REPORT ON THE CONSULTATION TO AMEND THE OISC'S CODE OF STANDARDS AND COMPLAINTS SCHEME

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Executive Summary

1. This report provides the Immigration Services Commissioner's response to the consultation paper on making certain amendments to her Code of Standards and Complaints Scheme. The consultation paper was primarily concerned with proposals aimed at clarification of the Code of Standards and Complaints Scheme to make them more effective. The consultation was opened on **18th June** 2012 and closed on **7th September** 2012**.**

2. The responses we received broadly agreed with the proposals made. The Commissioner however believed that, in light of some of the comments received, the Office of the Immigration Services Commissioner (OISC) should not proceed with a number of the proposals at this time. She remains aware of the fact that there are some key issues in the regulation of immigration advice and services that may potentially cause consumer harm. She is also aware of new business trends and ways of working, such as greater use of the internet, that necessitate greater flexibility in the regulatory structure. The more fundamental review of the Code and Rules due to take place in 2013/14 will provide an opportunity to address such issues more thoroughly.

3. The Commissioner is pleased with the quality of responses that she received and has considered these in coming to her conclusions. She is persuaded by arguments over the wording of "adviser" and "organisation" and has determined not to progress with this proposal at this stage. Similarly, she has listened to the arguments against removing the concept of "recklessness" from the Code of Standards, and is persuaded. Given the weight of argument against allowing referral fees and her consideration of the needs of the ultimate consumers of immigration advice or services, the Commissioner will maintain her ban on regulated advisers requesting or offering referral fees for the time being.

4. The Commissioner has, however, decided that she will relax the rule on supervisors being co-located with those that they are supervising. She acknowledges the arguments that were raised about standards needing to be maintained, but is not persuaded that co-location of itself guarantees standards. She believes that this proposal supports new business methods and adds flexibility to advisers' ways of working. The Commissioner also believes that the greater clarity offered in the re-wording of Code 13, that advisers must act in accordance with all UK laws, and Paragraph 30 of the Complaints Scheme on the application of the civil standard of proof in regulatory matters should be pursued.

Introduction

5. The Office of the Immigration Services Commissioner (OISC) was created by the Immigration and Asylum Act 1999 to:

    - Promote good practice
    - Establish a regulatory scheme
    - Establish a complaints scheme
    - Establish as far as practicable that those that provide immigration advice or services are fit and competent to do so

6. Under the 1999 Act, as amended by the Legal Services Act 2007, immigration advice and services in the UK may only be provided by those authorised by a qualifying regulator, those regulated directly by OISC or those exempted by Ministerial Order. Any other immigration work carried out in the course of a business is an offence under the 1999 Act. The Legal Services Board now has responsibility for oversight of the qualified regulators[1] (previously described as designated professional bodies) in England and Wales. The OISC directly regulates those who provide immigration advice and services but are not authorised by a qualifying regulator or the designated professional bodies in Scotland and Northern Ireland[2].

7. The Commissioner undertook this consultation in accordance with the requirements of paragraph 3(5) and (6) of Schedule 5 of the Immigration and Asylum Act 1999 with regards to the *Code* and paragraph 5(2) of Schedule 5 with regards to the Complaints Scheme as set out below:

> The Code of Standards –
>
> *(5) If the Commissioner alters the Code, he must re-issue it.*
>
> *(6) Before issuing the Code or altering it, the Commissioner must consult—*
> *(a) each of the designated professional bodies;*
> *(b) the designated judges;*
> *(c) the Lord President of the Court of Session;*
> *(d) the Lord Chief Justice of Northern Ireland; and*
> *(e) such other persons appearing to him to represent the views of persons engaged in the provision of immigration advice or immigration services as he considers appropriate.*
>
> The Complaints Scheme -
>
> *(2) Before establishing the scheme or altering it, the Commissioner must consult—*
> *(a) each of the designated professional bodies; and*
> *(b) such other persons appearing to him to represent the views of persons engaged in the provision of immigration advice or immigration services as he considers appr*

8. The Commissioner has undertaken the required consultation process and here reports on the outcomes.

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[1] The Bar Standards Board, The Solicitors Regulation Authority, The Chartered Institute of Legal Executives

[2] The Law Society of Scotland, The Law Society of Northern Ireland ,The Faculty of Advocates, The General Council of the Bar of Northern Ireland

General Issues

9. The consultation was intended as a general "cleaning up" exercise prior to a fundamental review in 2013/14. In her consultation document the Commissioner covered six broad areas:

    i. The focus of regulation to become the organisation rather than the adviser
    ii. Deletion of the term "reckless"
    iii. Emphasising that advisers must observe all of the UK's laws
    iv. Supervisors need no longer be co-located with those they supervise
    v. To amend or remove the prohibition on referral fees
    vi. If criminal activity is alleged it is in the Commissioner's discretion whether to invite the adviser in to make oral representations

10. The Commissioner is grateful for the responses to the consultation. A list of the respondents is at **Annex A**.

11. There were eighteen substantive responses:

    - two from Qualified Regulators
    - five from OISC Exempt organisations
    - six from OISC Registered organisations
    - two from Law Officers
    - two from Public Sector bodies
    - one from a representative body

12. Relevant extracts from the substantive responses to the consultation are at **Annex B**.

Summary of responses to consultation and OISC response

Question 1:

Code 3 currently reads –

> *3. Within this Code 'adviser' means both an organisation or an individual providing immigration advice or immigration services in the course of business, whether or not for profit, within the UK, and includes a sole practitioner.*

This Commissioner proposes to amend this to read as follows:

> *3. Within this Code the word "organisation" means both a firm and an individual providing immigration advice or immigration services in the course of business, whether or not for profit, within the UK. This includes a sole practitioner.*

This Code's current wording is taken from section 82 of The Immigration and Asylum Act 1999 (the Act). In practice, the Commissioner has always regulated organisations and not individuals, acknowledging advice giving organisations as corporate identities separate from the individuals that run them. The proposed amendment makes the language in this Code more in keeping with this.

It remains important, however, for advisers to appreciate that, whether operating within a large company or alone, the Code refers to them and applies in its entirety[3].

The proposed amendment will also affect Codes 4-7; 9-17; 19-24; 29-38; 40-44; 48-50; 52; 54-55; 58-62; 65-68; 71-74; 78-84; 88; 90-95. Should the amendment be made, then the word "adviser" will be replaced by the word "organisation" in all of the above Codes. This amendment also is relevant to Questions 2 and 3 in this consultation.

