

policy response

Oversight of the Immigration Advice Sector

The Advice Services Alliance's response to the
UK Border Agency's consultation paper

- 1.1 ASA welcomes the opportunity to respond to this consultation.
- 1.2 The Advice Services Alliance (ASA) was established in 1980, and is the umbrella organisation for independent advice services in the U.K. Our aims are to:
 - Champion the development of high quality information, advice and legal services;
 - Ensure that people are not denied access to such services on account of lack of means, discrimination or other disadvantage;
 - Encourage co-operation between organisations providing such services;
 - Provide a forum for the discussion of issues of common interest or concern to advice organisations.
- 1.3 Full membership of ASA is open to national networks of independent advice services in the U.K. Current full members are:
 - Advice UK
 - Age Concern and Help the Aged
 - Citizens Advice
 - DIAL UK (the disability information and advice service)
 - Law Centres Federation
 - Shelter
 - Shelter Cymru
 - Youth Access
- 1.4 Our members represent over 2,000 organisations providing a range of services to diverse groups and working mainly on a local level throughout the U.K.
- 1.5 Our members include many agencies that have been exempted by the OISC. We also count amongst our members a number of agencies with Legal Services Commission contracts in immigration.

Question 1

Do you agree that it is beneficial for the immigration advice and services sector to remain regulated?

We agree with the statement that immigration clients are often vulnerable and are therefore easy targets for the unscrupulous. We also agree that it is important to have strong sanctions in place to deal with those seeking to exploit vulnerable people or cheat the immigration system.

However, we believe that the risk of this kind of unscrupulous behaviour occurring in the NfP sector is very low because of the values that generally drive people who work in that sector and also because no charge is made for services. The OISC has acknowledged this throughout and made provision for it by requiring a different level of compliance from the NfP sector.

However, despite the slightly lesser requirements for NfPs, it is our view that the burden of OISC compliance has been heavy on NfP providers, particularly because it has extended well beyond regulation into quality assurance and competence assessment.

Furthermore, it is important to note that the NfP sector is subject to a number of other quality and auditing regimes including the General Help Quality Mark, the Specialist Quality Mark and the Immigration and Asylum Accreditation Scheme. None of these schemes apply to the For Profit sector.

For these reasons, if the UKBA chooses to go ahead with the proposal to charge for OISC regulation, we would support ongoing regulation of the For Profit sector and basic regulation of the NfP sector but could not support paid for quality auditing and competence assessment.

Question 2

Do you think that the existing regulatory structure should be retained without any changes?

No. There has always been an anomaly in relation to the regulation of solicitors working in NfP agencies. Solicitors carrying out immigration work in private practice are not required to comply with OISC regulation because they are regulated by the Solicitors' Regulatory Authority. However, solicitors working in NfP agencies, despite being required to comply with the solicitors' practice rules and code of conduct and pay for their practising certificates, are also required to comply with OISC regulation. We have complained about this double regulation in the past as we consider it to be unfair and a waste of time for solicitors who are working in organisations with extremely limited resources.

The new Legal Services Board (LSB) is currently consulting on its development of a regulatory regime for Alternative Business Structures. We propose that the double regulation that we outline above should be reviewed once the LSB and the new licensing authorities have clarified their requirements in relation to NfP solicitor agencies.

Question 3

Do you agree that individuals who have been convicted of illegally providing immigration advice and services should be prevented from owning or participating in a regulated advice organisation? If so, how long should the ban last?

Yes. We think the ban should be for life.

Question 4

Do you think combining regulated and exempted advisers into a single register would be helpful?

We think that this is a good idea, however, given that many potential clients will not want or be able to pay for advice, it should be clear which providers are For Profit and which are Not for Profit. It should also be possible to search the list for NfP providers only.

Question 5

Do you think the introduction of Improvement and Prohibition Notices would be helpful.

This seems like a sensible idea however we feel unable to comment further without seeing more detail about what areas such notices would cover, the status of such notices, any appeal rights and sanctions for non-compliance.

Question 6

Do you feel the existing audit arrangements of the OISC are effective? Would additional powers be helpful? If so, please explain.

We do not have any direct experience of the audit arrangements. We will therefore leave this question for those organisations that do.

