



Citizens Advice response to
UK Border Agency consultation on
Oversight of the
Immigration Advice Sector

July 2009

Introduction

This paper sets out the response of Citizens Advice to the consultation on Oversight of the Immigration Advice Sector, issued by the UK Border Agency on 14 May 2009.

Citizens Advice is the national body for the 420 Citizens Advice Bureaux in England and Wales.¹ In the financial year 2008-09, these 420 bureaux dealt with just over six million separate advice problems, including a total of 80,726 separate advice problems relating to immigration, asylum or nationality brought by 56,700 individual clients.

In terms of the regulatory regime for immigration advice established by Part V of the Immigration & Asylum Act 1999 and administered by the Office of the Immigration Services Commissioner (OISC), all 420 Citizens Advice Bureaux in England and Wales are covered by a 'block exemption', under section 84(4)(d) of the 1999 Act, to operate at OISC Level 1. The basis for this 'block exemption' is that all Citizens Advice Bureaux are subject to the quality assurance scheme administered and audited by Citizens Advice, which is convergent with the Legal Services Commission's General Help Level Quality Mark scheme. In addition, ten CAB specialist advisers holding a Legal Services Commission contract in immigration are exempted to operate at OISC Level 3; their advice work is subject both to the quality assurance scheme administered and audited by Citizens Advice, and to the Specialist Quality Mark scheme administered and audited by the Legal Services Commission.

Summary of the consultation proposals

Part V of the Immigration & Asylum Act 1999 created the Office of the Immigration Services Commissioner (OISC) to regulate the immigration advice sector in the UK. It is an offence to offer immigration advice or services without being either registered or exempted by the OISC. The only exceptions to this are those who are regulated by a Designated Professional Body, such as the Law Society or Bar Council, and those (such as Citizens Advice Bureaux) who have been exempted by a Ministerial Order under section 84(4)(d) of the 1999 Act. As of March 2008, there were 1,677 registered advisers (in 703 private sector/for-profit organisations) paying a registration fee, and 2,395 advisers (in 977 voluntary sector/not-for-profit organisations, including 596 Citizens Advice Bureaux) exempted from paying a fee. And, as of March 2008, the OISC's income from fees was £600,000, and its Grant in Aid from the UK Border Agency was £4.5 million.

The UK Border Agency's consultation sets out three options for reform of this regulatory regime:

- Leave the existing regulatory regime broadly as it is (i.e. no change)
- Increase the powers of the OISC; remove the distinction between 'regulated' (i.e. fee-paying) and 'exempted' advisers; and seek full cost recovery by imposing a fee on *all* advisers/organisations. This would involve raising an additional £1 million in fees from the 703 registered organisations, and some £2.3 million from the 977 exempted, voluntary sector/not-for-profit organisations.
- Bring regulation of immigration advice under the new regulatory framework established by the Legal Services Act 2007 and overseen by the new Legal Services Board

The consultation document states that the Government's preferred option is Option 2.

¹ As of 1 April 2009. Citizens Advice Bureaux in Scotland and Northern Ireland belong to separate organisations, Citizens Advice Scotland and the Northern Ireland Association of Citizens Advice Bureaux respectively.

General remarks and summary of our response to the consultation

Citizens Advice is greatly alarmed by, and strongly opposes, the proposal (under Option 2) that the currently 'exempted' voluntary sector organisations – such as Citizens Advice Bureaux – become liable to pay a (full cost recovery) annual registration fee of £2,350. We are surprised and disappointed that the UK Border Agency did not discuss this specific proposal with voluntary sector organisations such as Citizens Advice prior to formulating the consultation options. If it had, we would have advised that the imposition of such a fee would simply cause most if not all Citizens Advice Bureaux (and no doubt some other *generalist* advice providers) to cease to offer immigration advice, so reducing the overall supply of legitimate, quality-controlled immigration advice.

This would in turn increase the risk of those seeking immigration advice – who, as the consultation paper notes, are 'often vulnerable and therefore an easy target for an unscrupulous person' – having to turn to unregulated, illegal advisers. But it would also undermine the proposed funding base of the OISC, creating a vicious circle in which falling numbers of registrations would lead to ever higher registration fees for those voluntary sector organisations that remained. For example, if just three out of four of the 596 Citizens Advice Bureaux in the UK ceased to offer immigration advice, the (full cost recovery) annual fee for the remaining 530 voluntary sector organisations (many of which are small, community-based organisations with very limited funding) would have to rise to £4,340.