Responses

There was general agreement with the amendment. All nine regulated advisers that answered this question agreed with the proposal. One responded in this way, "*The Commissioner regulates the organisations not the individuals and it is more understandable that when the organisation comes first and the individual adviser comes within the meaning of an organisation*." (AKK Immigration Services). While Dearson Winyard International (DWI) stated, "*Makes perfect sense to us as the Advisor should be under the control of the organisation*." The Solicitors Regulation Authority (SRA) stated, *"we agree with the use throughout the Code of 'organisation'."* Others, notably the Lord President of the Court of Sessions and the Immigration Law Practitioners Association (ILPA), were not in agreement. The Lord President stated, "*I would have thought that the current wording already strikes an appropriate balance between the terms of section 82 and what happens in practice. It seems to me that there is a risk that the proposed amended wording will be more confusing than the present wording.*"

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[3] see Schedule 5, paragraph 3(3) of the Act

Conclusion

Having considered the responses the Commissioner believes that this proposal should not be progressed at this stage. Further clarification is needed on the wording in order to avoid any confusion arising.

Question 2:

The terms "reckless" and "recklessly" are used in the criminal law to indicate when a person is aware of the potentially adverse consequences of their actions, but nevertheless proceeds. As Codes 13 (d) and 20 already include advisers acting "knowingly" or "negligently", the Commissioner feels the inclusion of the words "reckless" and "recklessly" to be unnecessary and proposes to delete these from those Codes. Their proposed replacement Codes are given below.

Current Codes 13 (d) and 20

> *13. An adviser must act in accordance with the laws of the UK.*
> *An adviser must at all times:*
> *(d) not knowingly, recklessly or negligently mislead those mentioned at (a) to (c) above, nor knowingly, recklessly or negligently permit themselves to be used in any deception;*
>
> *20. An adviser must not act in a reckless or negligent manner.*

The Commissioner proposes to amend these Codes to read as follows:

> *13. An adviser must act in accordance with the laws of the UK.*
> *An adviser must at all times:*
> *(d) not knowingly or negligently mislead those mentioned at (a) to (c) above, nor knowingly, recklessly or negligently permit themselves to be used in any deception;*
>
> *20. An adviser must not act in a negligent manner.*

Responses

There was again, general agreement with the proposal. This was especially so among the regulated sector, where the eight that gave a full response, agreed in whole or in part. ASSA (Wakefield) District Ltd stated, "*YES -.The proposed wording is better for regulating organisations. The new wording closes the possibility of misunderstanding and gives much clearer idea. It is much more accurate than the current one. I am sure the organisations are also benefit from this clarity."* Bail for Immigration Detainees (BID) responded, "*YES - with regard to code 13, but NO with regards to code 20. Removing the word 'recklessly' from code 20 removes the element of intentionality. Current code 20 should therefore be retained*." The contrary argument was mounted by ILPA, "*NO - We disagree with the change. It appears to take as its starting point that all instances of recklessness are subsumed under either acting knowingly or negligently. No so. This is a matter of settled law. There is a difference between my knowingly misleading you and my being reckless as to whether I mislead you or not. As to negligence, negligence in English law is inadvertent whereas recklessness is advertent. Reckless conduct should be covered and thus the word reckless should remain.*"

Conclusion

The Commissioner has decided to retain the term of recklessness and to re-examine whether the term should be retained in the fundamental review of the Code of Standards in 2013/14.

Question 3:

The current wording of Code 13 has led to an element of confusion as it has been argued that the requirement to "act in accordance with the laws of the UK" means that Code 13 only applies to immigration and asylum law. The Commissioner's duty under the Act clearly extends to the observance of all UK laws and not just those relating to immigration and asylum, and it is important that this is clear in the Code.

Code 13 currently reads:

> *13. An adviser must act in accordance with the laws of the UK.*
> *An adviser must at all times:*
> *(a) show due respect, politeness and courtesy to their client, the Asylum and Immigration Tribunal and the Commissioner;*
> *(b) act objectively and fairly with respect to the client;*
> *(c) be prepared to provide – e.g. to a member of staff of the Asylum and Immigration Tribunal, immigration judge or government immigration and nationality staff, including those at posts abroad – identification and confirmation of their authorisation by the OISC to provide immigration advice or immigration services under the Act at the authorised level;*
> *(d) not knowingly, recklessly or negligently mislead those mentioned at (a) to (c) above, nor knowingly, recklessly or negligently permit themselves to be used in any deception;*
> *(e) not seek to abuse any procedure operating in the UK in connection with immigration or asylum, including any appellate or other judicial procedure; and*
> *(f) not advise any person to do something which would amount to such abuse.*

The Commissioner proposes to amend the Code to read as follows:

> *13(a) An adviser must act in accordance with the laws of the UK.*
>
> *(b) An adviser must at all times:*
> - *i. show due respect, politeness and courtesy to their client, the Tribunal Service (Immigration and Asylum Chamber)and the Commissioner;*
> - *ii. act objectively and fairly with respect to the client;*
> - *iii. be prepared to provide – e.g. to a member of staff of the Tribunal Service*
> - *iv. (Immigration and Asylum Chamber), immigration judge or government immigration and nationality staff, including those at posts abroad – identification and confirmation of their authorisation by the OISC to provide immigration advice or immigration services under the Act at the authorised level;*
> - *v. not mislead those mentioned at (i) to (iii) above, nor permit themselves to be used in any deception;*
> - *vi. not seek to abuse any procedure operating in the UK in connection with immigration or asylum, including any appellate or other judicial procedure; and*
> - *vii. not advise any person to do something which would amount to such abuse.*

The Commissioner has also taken the opportunity of this consultation to make reference in this Code to the Tribunal Service (Immigration and Asylum Chamber).

Responses

There was agreement with the proposal and no disagreement, though some were "*at a loss to understand the problem or the solution*" (ILPA), but from whom there was, "*no objection to the split and (a) and (b) numbering per se*." ASSA responded "*YES - It reflects the duties of advisor much better*." While another regulated adviser, AKK, stated, "*YES - It reads clearer as the Code should be*".

Conclusion

The Commissioner will adopt the proposal and amend her Code of Standards accordingly.

Question 4:

With the development of different business models, including people working in remote locations, the Commissioner believes that the current Code 27(a) needs updating as a supervisor may not be physically co-located with the person they are supervising. Notwithstanding this, it remains important that a supervisor is accessible to those they are supervising.

The current Code reads as follows:

Code 27 (a) requires that:

27. A supervisor must:

(a) be co-located with the person being supervised by them and readily accessible to them;

The Commissioner proposes to amend Code 27(a) to read as follows:

A supervisor must:

(a) work for the same organisation as the person being supervised by them and be readily accessible to them;

Responses

There was general agreement with the proposal, though in the regulated sector Asylum Aid (AA) argued against it, stating, "*However, if supervision was to become more remote, both in terms of location/ geography and frequency (which is a likely outcome of distance) then there is a very real danger of poor supervision and a decline in supervisory and corresponding overall quality standards. This is a very real concern when supervisory and quality standards are already questionable. This is even more of a worry for non SRA regulated organisations i.e. those regulated by OISC, whose overall quality standards and systems are likely to be of an inferior level to those that are SRA regulated or have SRA regulated persons employed."* The SRA actually supported the proposal however, stating, "*YES we agree that the change is sensible to cover situations where supervisors and those being supervised may not physically be located in the same building*." The UK Council for International Student Affairs (UKCISA), responded, ""*However, this would clarify that our supervision arrangements fall more comfortably within the Code and reflects more accurately the way supervision is given to those of our advisers who are working off-site*."