Question 7

Do you agree that the cost of regulation should be paid for by the sector? Do you have any preferences on how fees are levied (eg per organisation/per adviser etc.)?

As you acknowledge in later questions, there is not one sector to consider but two quite distinct ones. We have serious concerns about the impact of passing any costs on to the NfP sector which we set out in our answer to question 8.

We agree that the OISC has probably raised standards of immigration advice provision, however, we have never seen an evaluation of the extent of this and think that the OISC should present clear evidence of the benefits of each aspect of its regulatory regime before passing on any of the charges. This would enable a proper cost-benefit analysis and allow immigration providers to make a judgement about which elements of the regulatory regime they would be prepared to pay for.

Question 8

Do you think that full cost recovery should be sought from the not-for-profit sector? If not, please explain why you think a public subsidy would be appropriate.

We would like to draw a distinction between what we regard as basic regulatory functions such as complaints, investigations and prosecutions and quality assessment which covers things such as organisational quality standards and competence assessment. Currently, the OISC do both. With regard to the basic regulatory functions, we are opposed to charging for the reasons set out below:

1. As the OISC acknowledges, its main purpose when it was set up was to prevent unscrupulous immigration advisers taking advantage of those seeking

immigration advice by charging them for poor quality or non-existent services. The risk of this occurring in the NfP sector is very low. We therefore think it is wrong in principle to charge the NfP sector to prevent a wrong of which it is almost never guilty.

2. We have no idea where NfP agencies would raise the money to pay for regulation. Whilst For Profit providers have the option of raising their charges to cover the cost of regulation, NfP providers have no such option. Unless the UKBA can persuade the other funders of NfP organisations to pay for regulation, we think the majority will not be able to afford it. In the unlikely event that other funders agree to cover the cost of regulation, that cost would still be being met out of the public purse. We see no benefit in shifting that financial burden from one public body to another simply to enable the UKBA to meet a Treasury target.
3. We would also like to point out that the NfP sector is facing the introduction of other charges for regulation and quality auditing. The Legal Services Commission recently contracted out the auditing of the General Help Quality Mark and introduced charging for the audit. They are proposing to do the same for the Specialist Quality Mark. They are also proposing to put an end to their existing policy of reimbursing the cost of the Immigration and Asylum Accreditation Scheme. We are very concerned about the impact that this will have on the NfP advice sector. That the UKBA is proposing to introduce charging for regulation at the same time suggests there has been no joined-up thinking between government departments. We hope that the UKBA is aware of the LSC's plans and will take them into account when deciding future policy. In particular, we hope that where an agency demonstrates that it meets OISC requirements through compliance with another scheme, it will not be expected to demonstrate it again.

Question 9

Do you think a sliding scale for recovering costs from the not for profit sector would be helpful? What factors should it take into account?

We agree that risk is something that should be taken into account when determining what charges should be made. As we have stated, we think the NfP sector presents virtually no risk and therefore should not be charged for the basic regulatory functions of complaints, investigations or prosecutions. However, we accept that where a complaint is upheld or a prosecution achieved against a particular NfP organisation, the OISC should have the power to recoup its costs.

We acknowledge that the OISC scheme goes much further than these basic regulatory functions as it also operates a competence assessment scheme. We think that testing individuals' competence in the law is an effective way to ensure quality in the sector. However, without an injection of funding to cover the cost of assessment, there is no way the sector can afford to pay for it. If charging is introduced we believe there will be a significant drop in the number of new entrants to the area. This will result in fewer people receiving the advice they need.

Question 10

Do you think immigration advice services should be a reserved activity under the Legal Services Act? Please give your reasons.

Yes. In principle, we see no reason for keeping regulation of immigration services separate from the regulation of other legal services.

Furthermore, as we said in our answer to question 2, once provision is made for the licensing of special bodies under s.106 of the Legal Services Act 2007, the OISC should review whether it continues to be necessary for it to regulate solicitor NfP agencies that do immigration work.

However, how the costs of the LSB are to be met is very unclear and we are very concerned about the imposition of any further costs on our sector.

Question 11

Do you agree with our intended approach? Please give reasons.

No, for the reasons set out above, we are strongly opposed.

Question 12

Are there any other changes in regulation would you would like to see?

No.