In the impact assessment accompanying the consultation, the UK Border Agency itself defines 'the problem' that the OISC-led regulatory regime seeks to remedy in the following terms: "There are some unscrupulous immigration advisers *who charge for advice* which is of poor quality or simply not given, and submit numerous speculative or unfounded applications to the UK Border Agency *for personal profit*. Not only does this frustrate enforcement activity, but it encourages applicants to pursue and submit cases to appeal when there is little of hope of success. This is wasteful of public resources and undermines the public confidence in the immigration system." [emphasis added]

There is no suggestion, in the consultation document or elsewhere, that voluntary sector providers of advice are guilty of such malpractice. Since it began operations in May 2001, the OISC has received over 3,500 complaints about advisers. Yet only one of these complaints was about a Citizens Advice Bureau in England or Wales, and even in that case the complaint proved to be spurious and without foundation. All Citizens Advice Bureaux in England and Wales are subject to the quality assurance scheme administered by Citizens Advice, which is convergent with the Legal Services Commission's General Help Level Quality Mark. Accordingly, we cannot see any rational reason why these 420 Citizens Advice Bureaux should between them contribute almost £1 million (and the voluntary sector as a whole some £2.3 million) towards the £4.6 million operating costs of the OISC.

The sole rationale for the proposed imposition of fees on the voluntary sector put forward in the consultation document is that the operating costs of the OISC should no longer fall on 'the public purse'. In other words, the UK Border Agency no longer wishes to fund the OISC. But this overlooks the fact that many (and perhaps most) of the currently exempted voluntary sector providers of immigration advice – including Citizens Advice Bureaux and organisations such as the Immigration Advisory Service and Refugee & Migrant Justice – are themselves publicly funded, primarily by local authorities and the Legal Services Commission. So, were such organisations to be required to pay a registration fee to the OISC, and were they to pay the fee (so as to continue to provide immigration advice, the prime purpose of many such organisations), then the burden would continue to fall largely on the public purse in any case.

In short, in the words of one CAB adviser: "To send the bill for policing the corrupt practices of the for-profit sector to the voluntary sector would be unwise, unjust, and counterproductive".

Our response to the consultation questions

Q1. Do you agree that it is beneficial for the immigration advice and services sector to remain regulated. If yes, do you think current regulation works and, if not, why not?

It is important to bear in mind that, even if the OISC-led regulatory regime were to be abolished tomorrow, most of the immigration advice and services sector would continue to be regulated. For example, the 420 Citizens Advice Bureaux in England and Wales are regulated by Citizens Advice, under a quality assurance regime that is convergent with the Legal Services Commission's General Help Level Quality Mark, while all solicitors and barristers are regulated by the Law Society and the Bar Council respectively. And, from 2010, all such regulation will also come within the scope of the Government's new oversight regulator for the advice sector, the Legal Services Board (see also our response to Q10, below).

Were the OISC-led regulatory regime to be abolished, it is primarily the private sector/for-profit immigration advice-giving organisations that would cease to be regulated. We agree that it is beneficial for this part of the immigration advice and services sector to be regulated, for the reasons that the UK Border Agency sets out in the consultation document and impact assessment.

Q2. Do you think that the existing regulatory structure should be retained without any changes?

No, in our view the regulation of immigration advice and services should be made a reserved legal activity under the Legal Services Act 2007, so that it comes within the scope of the Government's new oversight regulator for the advice sector, the Legal Services Board (i.e. the consultation document's Option 3). See also our response to Q10, below.

Q3. 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 immigration advice organisation? If so, how long should that ban last?

Yes, this appears to us to be a sensible proposal. For any such ban to be meaningful, it would in our view need to be for at least 10 years.

Q4. Do you think combining regulated and exempted advisers into a single register would be helpful?

Simplification is always helpful, and we have no objection to the simple combination of the two existing registers into one for the purpose of enabling those seeking advice to more readily identify all the providers (both private sector/for-profit and voluntary sector/not-for-profit) in their local area.

However, such a combined register would still need to distinguish between private sector/for-profit and voluntary sector/not-for-profit advisers. Accordingly, we are not entirely sure what benefit would be achieved by the creation of a single register. And we note that the consultation document does not set out any actual evidence of confusion on the part of those seeking immigration advice.

Q5. Do you think the introduction of Improvement and Prohibition Notices would be helpful?

On the face of it, this appears to us to be a sensible proposal. However, the consultation document sets out so little information about the nature and use of such Notices that we cannot express a firm view one way or the other.

Q6. Do you feel the existing audit arrangements of the OISC are effective? Would additional powers be helpful? If so, please explain.