Others, such as BID, suggested a compromise, *'The Commissioner may in certain circumstances agree to allow an organisation to be supervised by another organisation. In such circumstances the external supervisor must be accessible, and must be closely familiar with the organisation's work so as to ensure meaningful supervision in accordance with these rules.*'

The objections that those were against the proposal had were about ensuring quality and standards. The current Code does not ensure either of these, but rather, they concentrate on the liability/responsibility of the supervisor.

Conclusion

The main reasons for the proposal were to add flexibility, support business and reflect the reality of the way that business is done today.

The Commissioner had decided to proceed with the proposal. She will also seek to strengthen guidance on supervision and what is expected of supervisors and the person supervised.

Question 5:

Codes 45 and 46 prohibiting the payment of referral fees are not in line with either the Solicitors Regulation Authority's (SRA)[4] or that of the Chartered Institute of Legal Executives' (CILEX)[5] regulations, which currently allow such fees to be paid. In contrast, the Bar Standards Board (BSB) has recently reviewed the payment and acceptance of referral fees and has decided to retain its prohibition of them[6]. The Commissioner is also aware that the SRA is presently discussing reversing its position on referral fees because of the dangers these fees may have for vulnerable consumers.

Codes 45 and 46 currently read as follows:

> *45. A regulated person must not demand or accept from any person a fee, commission or any other compensation for referring or recommending a client.*
>
> *46. A regulated person must not offer or accept an inducement for taking on a client or offer such for referring a client to another person.*

Taking into account the approach of the other legal regulatory bodies, the Commissioner is inviting comment on whether these Codes should be relaxed completely to allow referral fees to be paid generally or to some extent under certain conditions.

Such a relaxation all or in part would be in line with the Regulators' Compliance Code's[7] requirement that "[R]egulators should consider the impact that their regulatory interventions may have on economic progress, including through consideration of the costs, effectiveness and perceptions of fairness of regulation". However, against this is the need to ensure adequate consumer protection.

When these Codes were introduced in 2000, there were credible reports of interpreters and others using undue influence when referring applicants on their arrival in the UK to advisers who would pay a fee to them as a result. This situation was made even more serious by the fact that, in many instances, the clients were confused, vulnerable and largely ignorant of the UK's immigration and asylum system. Consumer protection remains a concern as it is possible that, if the prohibition on the payment of referral

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[4] http://www.sra.org.uk/solicitors/handbook/code/part3/rule9/content.page
[5] http://www.ilex.org.uk/pdf/IPS%20Code%20of%20Conduct%20May%2010%20final.pdf
[6] http://www.barstandardsboard.org.uk/regulatory-requirements/the-code-of-conduct/the-code-of-conduct/part-ii-practising-requirements/
[7] http://www.bis.gov.uk/files/file45019.pdf

fees was abolished all or in part, client choice might be reduced with referrals being made more because of the attraction of receiving a referral fee rather than it being in the best interests of the client.

The Commissioner welcomes views on this issue, and whether these Codes should be retained, abolished or amended to allow the payment and acceptance of referral fees to a greater or lesser extent, and, if such payments should be allowed, in what circumstances.

Responses

This question attracted the greatest debate. There were six responses in favour of the proposal while ten were against it. None that supported the proposal wanted to see a complete abolition of Codes 45 and 46 on referral fees. As DWI stated, "*This is a difficult area to deal with because of the various potential issues that may arise. For example, an individual who asks for a discount because he has referred or plans to refer friends or colleagues is totally different in context from a recruitment firm who charges a fee for referring clients. That said, the overriding principle always has to be the independence of advice and the impartiality of treatment*." The London Link (LL) opined, " *I think that, to allow inducements / financial rewards for referrals, the client can and should be informed of any referral arrangements, especially in cases where an OISC Level 1 or 2 advisor cannot act any further on the client's behalf due to the complexity of the case. This should be explained in writing and the referrer must get the written consent of the client, before referring.*"

The general thrust of the responses however, was against the proposal. Refugee Action stated, "*We do not see that the risks posed to clients as identified in 2000, have diminished, and we fear that should referral fees be allowed, asylum applicants would be extremely vulnerable to exploitation by unscrupulous interpreters and others who would seek to gain financially by referring them to an adviser. The best interest of the client should be paramount, and should not be corrupted by the attraction of a referral fee. It continues to be the case that asylum applicants often arrive in the UK confused, ignorant of the UK's immigration and asylum system and vulnerable to misinformation. If anything, the current and much reduced availability of free advice for asylum seekers and migrants in the UK leaves them even more vulnerable to being coerced into seeking advice from one provider or another based on the financial gain that might be made.*" The Bar Standards Board (BSB) was against the proposal, stating, "*The BSB remains in principle against the payment of referral fees so would prefer the first option proposed by the OISC – do nothing. The BSB has maintained the prohibition in its Code of Conduct against the payment of any type of referral fee, either in cash, or as benefit in kind..... The BSB is of the view that it is particularly important to maintain the ban on referral fees in the context of immigration advice and services as the clients OISC advisers/organisations deal with are likely to be vulnerable and less knowledgeable about legal services in general in the UK. In these instances it becomes more important that clients receive the best advisers rather than an adviser who is prepared to pay the most in order to procure the work ."* The Legal Services Board and ILPA supported the BSB's position, while the SRA stated that there were currently consulting on their position in respect to referral fees and as such did not have any alternatives to suggest at this stage.

The Lord President of the Court of Sessions had a different perspective on this issue. He stated, "*The discussion ..... appears to focus only on the current position in relation to referral fees in England and Wales. It does not appear to take into account the position in Scotland. You may be aware that Sheriff Principal Taylor is currently undertaking a Review of Expenses and Funding of Civil Litigation in Scotland. .... You will note that although the Taylor Review consultation paper invites comments as to whether or not there would be merit in permitting referral fees in Scotland, the current position is that referral fees are generally prohibited in Scotland. My own view is that the OISC Code requires to reflect the current position.*"

Conclusion

The Commissioner does not see any great appetite for the ban on referral fees to be removed. Further, as the debate among the legal advice sector is still in a state of flux, it does not appear sensible to allow such fees at this stage. The Commissioner will therefore uphold the ban on regulated advisers accepting or offering referral fees and maintain the current wording of Codes 45 and 46.

Question 6:

Since 1st November 2011, the Complaints Scheme has not required the burden of proof to be the criminal standard[8]. Considering this, the reference to that standard in paragraph 30 has been deleted.

The Commissioner now proposes to change the wording in the final sentence of paragraph 30 from "**will**" invite to "**may**" invite to make it absolutely clear that this invitation is entirely at her discretion.

