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By email to Neil.Clowes@homeoffice.gsi.gov.uk
cc George.Noronha@homeoffice.gsi.gov.uk

Date 18 February 2008

Dear Mr Clowes

Re Border and Immigration Agency Review of the Office of the Immigration Services Commissioner

Further to your letter of 7 February on this topic and your subsequent telephone conversation with ILPA's General Secretary, Alison Harvey, the Executive Committee of ILPA has considered your request for ILPA's assistance in the study by the Border and Immigration Agency (BIA) to consider its future policy around the regulation of immigration advice.

As you will be aware, ILPA participated in the discussions that led up to the 1999 legislation setting up the Office of the Immigration Services Commissioner (OISC). Discussions between ILPA and the BIA and its predecessors on the regulation of immigration advice predate that legislation and have continued subsequently.

As Ms Harvey identified, the timescale is not an accommodating one. The Executive Committee of ILPA has concluded that the timescale presents insurmountable difficulties for a membership organisation such as ILPA, which must give its members an opportunity to be involved in responses submitted by the Association. ILPA is therefore unable to accede to your request to participate in this consultation.

The regulation of immigration advice is a topic close to members' hearts. We are grateful for your invitation to Ms Harvey to pass your letter directly to members so that they could respond as individuals and this we have done, for those with whom we have contact by email. These make up approximately 80% of ILPA's membership. The other 20% will receive our hard copy mailing shortly before your deadline.

May we please require that the paragraph above be cited in full if any reference is made to ILPA or to this letter in the context of the BIA OISC Review.

I note the Executive Committee's concern that the BIA Review team is itself working to such a punitive timescale. The timescale for this phase seems to us unlikely to provide an opportunity for a meaningful consideration of this very complex field. We understand from your conversation with Ms Harvey that the timescale is imposed upon you by the constraints of a legislative timescale, that of the simplification project. The Executive Committee is concerned by this, given that throughout discussions to date of simplification

there have been repeated statements that there will be opportunities for meaningful consultation.

We should like to take this opportunity to reiterate ILPA's longstanding commitment to the principle of independent regulation of the giving of immigration advice. ILPA is a professional association with around 1,000 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. The Memoranda and Articles of Association set out who can be a member of ILPA. These can be read in full on our website in the section on membership. It is a condition of membership that a person undertaking advisory or representation work must be a member of a recognised professional body exercising a disciplinary function in respect of professional misconduct by the individual.

It would not be proper to close without reiterating ILPA's position on the topic covered in the questions posed in your letter as

- Whether regulation could be done by some other means, for example, by a trade association,

ILPA is the oldest, largest and most established specialist professional organisation for those giving immigration advice and providing representation. It has existed for some 24 years. Any suggestion that a professional body should undertake regulation would inevitably involve consideration of ILPA for this role.

ILPA does not play a regulatory role. ILPA does not want a regulatory role; our work lies in the pursuit of excellence in the giving of advice or provision of representation in immigration, asylum and nationality law, which is different from the satisfying of minimum standards as in a regulatory model. It is unlikely that any of the existing regulators would suspend a person's right to give immigration advice because they did not do everything described as best practice in an ILPA best practice guide, or set out as best practice in ILPA training sessions. We exist to help to make it possible for those who wish to maintain or improve their standards to do so. The member's own desire to pursue excellence is central to this.

A move toward self-regulation would run counter to the trend, evidenced by Part V of the Immigration and Asylum Act 1999, by the establishment of the Office of Legal Complaints, against self-regulation. You may be aware that the Law Society and Bar Council have divided their functions into regulatory and non-regulatory, so that regulatory work is undertaken by the Bar Standards Board and Solicitors Regulation Authority.

On ILPA's website www.ilpa.org.uk in the section on submissions you will find ILPA's January 2008 response to the Solicitors Regulation Authority consultation on its accreditation schemes. You will also find a number of submissions that discuss in detail the question of ease/difficulty of access to legal advice in immigration, among which we particularly highlight responses to the Legal Services Commission on the availability of publicly funded legal advice. These you may find helpful in your work.

Yours sincerely

Sophie Barrett-Brown

Chair, ILPA