



1. The Immigration and Asylum Act 1999 (Part V) established a scheme to regulate immigration advisers in the United Kingdom. The Act set up the Office of the Immigration Services Commissioner as an independent body to ensure that immigration advisers were fit and competent and act in the best interests of their clients. The OISC'S duties include setting and enforcing standards, handling complaints about immigration advisers and taking criminal proceedings against advisers who are acting illegally. The core of the OISC's regulatory activity centres on ensuring that advisers come under the regulatory scheme and thereupon for the OISC to monitor the standard and quality of work through an audit/ inspection process. We have a particular and distinctive experience of enforcement against unregulated activity.
2. The OISC also has a statutory responsibility to report to the Home Secretary on the effectiveness of the regulation of legally qualified immigration advisers by their designated professional bodies (DPBs). This gives the OISC an interest as co-regulator into the setting of standards and enforcement by these bodies.

The OISC's Response to the consultation

3. The OISC welcomes the opportunity to respond to the consultation document. In future we would be happy to be involved in developing your strategies considering our role as a national regulator.
4. The OISC is pleased that many of the proposals in the consultation document are already part of its policies and procedures. Our ethos is to promote targeted and proportionate regulation based on need and risk analysis.
5. The consultation document itself appears to be details of principle rather than details that would directly affect the operations, policies or procedures of the OISC. There are, however, some points that it would



be useful for us to make as well as addressing some of the particular questions raised.

Burdens placed on Regulators

6. First, as a regulator we are also regulated. As a small Non-Departmental Public Body (NDPB) we are effectively the equivalent of a Small or Medium Enterprise (SME) in a business sense, and we not only have to regulate the sector within our remit, but also have to comply with the regulations placed on us by others such as the Better Regulation Executive, the Home Office and the Immigration Services Tribunal. This in turn means that we too face a burden. It would appear that the burden on regulators is largely ignored in the consultation document. This should have been effectively picked up in recommendation 3 on page 15 of the consultation, but in our view it is not.

Recommendation 7, two-year rule

7. Recommendation 7, the 2-year rule, is interesting. As stated above, the regulations that govern the OISC are contained in the Immigration and Asylum Act 1999 (as amended in 2002 and 2004). Given the fact that the 1999 Act and immigration and asylum law in general is constantly changing, it would be useful to the OISC's operational capability to have the 2-year rule lifted.

The Hampton Review – Enforcement Concordat

8. Chapter 2 of the consultation document examines implementation of the Hampton Review, initially focusing on updating the Enforcement Concordat. It should be noted that, although voluntary, the OISC chose to sign up to the Enforcement Concordat from its inception, and it has guided our general approach to regulation as a whole and not just enforcement.
9. It is to be hoped that in drafting the new Concordat and possibly putting it on a statutory basis that the wider operational aspects of regulators work



(e.g. the exchange of information, cross-agency working, work as part of a wider Government agenda) is looked at, and the flexibility alluded to at Page 25 is also afforded to them. It is not clear, however, what relationship, if any, will exist with a new statutory Enforcement Concordat and the Compact on relations between government and the voluntary and community sector.

10. Regarding the questions raised on page 26, we agree that the Enforcement Concordat should be updated, as described, and it is logical that it should apply to national as well as local regulators. As stated above, the OISC signed up to the Concordat at its inception. Without more information it is difficult for us to comment on whether the Concordat should be put on a statutory footing. Having said that, we are aware that putting matters in statute tends to reduce flexibility, and, as we see it, the Concordat is part of an evolving and organic process. Regulation is informed by both experience and aspiration, and must be sensitive to new developments and be able to change as necessary. It may be that changes in the process could be restricted to Regulatory Reform Orders as outlined in the consultation, but with the information we have at present it is not possible for us to comment further on this.

Simplifying Regulatory Structure

11. Chapter 2 further discusses the simplifying of the regulatory structure including the merging of regulators. In principle this suggestion is supported, to the extent that there is some form of synergy between the work undertaken by the individual regulators. Caution must, however, be exercised. The merging of small organisations can result in the “de-skilling” of staff. This allied to a possible loss of focus on the work that any small constituent regulators could have undertaken previously may be counter-productive. There may also be problems of re-location. These concerns are in the main about the detailed implementation of the proposals, but it is thought helpful to raise them at this stage.



Modernising the Penalty Regime

12. Modernising the penalty regime is addressed at page 27. To place our comments in context, it should be noted that the OISC is involved in a penalty regime in two distinct ways. First, through the powers exercised by the Immigration Services Tribunal that adjudicates on decisions made by the OISC in regard to those within the regulatory scheme. Second, the OISC prosecutes under its statutory powers those who wilfully remain outside of the regulatory regime.

13. The OISC's view of the current penalty regime is that legal action is expensive. It has been our experience that tribunals are neither necessarily quick nor cheap. The recovery of costs awarded to regulators is similarly ineffective and small regulators are not resourced or in a position to seek recovery of such costs. It frequently becomes prohibitively expensive to pursue any claims for costs, let alone to collect them.

14. It has been our experience that Magistrates' Courts do not always take a consistent view with regard to the penalties available to them, and, as such, it is unusual in our experience for Magistrates to utilise the maximum penalty available to them. Whilst we do not wish to suggest that judicial discretion be fettered in any way, any rationalisation of penalty regimes would be encouraged.

If you would find it helpful, we are happy to discuss with you further any of the points made above or regarding the consultation generally.

A handwritten signature in black ink, appearing to read 'Suzanne McCarthy'.

Suzanne McCarthy
Immigration Services Commissioner