Paragraph 30 of the Complaints Scheme currently reads:

> *Having had sight of available evidence, and noting the nature of the alleged breach or breaches are such that require the criminal standard of proof - i.e. beyond reasonable doubt - the Commissioner may provide the person complained of a reasonable opportunity to make oral representations. In such circumstances, the Commissioner will invite the respondent to make oral representations in respect of the complaint or part of a complaint.*

The Commissioner proposes to amend the paragraph to read as follows:

> *Having had sight of available evidence, and noting the nature of the alleged breach or breaches, including allegations of criminal behaviour, the Commissioner may provide the person complained of a reasonable opportunity to make oral representations. In such circumstances, the Commissioner may invite the respondent to make oral representations in respect of the complaint or part of a complaint.*

Responses

There was almost universal agreement with this proposal. The LL stated "*YES - criminal standard of proof should never apply to unsubstantiated claims or unfounded allegations against OISC advisors. This is unfair and takes up a lot of time and resources on the part of the immigration advisor trying to do a "good, honest job*". AA stated, "*If the level of evidence is to such an extent that the OISC if confident that it can pursue criminal proceedings against an organisation then it should not necessarily have to invite the respondent to submit evidence to the contrary. However in normal circumstances it would seem appropriate and just to allow the accused to put forward any evidence that could have an impact on any decision to prosecute."* While the BSB stated that, ", *in isolation the change would appear to be sensible one that allows for flexibility*." And the SRA had no objection to the proposal.

ILPA were against the proposal. They stated, " *NO - As to the reference to the criminal standard, ILPA considers that whatever the controversy over the appropriate standard, it is uncontroversial that the complaints scheme should reflect the standard agreed upon and being used.*

[8] see the Consultation on Changes to the Office of the Immigration Services Commissioner's Complaint Scheme - Standard of Proof http://oisc.homeoffice.gov.uk/servefile.aspx?docid=227

As to the question of oral representations, ***audi alteram partem****. ILPA considers that a person should have the right to make oral representations when an allegation with potential consequences that could include losing their right to continue in their chosen occupation is made against them. The obligation on the Commissioner to invite a person to make oral representations should remain. If a change in wording is desired the change could be to emphasise that while the Commissioner must make the invitation, it is entirely up to the person whether they wish to make such representations. We consider that the present wording places no obligation on the respondent, but this could be made explicit."*

Conclusion

The argument presented by ILPA of *audi alteram partem,* or that the other side should be heard, is a fair one, but they also seek to impose an obligation on the Commissioner to invite the "accused" adviser to make oral representations. It must be remembered that there is an independent Tribunal (First-tier Tribunal [Immigration Services]) that is able consider the Commissioner's findings and hear from the adviser if they so choose, so the *audi alteram partem* is properly addressed there.

Making it an obligation on the Commissioner to invite oral representations would slow down the Complaints process and give any adviser suspected of criminal/dishonest behaviour two "bites at cherry", not assisting the Commissioner in her duty to ensure advisers, the people the OISC refer vulnerable members of the public to are "*fit*" to provide immigration advice and services.

The Commissioner has decided to amend the Complaints Scheme as proposed.

Next Steps

The Commissioner proposes to amend the Code of Standards and Complaints Scheme as stated in this report. That is:

- Amend Code 13 of the Code of Standards to make it explicit that advisers must observe all UK laws and not just those relating to immigration and asylum.
- Update the Code of Standards to include references to the Tribunal Service (Immigration and Asylum Chamber).
- Amend Code 27 of the Code of Standards to allow for supervisors not to be co-located with the people that they supervise
- Amend the wording of Paragraph 30 of the Complaints Scheme from "**will**" to "**may**"

These amendments will come into effect from 1 January 2013.

As mentioned earlier in this document, there will be a fundamental review of all of the Commissioner's Statutory Framework Documents; the Code of Standards; the Commissioner's Rules and the Complaints Scheme in 2013/14. Some of the issues addressed in this consultation may be addressed again at that stage.

Annex A

Consultation respondents

Designated Regulator

BSB	= Bar Standards Board
SRA	= Solicitors Regulation Authority

OISC Exempt Organisation (E)

AA	= Asylum Aid
ASSA	= ASSA (Wakefield) District Ltd
BID	= Bail for Immigration Detainees
RA	= Refugee Action
UKCISA	= UK Council for International Student Affairs

OISC Registered Organisation (F)

*	= Unnamed OISC registered body 1
**	= Unnamed OISC registered body 2
AKK	= AKK Immigration Services
DWI	= Dearson Winyard Intl.
LL	= The London Link
WPC	= Work Permit Consultants

Law Officers (L)

LCJNI	= Lord Chief Justice Northern Ireland
LPCS	= Lord President of the Court of Sessions

Public Sector (P)

LSB	= Legal Services Board
UKBA	= UK Border Agency

Representative Body (R)

ILPA	= Immigration Law Practitioners

Annex B

Answers to the consultation

Q1. Change of emphasis from "adviser" to "organisation"	Y/N	Response/ comments
BSB		
SRA	Y	we agree with the use throughout the Code of 'organisation'
AA	Y	
ASSA	Y	The new wording looks more professional and reflects much better the reality of the workplace.
BID	Y	
RA		
UKCISA		
*	Y	
**	Y	
AKK	Y	The Commissioner regulates the organisations not the individuals and it is more understandable that when the organisation comes first and the individual adviser comes within the meaning of an organisation.
DWI	Y	Makes perfect sense to us as the Advisor should be under the control of the organisation.
LL	Y	
WPC	Y	
LCJNI	Y	
LPCS	N	I am struggling to follow the logic behind this proposed alteration. The consultation paper suggests that the term "adviser" is taken from the relevant provision in the statute: section 82 of the Immigration and Asylum Act 1999. In fact, that provision does not appear to define the term "adviser". It does, however, define the terms "immigration advice" and "immigration services". Section 82(2) of the 1999 Act appears to envisage that immigration advice or services will be provided by "a person". Under the wording currently used in the Code, "adviser" can mean either an organisation or an individual. That seems to me to make sense. What is now proposed is that the term "organisation" will cover both a firm and an individual. That seems to me to make less sense; I find it difficult to see how an individual can ever be described as an organization. I would have thought that the current wording already strikes an appropriate balance between the terms of section 82 and what happens in practice. It seems to me that there is a risk that the proposed amended wording will be more confusing than the present wording
LSB		
UKBA	Y	I have reviewed the proposals and wish to say that proposed amendments set out in questions 1 and 2 seem to be appropriate.

