of our plans to enable us to regulate competently and credibly immigration advice and services as a reserved legal activity across the whole market:
 1. Bringing strong and credible consumer protection measures across the whole market for immigration advice and services, including the requirements for professional indemnity insurance and Compensation Fund arrangements, in order to provide the security and reassurance we believe is essential for consumers who access any legal service. These protections already apply to clients of our regulated community. They should apply in equal measure to customers of other practitioners who may in the future seek authorisation from the SRA.
 2. Appraising and re-evaluating the competence of individuals who provide immigration advice and services, considering the extent to which all individuals who provide immigration advice and services (not just those who provide publicly funded services) should be required to demonstrate a particular level of competence and, if so, how this might be



best achieved. We are asking the ongoing Legal Education and Training Review (LETR) to consider the relevant issues. We will also work with other stakeholders, including expert practitioners and the Law Society, which currently operates the Immigration and Asylum Accreditation Scheme (IAAS).

3. Drawing on our extensive current experience in working collaboratively with other relevant providers and stakeholder organisations – we already have Memoranda of Understanding (MoU) in place with a broad range of stakeholders to underpin our working relationships in the public interest, and which support us in respect of our work with SRA-regulated firms and individuals. These already cover organisations such as:
 1. the Office of the Immigration Services Commissioner (OISC) (note: this is currently being revised),
 2. the Association of Chief Police Officers (ACPO),
 3. the Identity and Passport Services (via the Home Office)
 4. UKBA.
4. Thematically reviewing consumer vulnerability within immigration advice and services (and in connection with other legal services) as a means of better understanding how firms and individuals provide these services, how consumers experience them and the types of outcome clients receive, and then addressing any problem areas through our proportionate regulatory response.
5. Developing advice and guidance for consumers of immigration advice and services, we support consumers by e.g. providing advice and resources via our website (www.sra.org.uk/consumers [<https://www.sra.org.uk/consumers/>]), through our Contact Centre, and through working collaboratively with organisations in the not-for-profit and third sector.
6. Publishing advice, warnings and alerts to practitioners—we publish on our website warnings [<https://www.sra.org.uk/consumers/scam-alerts/>] to our regulated community to highlight specific concerns in order to make clear our expectations and to raise standards. We consider this to be a key tool in ensuring e.g. immigration practitioners are alerted any issues which may present a risk to clients.

Our responses to the consultation questions

Q1 Do you think we have captured all 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?

Many inter-related issues are identified in the consultation paper which demonstrate the need for closer scrutiny of the immigration advice services sector by the LSB. We agree that the paper represents a good starting point for understanding the key issues, so that the LSB can decide whether to conduct a statutory investigation.

Q2 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?

We agree that the findings may be relevant also to businesses, and recommend that the LSB's review be broadened. We believe that the full range of "consumers", whether businesses or private individuals, should be considered by the LSB in their review. The LSB should also have regard to the different powers exercisable by the Legal Ombudsman (LeO) in respect of complaints made by individuals and businesses.

Q3 Do the tables on pages 21 to 24 cover all of the risks to each consumer type? What other risks should qualifying regulators be concerned about and actively managing?

We consider the sections on pages 21-24 of the consultation paper are probably sufficiently detailed with regard to the risks for consumers.

Q4 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?

The tables on pages 21-24 are very detailed and we have no suggestions as to other information sets that would be relevant.

Q5 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?

We set out at Annex 1 ^[#annex1] information concerning our regulated community. We are continuing to develop the information sources to form the basis of our risk analysis. We look forward to continuing to work with the LSB in this key area.



Q6 What further action should LSB and qualifying regulators, jointly or individually, be undertaking on this issue?

We note the LSB's conclusion, at paragraph 30 of the consultation paper, that the existence of the LSC's requirements for providing publicly funded advice "...has led to it becoming a regulator by proxy for its particular segment of the market".

We have not seen evidence to support this conclusion. We would be interested in exploring the thinking behind the LSB's view, so that these apparent concerns can be allayed.

We believe further action should be carried out collaboratively via engagement between the LSC, the LSB, and other regulators and stakeholders as a joint initiative.

Q7 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?