As Citizens Advice Bureaux in England and Wales are not audited by the OISC, we do not have the experience that would enable us to answer this question in a meaningful way.

Q7. 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 (e.g. per organisation/per adviser etc.)?

No, we do not agree that the cost of regulation should be paid for by the sector *as a whole*. In the impact assessment accompanying the consultation document, the UK Border Agency defines ‘the problem’ that the OISC-led regulatory regime seeks to remedy in the following terms :

“There are some unscrupulous immigration advisers *who charge for advice* which is of poor quality or simply not given, and submit numerous speculative or unfounded applications to the UK Border Agency *for personal profit*. Not only does this frustrate enforcement activity, but it encourages applicants to pursue and submit cases to appeal when there is little of hope of success. This is wasteful of public resources and undermines the public confidence in the immigration system.” [emphasis added]

There is no suggestion, in the consultation document or elsewhere, that Citizens Advice Bureaux and other voluntary sector/not-for-profit providers of advice are guilty of such malpractice to any significant degree. Since it began operations in May 2001, the OISC has received over 3,500 complaints about advisers (paragraph 1.9 of the consultation document). Yet only one of these complaints was about a Citizens Advice Bureau in England or Wales, and even in that case the complaint proved to be spurious and without foundation. All Citizens Advice Bureaux in England and Wales are subject to the quality assurance scheme administered by Citizens Advice, which is convergent with the Legal Services Commission’s General Help Level Quality Mark, whilst those holding a Legal Services Commission contract in immigration are also subject to the Specialist Quality Mark scheme administered by the Legal Services Commission. Accordingly, we cannot see why these 420 Citizens Advice Bureaux should between them contribute almost £1 million (and the voluntary sector as a whole some £2.3 million) towards the £4.6 million operating costs of the OISC.

Q8. 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.

No, for the reasons set out in our response to Q7, above, we do not think that full cost recovery should be sought from the voluntary/not-for-profit sector. Indeed, we do not think that *any* cost recovery – full or otherwise – should be sought from the voluntary/not-for-profit sector.

As the consultation document makes clear, the principal beneficiary of the OISC regulatory regime – apart from those seeking immigration advice – is the UK Border Agency, which has to deal with fewer

unfounded applications and which, more generally, is assisted 'in delivering its strategic objective of tackling border tax fraud, smuggling and immigration crime'. In addition, the Government benefits from increased public confidence in the immigration system. Accordingly, public subsidy of the OISC-led regulatory regime is in our view entirely appropriate.

In any case, the UK Border Agency appears not to appreciate that many – perhaps most – of the currently exempted voluntary sector providers of immigration advice – including Citizens Advice Bureaux and organisations such as the Immigration Advisory Service and Refugee & Migrant Justice – are themselves publicly funded, primarily by local authorities and the Legal Services Commission. So, were such organisations to be required to pay a registration fee to the OISC, and were they to pay the fee (so as to continue to provide immigration advice, the prime purpose of many such organisations), the burden would continue to fall largely on the public purse. The budget responsibility would simply be shifted from the UK Border Agency's balance sheet to those of local authorities and the Legal Services Commission.

Q9. 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?

No, for the reasons set out in our response to Q7 and Q8, above, we do not think that any of the OISC's operating costs should be recovered from the voluntary/not-for-profit sector.

Q10. Do you think making [sic] immigration advice and services should be a reserved activity under the Legal Services Act? Please give your reasons.

Yes, in our view the regulation of immigration advice should be included within the wider regulatory framework established by the Legal Services Act 2007 (the consultation document's Option 3). The Act establishes an oversight regulator, the Legal Services Board, and an independent legal complaint handling body, the Office for the Legal Complaints, which will administer an ombudsman scheme.

The 2007 Act has already transferred the OISC's oversight functions in respect of the Law Society, the Bar Council and the Institute of Legal Executives to the new Legal Services Board. We see no reason why the OISC should not become an 'approved regulator', with its activities overseen by the Legal Services Board. Certainly, the UK Border Agency's consultation document does not set out any case for keeping the regulation of immigration advice separate from the system for the regulation of all other legal advice.

Q11. Do you agree with our intended approach? Please give reasons.

No, for the reasons set out above, we strongly oppose the Government's intended approach.

Q12. Are there any other changes in regulation would you [sic] like to see?

The OISC needs to improve its performance in responding to requests for general guidance on and clarification of how advisers in the voluntary sector/not-for-profit sector operating at OISC level 1 can comply with the Commissioner's Code of Standards. Since 2001, we have often failed to get a prompt and satisfactory response from the OISC to our requests for such guidance and clarification.