ILPA		We have been told that that this change has been proposed because of the outcome of cases before the Immigration Services Tribunal and because the Commissioner's powers have been held to be insufficient to stop an organisation, including an exempt organisation, from continuing to operate and having power only to stop an individual from continuing to advise or provide services. If this is indeed the thinking behind the change, it is not possible to discern from the explanation in the consultation paper. From the paper alone we were wholly confused as to the reason for these changes. We support the notion that the OISC should have power to stop both an organisation and an individual from continuing to provide immigration advice and services. The drafting is unfortunate and requires further work. Organisation does not mean individual and to deem it to do so is clumsy. It is also unclear why the word "firm" has been substituted for "organisation" in the definition as opposed to added next to organisation. In the legal world, firm is the term normally used of a partnership as opposed to any other structure.

Q2. Removal of "recklessness"	**Y/N**	**Response/ comments**
BSB		
SRA	Y	Yes we have no objection to the proposed change
AA	Y	
ASSA	Y	YES -.The proposed wording is better for regulating organisations. The new wording closes the possibility of misunderstanding and gives much clearer idea. It is much more accurate than the current one. I am sure the organisations are also benefit from this clarity.
BID		YES - with regard to code 13, but NO with regards to code 20. Removing the word 'recklessly' from code 20 removes the element of intentionality. Current code 20 should therefore be retained.
RA		It is difficult to state whether or not we are in agreement with this proposal until it has become clear how this change would be implemented, and what impact it might have on the liability of the advice organisation. If OISC intends to delegate the monitoring of standards to organisations, those organisations would clearly need some form of protection from prosecution where they had taken reasonable steps to ensure that their staff were properly trained and supervised. The devil will be in the detail in terms of defining what would be reasonable. Currently, if staff become accredited at the relevant level, undertake sufficient CPD and undergo regular peer reviews, they can be said to be properly trained and supervised. However, it is not clear how the current system of regulation would change if the emphasis shifted to organisations. If this change places additional burdens on advice organisations beyond those stated above, we would not support this change. If the change is to be implemented, we would need to understand clearly what additional steps would be required of us as an advice organisation in order to ensure that we were not held liable for the actions of our employees.
UKCISA	Y	But it seems that the word 'recklessly' has been retained in the proposed revised wording? If so, was this typing error?
*	Y	
**	Y	
AKK	Y	YES - A strong word like reckless or recklessly are more appropriate to use in the least frequency for people dealing with legal matters.
DWI	Y	YES - It appears to be pointless repetition.
LL		

WPC		
LCJNI	Y	

LPCS		I note that you have indicated that you feel these words are unnecessary. However, I am not entirely clear why you take that view. A person who recklessly misleads another person does not necessarily do so knowingly or negligently. This reflects the fact that the provisions currently apply to three distinct ways in which a person might be misled. I am not immediately clear of the reasoning why one of these ways is to be removed from the Code. Reference is made in the consultation paper to the use of the terms in criminal law; but that does not necessarily mean that the terms are inappropriate in other contexts. In any case, I note that the word "recklessly" still appears in the final line of proposed amended Code 13(d) (as set out in Question 2). If there is a policy reason why the references to "reckless" and "recklessly" should be removed, then it seems to me that all such reference should be removed.
LSB		
UKBA	Y	I have reviewed the proposals and wish to say that proposed amendments set out in questions 1 and 2 seem to be appropriate.
ILPA	N	NO - We disagree with the change. It appears to take as its starting point that all instances of recklessness are subsumed under either acting knowingly or negligently. No so. This is a matter of settled law. There is a difference between my knowingly misleading you and my being reckless as to whether I mislead you or not. As to negligence, negligence in English law is inadvertent whereas recklessness is advertent. Reckless conduct should be covered and thus the word reckless should remain.

Q3. Acting in accordance with the laws of the UK	**Y/N**	**Response/ comments**
BSB		
SRA	Y	Yes we have no objection
AA	Y	
ASSA	Y	YES - It reflects the duties of advisor much better
BID	Y	
RA	Y	
UKCISA	Y	YES However, I can't see any change in wording to achieve the stated aim re: all laws, that is: The Commissioner proposes to amend the Code to read as follows: 13(a) An adviser must act in accordance with the laws of the UK. Which seems to be the same as the wording in the current version: Code 13 currently reads: 13. An adviser must act in accordance with the laws of the UK. and I could not see anything in the rest of the text that would achieve that aim.

*	Y	
**	Y	
AKK	Y	YES - It reads clearer as the Code should be
DWI	Y	
LL	Y	
WPC	Y	
LCJNI	Y	

LPCS		In proposed amendment under Question 3, Code 13(d) would become Code 13(b)(iv). However, the terms of this proposed provision are not consistent with the amendment which is proposed under Question 2. In the proposed version at Question 3, all of the words "knowingly, recklessly or negligently" have been removed.

LSB		
UKBA	Y	I fully support the proposed amendments (question 3) to code 13, namely amending references to adviser behaviour so that advisers must act in accordance with all laws.

ILPA		We are at a loss to understand the problem or the solution. We do not understand where the ambiguity lies in the original formulation. We do not understand how splitting this paragraph into subsections (a) and (b) achieves the change claimed and resolves any ambiguity. We can see no objection to the split and (a) and (b) numbering per se.

Q4. Supervisors not having to be co-located	**Y/N**	**Response/ comments**
BSB		
SRA	Y	YES we agree that the change is sensible to cover situations where supervisors and those being supervised may not physically be located in the same building. We have no comments on the potential costs or benefits of the proposal.

AA	N	This is a difficult area to comment on. It is as much to do with the level, type, quality and consistency of supervision as where it is located. We do not believe that the OISC has the resources or ability to effectively monitor quality of service or supervision. If it was able to improve its ability to do this then this might be something to consider as it is acknowledged that allowing co-location could be beneficial in terms of increasing access to services and advice provision which is also badly needed. However, if supervision was to become more remote, both in terms of location/geography and frequency (which is a likely outcome of distance) then there is a very real danger of poor supervision and a decline in supervisory and corresponding overall quality standards. This is a very real concern when supervisory and quality standards are already questionable. This is even more of a worry for non SRA regulated organisations i.e. those regulated by OISC, whose overall quality standards and systems are likely to be of an inferior level to those that are SRA regulated or have SRA regulated persons employed. Therefore on balance we would argue the potential costs of allowing supervisors to not be geographically located with their supervisees outweigh any potential benefits. One alternative could be that the OISC should consider more stringent forms of monitoring the quality of supervisory support and quality of advice provision where it has agreed to allow co-location and only to allow this on a discretionary basis when the OISC has satisfied itself that the organisation has the necessary quality systems in place that can be verified.