Overall we believe that a voluntary scheme for redress would be an improvement, but that a statutory scheme is preferable. The disparity and confusion, triggered by different regulatory and legislative provisions affecting the sector, causes obvious difficulties for consumers. There should be one route to effective redress and which is accessible to all users of legal services, including immigration services. The Legal Ombudsman's powers should, however, be equivalent to those concerning clients of solicitors and we query how this can be achieved under voluntary arrangements.

Annex 1

SRA responses to questions on pages 21-24 of the consultation paper

Immigration - natural persons - legal aid

What do regulators know about this client group? How is regulation targeted at the risks they face?

1. Our regulatory approach is built around an expectation that all consumers of SRA-regulated legal services providers receive appropriate outcomes. We achieve this through our authorisation, supervision and enforcement activities. We do not necessarily distinguish between the method by which a particular legal service is funded (i.e. whether publicly or privately funded); our focus is on the outcomes and the extent to which they are achieved.



2. However, we understand that some clients, for many reasons, can enter the legal services process at a potentially greater risk of disadvantage or vulnerability compared with other clients. Clients using publicly funded services may be one such group. Through our work with stakeholders, such as the Legal Ombudsman, and our consumer research projects with stakeholders, including the LSB, we are building our understanding of the particular risks faced by publicly funded clients. We have started work on analysing issues concerned with consumer vulnerability. This will assist in developing our knowledge and understanding of the particular issues which face certain client groups, e.g. clients who access immigration services with the benefit of public funding.

What do regulators know about the providers in this market?

3. We collect information about our regulated community and work closely with our stakeholders to ensure we are able to understand the nature of the different segments of the legal services market, and can identify the extent to which consumers receive suitable outcomes when accessing services.
4. Information from 2010-11 tells us that out of 8,858 SRA-regulated firms, almost 1,300 carry out some form of immigration work (14.6%). Of these, 350 SRA-regulated firms receive some of their turnover from public funds.
5. Our work in supervising firms ensures that we can approach issues arising from these firms, as with any other firms we regulate, in ways that are most appropriate and which are proportionate to the risk. We use the information supplied by our regulated community and other sources of intelligence to enhance our understanding of firms operating within the publicly-funded immigration services and advice sector.

Do they understand potential impacts of their actions for BME providers?

6. The SRA has worked extensively to understand the impact of our work and our decisions as they affect BME providers. Following the conclusions of Lord Ouseley's 2008 report, we have continued to work alongside stakeholder groups within our regulated community to ensure issues faced by BME providers can be addressed, and appropriate action taken. We carry out equality impact assessments concerning our

activities. This issue continues to be a high priority for the SRA.

Do regulators make appropriate use of data and understand complaints about legal aid providers?

7. In considering matters relating to our regulated community, we do not necessarily separate complaints which relate to legally aided service providers and investigate those matters in a different way from complaints relating to providers of privately funded services. We require every provider to achieve the right outcomes for their clients and for the public interest, regardless of source of funding. However, in considering those outcomes, we will look at the extent to which the particular circumstances of a client, including any special vulnerability, may be relevant.

How will regulators ensure that LSC understanding of the market is not lost when scope changes take effect?

8. We are not particularly reliant on the LSC's work and remit currently in order to perform our regulatory functions. We question the basis for the LSB's assertion that the LSC currently "regulates by proxy". We do, however, agree that there is an ongoing requirement for greater levels of information sharing and collaborative working between legal regulators and the LSC. We look forward to continuing our engagement with all stakeholders (including the LSC) to maintain standards in this and other areas.

How certain are the regulators that they, rather than the LSC, are regulating providers?

9. We reject the assertion that the LSC is a "regulator by proxy" for providers of legally aided immigration services to clients, where those providers are also SRA-regulated entities. Our regulatory approach puts in place the range of consumer safeguards that we believe are required for consumers to be suitably protected when they access legal services, and we work to ensure those safeguards are delivered as appropriate outcomes for each client. While we acknowledge the importance and significance of the LSC's work and requirements for providers to meet different performance criteria, these are requirements for eligibility to work on behalf of legal aid funded clients and, therefore, represent just one factor in the successful delivery of services to those clients.

Do regulators understand the potential impact of changes to legal aid funding on quality?

10. Although the Government's decision to cut public funding may entail some additional risk regarding the quality of work, we do not believe that this is a necessary consequence. Through our approach to risk identification and analysis, we continue to monitor trends and take proportionate regulatory action. We are asking the Legal Education and Training Review team to consider the issue of quality in connection with immigration services as part of their general review.