ASSA	Y	We are living in the 21st Century. More and more organisations are using electronic data to keep all the information/documents in file rather than hard copies/papers. Being in the same building is costing a lot for organisations. This may suits some organisations though. However, for the purpose of providing supervision, the supervisor is able to fulfil its duties via other methods that do not need co-location. In particular the supervisor may use internet to: - check files - allocate the works - speak to the supervisee - make sure the instructions and task carried out correctly - being available at the time and location that suits both - There are many qualified women immigration practitioner, who have the supervisory accreditation from Law Society, are able to provide an effective professional supervisory service using the latest technology. This means they do not need to be in the same location. The proposed changes in the best interests of our client because it opens the market. It makes the market more flexible and more competitive and this is what consumers/clients want. I strongly support the above changes. The new code will make the cost of supervision more affordable and empower many organisations to seek the right supervisor.
BID	N	It would not seem necessary for a supervisor to have to work for the same organisation. That is particularly relevant where an organisation consists of a single person and there is no person who may otherwise conduct supervision. What is important is for supervision to be meaningful and, for it to meet all the standards required for supervision to be effective. That would include a supervisor being assessable at all times. Such close supervision may be met, for example by a person having regular contact by Skype or FaceTime, combined with regular visits to the other office or organisation to allow for file reviews and other supervision requiring the presence of a person at the same office. If there are concerns however about the use of an external supervisor, the suggested new code 27a could be retained, with a new code 27b to read: 'The Commissioner may in certain circumstances agree to allow an organisation to be supervised by another organisation. In such circumstances the external supervisor must be accessible, and must be closely familiar with the organisation's work so as to ensure meaningful supervision in accordance with these rules.'
RA	Y	YES - We would certainly support the move towards supervision not having to be co-located
UKCISA	Y	There would be no cost implication for us. However, this would clarify that our supervision arrangements fall more comfortably within the Code and reflects more accurately the way supervision is given to those of our advisers who are working off-site.
*	Y	
**	Y	Benefits will be that a supervisor can work remotely.
AKK	Y	This amendment is more relaxed than the previous one and volunteers and trainees of the organisation will have a greater opportunity to become an advisor despite it is restricted to the supervisor and the supervisee be in the same organisation.

DWI	Y	Whilst we have multiple sites in the UK this has not been an issue for us; that said it makes sense with the advancements in communication technology to facilitate this. I see no cost impact and the resulting flexibility can only be of help to multi-site businesses.
LL	Y	I think the amendment allows greater flexibility – supervisors or immigration advisors can work for several organisations and be registered as OISC advisors under several organisations at the same time. It therefore makes sense to allow for remote working, especially with small immigration firms who employ freelance or part time immigration practitioners
WPC	Y	Benefits will be that a supervisor ca work remotely
LCJNI	Y	
LPCS		
LSB		
UKBA		

ILPA	N	An organisation seeking to provide the highest standards of supervision will wish to co-locate the supervisor and persons supervised. A supervisor who is in the same location as persons supervised can see and oversee what those being supervised are doing and also be approached directly with requests for support. Co-location is not a sufficient condition for adequate supervision, but we consider it to be a necessary one. Persons may spend some time working off –site, but the underlying arrangement will be that their place of work is one collocated with their supervisor. An organisation not seeking to provide the highest standards of supervision will find it easier to cut corners by isolating supervisors from those supervised. We also consider that it is likely to be more difficult to demonstrate that the supervisor knew or ought to have known or poor practice if they are not located in the same place as those supervised. Thus the proposal fails to support best practice and makes it harder to eradicate poor practice.

Q5. Referral fees	Y/N	Response/ comments
BSB	N	The BSB remains in principle against the payment of referral fees so would prefer the first option proposed by the OISC – do nothing. The BSB has maintained the prohibition in its Code of Conduct against the payment of any type of referral fee, either in cash, or as benefit in kind. Option 1 The OISC will be aware that in the Final Report of his Costs Review, Lord Justice Jackson recommended that referral fees should be prohibited in relation to personal injury cases. Lord Justice Jackson highlighted in his report that in personal injury cases solicitors pay referral fees to claims management companies, before-the-event insurers and other organisations to 'buy' cases, which then adds to the cost of litigation, without adding any real value to it. Lord Justice Jackson emphasises that prohibiting referral fees in personal injury cases would be in the public interest and benefit consumers: "*...under the new regime solicitors will compete upon the basis of which solicitors are charging the lowest success fees to clients, rather than which solicitors can pay the highest referral fees to claims management companies or before-the-event insurers. Thus the beneficiaries of competition will be consumers, not claims management companies, before-the-event insurers or similar bodies.*" Lord Justice Jackson's recommendation was subsequently adopted by the Ministry of Justice and it is possible that it may be extended to other areas of work. In fact Lord Justice Jackson specifically stated in his report that if his ban on personal injury referral fees are accepted, serious consideration should be given to banning, alternatively capping, referral fees in other areas of litigation. In light of this it would be both impractical and premature to amend the code of standards at this stage. The BSB is of the view that it is particularly important to maintain the ban on referral fees in the context of immigration advice and services as the clients OISC advisers/organisations deal with are likely to be vulnerable and less knowledgeable about legal services in general in the UK. In these instances it becomes more important that clients receive the best advisers rather than an adviser who is prepared to pay the most in order to procure the work. Ultimately the client's best interests should be paramount: if legal professionals, including OISC advisers/organisations are prepared to work at less than market rates, that benefit should be passed to the client rather than to the financial benefit of one or other legal professionals in the case. For the reasons set out above the BSB would urge the OISC to maintain the present position and retain a complete prohibition on the payment of referral fees.

[9] *Civil Litigation Costs Review: Final Report by Lord Justice Jackson* (21 December 2009)

SRA		The consultation paper refers to the SRA's current work in relation to referral fees. At the time of writing we are considering different potential options as part of the consultation process, but have not at this stage concluded whether or not to reverse our current position or change it in any way. This is being undertaken in line with the introduction of the Legal Aid Sentencing and punishment of Offenders Act ahead of that Act coming into force in 2013. We will keep OISC and all of our stakeholders informed of our decisions and policy direction towards referral fees through website updates as we proceed with our consultation process. The vulnerability and potential risk of disadvantage of different clients is a key factor to take into account in taking any policy decision towards referral fees. The SRA's Code of Conduct from our regulatory Handbook includes a strong emphasis on client care that is appropriate and considerate towards the specific circumstances of each client, irrespective of the ways in which someone actually becomes a client in the first place. We recommend that OISC maintains client vulnerability as a cornerstone of any decision it takes in relation to the prohibition on referral fees. The third option appears to most closely reflect the arrangements that are currently part of our Code of Conduct, including requirements that already prohibit referral fees in cases that are funded via Legal Aid. We are currently consulting on our position in respect to referral fees and as such we do not have any alternatives to suggest at this stage.
AA	Y	As you mention above, interpreters and others use undue influence when referring applicants on their arrival in the UK to advisers who would pay a fee to them as a result. This situation was made even more serious by the fact that, in many instances, the clients were confused, vulnerable and largely ignorant of the UK's immigration and asylum system. This is a very real ongoing concern so any change needs to ensure adequate protections for vulnerable clients. We would argue that there may be times where referral fees might be in the client's best interests. However in order for the OISC to ensure adequate protection the prohibition should remain in place for any individual seeking financial reward for making a referral. Referral fees should only be allowed in exceptional circumstances for organisations where prior authority has been agreed with the OISC so that adequate checks can be made and the OISC can be confident that any fee referral arrangement is set up for the sole purposes of ensuring the client's best interests are met. As above with Code 46 – this needs to be thought through very carefully by the OISC as the potential for exploitation is huge.
ASSA	N	I am working over nine years in asylum field. Because of current OISC strict approach, the situation has improved. The merits for referral should be the high quality of expertise and good reputation of agency not anything else. However, if you change it, in part or in whole, there is a danger that we back to where we were. Option 1 –I do not agree with the change Option 1 is the safest one. There is a risk associate with the other options. The risk is organisation try to attract clients via referral fees. It is important to make sure that client will benefit from the changes.

BID	N	Given that legal aid will be abolished in many areas of Immigration Law, combined with the increasing use of immigration detention, and the certain increase in the number of vulnerable persons who will be affected by these changes, the proposed abolition of the current code is highly undesirable. This is a time to be maintaining a level of production for vulnerable clients, not relaxing them. Option 1. is the preferred option. But if there is to be a change, option 3 is preferred. But Option 3 should exclude any referral fees being allowed where clients are in immigration detention, or where they may be entitled to legal aid advice. The latter issue should also refer to the Rule 5 of the Commissioner's Rules for Registered Advisers requiring all advisors to inform clients of the availability of legal aid where appropriate (and from April 2013 this will only include matters relating to detention or asylum). Please see above regarding the concern that the current code is retained (Option 1), and the risks that the alternative options pose to vulnerable groups.
RA	N	We do not see that the risks posed to clients as identified in 2000, have diminished, and we fear that should referral fees be allowed, asylum applicants would be extremely vulnerable to exploitation by unscrupulous interpreters and others who would seek to gain financially by referring them to an adviser. The best interest of the client should be paramount, and should not be corrupted by the attraction of a referral fee. It continues to be the case that asylum applicants often arrive in the UK confused, ignorant of the UK's immigration and asylum system and vulnerable to misinformation. If anything, the current and much reduced availability of free advice for asylum seekers and migrants in the UK leaves them even more vulnerable to being coerced into seeking advice from one provider or another based on the financial gain that might be made. Should it be necessary for the consultation proper, we may be able to provide evidence of the risks posed to asylum applicants of allowing referral fees.
UKCISA		
*	Y	Before referring a client to another organisation, an adviser must ensure that such organisation is genuine and is regulated. Option 2, 3, No - It is just common sense
**	Y	Referral fees exist in business throughout the business sector and should be allowed as long as they are transparent. Option 3 No - unless businesses try to hide this
AKK	N	Do nothing. If these codes are amended, it is highly likely that advisers will be under less control of ethical bounds related to money.

DWI	Y	This is a difficult area to deal with because of the various potential issues that may arise. For example, an individual who asks for a discount because he has referred or plans to refer friends or colleagues is totally different in context from a recruitment firm who charges a fee for referring clients. That said, the overriding principle always has to be the independence of advice and the impartiality of treatment. Our preference in this area is for the regulator to provide a light touch directional approach and therefore option 2 seems to fit this best. The reason we suggest option 2 is that Advisors still need to be clear that they have an obligation to act in the best interests of the client and not the individual receiving payment for the referral. Option 2 appears best suited to highlighting this fact without adding too much bureaucracy. In terms of transparency, this is a very difficult area when it comes to fees. For example, a client is given a discount because he has referred multiple clients; it is wholly inappropriate to then tell all the people he has referred, assuming you can identify them, that he has received a discount on his case. Therefore transparency becomes impossible to apply. Likewise, if an inducement is paid to a recruitment business for referrals, surely this is a commercial arrangement and has no impact whatsoever on the service and costs the client receives. After all, poor service provision is likely to affect both the relationship with the client and the recruitment company.
LL	Y	I think that, to allow inducements / financial rewards for referrals, the client can and should be informed of any referral arrangements, especially in cases where an OISC Level 1 or 2 advisor cannot act any further on the client's behalf due to the complexity of the case. This should be explained in writing and the referrer must get the written consent of the client, before referring. Transparency is important here, as it encourages the trust of the client. Once referred, the client should be quoted a fee by the referred immigration advisor before commencing work. This fee should be in line with the firm's published fee schedule. The client should not be charged a fee that is above the published fee or range of fees. If the work that is to be undertaken is not included in the fee schedule, a separate quote should be provided and this should be clearly substantiated. Issue to consider is if a complaint arises, does the referrer and/or the referred hold joint responsibility for the complaint? What will be the complaints process be in this case? I am all for Disclosure i.e. Option 3. Yes – please see my comments above In conclusion, allowing referrers to be rewarded would benefit businesses and clients if this is practised in a controlled way, and monitored by the OISC.
WPC	Y	Option 3
LCJNI		

LPCS	N	The discussion at Question 5 of the consultation paper appears to focus only on the current position in relation to referral fees in England and Wales. It does not appear to take into account the position in Scotland. You may be aware that Sheriff Principal Taylor is currently undertaking a Review of Expenses and Funding of Civil Litigation in Scotland. The Taylor Review has issued a consultation paper. I attach an extract from that consultation paper on the sensitive subject of referral fees. You will note that although the Taylor Review consultation paper invites comments as to whether or not there would be merit in permitting referral fees in Scotland, the current position is that referral fees are generally prohibited in Scotland. My own view is that the OISC Code requires to reflect the current position. Accordingly, as far as Scotland is concerned, I am of the view that the best option would be to do nothing and keep Codes 45 and 46 as they stand.
LSB	N	You will be aware that the recently enacted Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) introduced a ban on referral fees in personal injury cases. This ban will cover those regulators under the Legal Services Act authorised to regulate litigation. It may be appropriate for OISC to consider how the requirements of LASPO fit with its own approach to referral fees
UKBA	N	Turning to the issue of referral fees raised in question 5, I have to say that I feel the Code requires no amendment to the current approach. Although from a legal perspective there is no reason why referral fees should not be permitted, I am concerned about the possibility of change here. The consultation acknowledges that the Code was introduced when the OISC was set up and was a response to the unscrupulous actions occurring at that time. Whilst it is the case that now those who provide advice and services adhere to standards of practice and competence, this situation exists because OISC has driven up standards. As you are aware the OISC was set up to stop unscrupulous immigration advisers and to prevent the following types of activity: Incomplete, inaccurate or misleading advice; Unprofessional relationships with clients; Deception of the client or encouraging deception by the client; Unfair charging for services and materials. I am concerned that a relaxation of the controls on referral fees may result in the return of some of these practices. You will be in a better position than me to assess the likely impact or a partial or full removal of the ban, but my view is that a partial ban will be difficult to monitor.
ILPA	N	The ban on referral fees should be maintained. The consultation has been somewhat overtaken by events, in particular sections 56 to 60 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 and the debates that led to their passage. While they do not directly affect the OISC, as they are concerned with personal injury cases we consider that they are evidence that the tide is turning against referral fees. The Solicitors Regulation Authority is in mid-consultation and it would be very strange for the OISC to change its rules to align its position with the Solicitors' Regulation Authority when the Solicitors' Regulation Authority is reviewing its position. The OISC is dealing solely with those who advise, represent and provide services to persons under immigration control. Their client group will include a high proportion of persons unfamiliar with UK systems, without extensive networks in the UK, without English as a first language. Many