Immigration - natural persons - non- legal aid

How are regulators assured of quality in immigration advice and services?

11. We work closely with all stakeholders, including the Legal Ombudsman, to ensure we can take appropriate regulatory steps where there is unacceptable provision of legal services, including immigration advice and services.

Do regulators know who is providing immigration advice and services and where they are located?

12. Our information is that during 2010-11, of the 1,297 SRA-regulated firms which provided immigration services, the regional breakdown is as follows:

Region	Total
EAST	107
EAST MIDLANDS	32
LONDON	714
NORTH EAST	10
NORTH WEST	108
SOUTH EAST	113
SOUTH WEST	16
WALES	20
WEST MIDLANDS	102
YORKSHIRE AND THE HUMBER	75

Grand Total	1297
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Note that the above figures include firms which provide publicly funded services.

Do regulators know or need to know what the success rates for the work are and/or how to measure them so they can focus appropriately?

13. We focus on the conduct and behaviour of those involved in SRA-regulated firms. We will pursue, proportionately, issues relating to misconduct regardless of the "success" of a particular case. The ultimate "success", or otherwise, for the client in an immigration matter would be just one factor which we would consider as part of any investigation.

Do regulators understand this segment of the market and the changes that are likely to happen?

14. As mentioned above, we understand that many changes are taking place in this section of the legal services market. Our approach to risk identification, analysis and mitigation ensures that we monitor emerging trends and respond appropriately.

Is there sufficient information to identify and risk assess individuals who move between regulators?

15. We work closely with other legal services regulators and other agencies (with which we have Memoranda of Understanding), particularly when we consider applications for authorisation to join our regulated community, and in our supervisory activities. We, therefore, have no particular concerns regarding this issue.

Do regulators understand potential impacts of their actions for BME providers?

16. As stated above, we continue to work with all our stakeholders and members of our regulated community to ensure issues faced by BME providers are identified and explored, so that we can take appropriate regulatory action. We reiterate that this work remains a high priority for the SRA.

Do regulators make appropriate use of data and understand complaints about these providers?

17. The SRA does indeed do this. We continue to build on our information sources and engage closely with the Legal Ombudsman, consumer groups and other stakeholders. In this way we can deploy appropriate regulatory responses.

What mechanisms do regulators use to ensure they are managing the risks of organised crime?

18. The SRA's approach to investigation and enforcement draws on a wide range of intelligence sources to ensure that we are alert to emerging risks of organised crime, and that we can take appropriate action in respect of these risks. We work closely in collaboration with enforcement agencies, including the Serious Organised Crime Agency and the police, to ensure we are robust and coordinate our efforts to tackle the risks associated with organised crime.
19. When we consider applications for authorisation, we use a range of methods to ensure individuals are suitable to provide reserved legal activities and to be associated with the entities that provide them. These methods include making use of international identity proof and referencing systems, and Criminal Record Bureau checks.

What are the impacts of potential changes to arrangements for direct access to barristers for these consumers?

20. We have no comment on this question.

Asylum - natural persons - legal aid

What do regulators know about this client group? How is regulation targeted at the risks they face?

21. As we explained earlier in this response, our approach to regulation focuses on outcomes for clients and the general public interest, and the extent to which these are achieved. Some clients, because of their own particular circumstances, may be at a potentially greater risk of disadvantage or vulnerability compared with other clients. We are continuing our work on understanding consumer vulnerability. In this way we will continue to build our knowledge and understanding of clients who access asylum services via legal aid, and the ways in which their potential for vulnerability can be mitigated.

How assured are the regulators that they are not over reliant on the LSC monitoring providers in this segment?

22. We refer to our comments made earlier in this response.

What are the information sharing arrangements in place for advisers switching regulators?

23. We refer to our comments made earlier in this response.

Asylum - natural persons - non- legal aid

Do regulators understand this segment of the market?

24. Whilst we currently hold no specific data concerning this segment of the market, please refer to our comments made earlier in this response to our sources of information, stakeholder engagement and our regulatory approach. Through these means we are confident that we can enhance our understanding of different areas of the legal services market, including this specific area.

What is the size of the market?

25. We do not currently hold data specifically relating to this segment of the market.

Are lawyers charging for this advice? If so, do regulators understand why?

26. Whilst we have no current data on this specific issue, we would be interested to explore with stakeholders the issues.