ILPA	N	will come to their legal representatives through intermediaries. Those intermediaries should be disinterested. We recall the Bar Standard's Board's summary of its position in its February 2010 *Response to the Legal Services Board Consumer Panel Investigation into Referral Arrangements:* ***Summary Position:*** 1. *The BSB remains against the use of referral fees, either in cash or as a benefit in kind, and wishes to maintain their prohibition for the Bar and encourage their prohibition for other lawyers too.* *The BSB regards the use of referral fees as against the public interest and, in particular, the consumer interest.* 2. *The BSB views the use of referral fees as compromising the independence of lawyers.* 3. *The BSB views the use of referral fees as at best a distraction and at worst an obstacle to lawyers" professional and ethical obligation to act in the best interests of the client.* 4. *Where referral fees are currently permitted, the BSB deprecates the lack of actual transparency in their use, where clients are not usually aware they are a factor in the legal representation they receive.* 6. *The BSB believes that the incidence of referral fees in the legal services market is a distortion of competition in that market.* 7. *The BSB believes that the incidence of referral fees in the legal services market leads to an overall increase in the cost of legal services."* The Faculty of Advocates in Scotland takes a similar approach, with its guide to the Professional Conduct of Advocates stating *"9.12 Referral Fees.* *Counsel may not enter into arrangements by which a commission or referral fee is paid to any third party as a consideration for referring work, or for recommending or introducing counsel to the client or an instructing agent."* The Bar of England and Wales and the Faculty of Advocates have histories that go back to the 13th century and professional standards and codes of ethics that have developed over centuries. They are well placed through their history and traditions to resist the effect of referral fees in "compromising the independence of lawyers" and being "at best a distraction and at worst an obstacle to lawyers' professional and ethical obligations." Despite all this they consider that they would be ill-advised to take the risk. The Solicitors Regulation Authority said in its *Proposed ban on referral fees in personal injury cases Discussion paper* of 12 June 2012: *"27. Experience of referral arrangements before the ban was lifted in 2004 was that some people and businesses would go to great lengths to justify their arrangements and a considerable amount of investigation*

		was needed to get to the bottom of them. There may be attempts to "get round" the ban as well as cases where it is unclear whether or not there is a breach" This note of caution should be heeded by a regulator with limited resources. The consultation paper uses the past tense in its *"When these Codes were introduced in 2000, there were credible reports of interpreters and others using undue influence when referring applicants on their arrival in the UK to advisers who would pay a fee to them as a result. This situation was made even more serious by the fact that, in many instances, the clients were confused, vulnerable and largely ignorant of the UK's immigration and asylum system."* Despite the use of the past tense, the consultation paper does not suggest that anything has changed. We are unaware of any evidence that the situation has changed. Option 1 See above. Options 2 to 4 are fraught with risks difficult to manage or mitigate.

Q6. Changes to Complaints Scheme	**Y/N**	**Response/ comments**
BSB	Y	It is not clear from the consultation paper whether the OISC now applies the civil standard or indeed whether the Complaints Scheme explicitly adopts any standard. It may be that this is covered elsewhere in the scheme. Nevertheless, if the criminal standard of proof is no longer applied when deciding complaints it is important that reference to it is removed. In relation to the change from "will" to "may" in paragraph 30, it is difficult to assess what the impact of this change might be without having further information about the wider scheme and the context in which the oral representations are made. However, in isolation the change would appear to be sensible one that allows for flexibility. Presumably, the OISC will produce supplementary guidance on the circumstances in which a respondent may be invited to make oral representations
SRA	Y	We have no objection
AA	Y	If the level of evidence is to such an extent that the OISC if confident that it can pursue criminal proceedings against an organisation then it should not necessarily have to invite the respondent to submit evidence to the contrary. However in normal circumstances it would seem appropriate and just to allow the accused to put forward any evidence that could have an impact on any decision to prosecute.
ASSA	Y	YES - I hope this makes the prosecution easier.
BID	Y	
RA	Y	
UKCISA	Y	
*	Y	
**	Y	
AKK	Y	

DWI	Y	YES - Appears logical
LL	Y	YES - criminal standard of proof should never apply to unsubstantiated claims or unfounded allegations against OISC advisors. This is unfair and takes up a lot of time and resources on the part of the immigration advisor trying to do a "good, honest job" I would also add that, whenever you have a situation where a complainant demands a refund of fees paid to the immigration advisor and in doing so makes unfounded allegations against the advisor, there should be a mechanism in place to weed out these unsubstantiated claims and the matter should be resolved swiftly with all parties involved in the complaint. These unsubstantiated complaints should be resolved in a matter of weeks, and not months which is what seems to be happening now.
WPC	Y	
LCJNI	Y	
LPCS		
LSB		
UKBA		
ILPA	N	NO - As to the reference to the criminal standard, ILPA considers that whatever the controversy over the appropriate standard, it is uncontroversial that the complaints scheme should reflect the standard agreed upon and being used. As to the question of oral representations, audi alteram partem. ILPA considers that a person should have the right to make oral representations when an allegation with potential consequences that could include losing their right to continue in their chosen occupation is made against them. The obligation on the Commissioner to invite a person to make oral representations should remain. If a change in wording is desired the change could be to emphasise that while the Commissioner must make the invitation, it is entirely up to the person whether they wish to make such representations. We consider that the present wording places no obligation on the respondent, but this could be made explicit.

Annex C

Impact Assessments

Regulatory Impact Assessment

Given the scale of the changes proposed, no impact assessment has been produced for these proposals.

An initial assessment has suggested the impacts of the proposals will be minimal. There may be some small impacts on immigration advisers in understanding the changes, but these are expected to be small. The OISC requested consultation feedback and evidence on the potential range and scale of costs, benefits and risks associated with the proposals discussed in the consultation document, but no significant impacts were identified.

Equality Statement

In developing these proposals, the Commissioner has had due regard to equality matters. There were no comments on equality issues made by those that responded to the consultation. The Commissioner believes that the only adopted proposal that may have an impact with regard to gender, race and disability issues will be the relaxation of the Code on the co-location of supervisors with those that they are supervising. The potential impact has not been monetised, but the Commissioner believes this added flexibility will only be positive for those with the shared characteristics. This is especially so for women, members of minority ethnic communities and disabled advisers. The revised rule enables remote supervision, thus allowing more scope for issues such as child care and electronic working.