



**ILPA'S SUBMISSION TO SOLICITORS REGULATORY AUTHORITY
REVIEW OF THE PROFESSIONAL ACCREDITATION**

Introduction

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. ILPA exists to promote and improve the giving of advice on immigration and asylum, through training, disseminating information and providing evidence-based research and opinion.

ILPA limits this response to our area of expertise – the Immigration and Asylum accreditation scheme run by the Solicitors Regulation Authority (SRA). Our submission concentrates on four fundamental points.

A review of accreditation should:

- i) take into account the views of practitioners to postpone reaccreditation in the Immigration and Asylum scheme for 12 months;
- ii) review the impact of the past Immigration and Asylum accreditation scheme;
- iii) achieve clarity on the different roles undertaken by the Legal Services Commission (LSC) and the SRA and other regulators such as the Office of the Immigration Services Commissioner (OISC);
- iv) ensure that any accreditation process takes into account the views of practitioners and practitioner organisations

Question 1

Are the above [see consultation paper] objectives comprehensive and appropriate?

ILPA understands the objectives given the importance of accreditation in the scope of modern day legal practice. However ILPA would like more clarity within the Immigration and Asylum scheme on the different roles undertaken by the Solicitors Regulatory Authority (SRA) and the Legal Services Commission (LSC). At the moment, accreditation in immigration and asylum is not made compulsory by the SRA, but is made compulsory for those doing publicly funded work because the LSC require it. To the best of ILPA's knowledge, the vast majority of those accredited under the scheme are those undertaking publicly funded work.

Question 2

Do you agree that a suite of accreditation schemes run by the SRA in all areas of law is undesirable?

ILPA agrees that accreditation is necessary for immigration and asylum work because of the potential vulnerability of clients but cannot comment on whether accreditation is necessary in other areas of law.

Question 3

Do you agree that the SRA's role in accrediting solicitors should focus primarily, in the public interest, on the protection of the vulnerable client and supporting an efficient justice system?

ILPA agrees that the SRA's role in accrediting solicitors should focus primarily, in the public interest, on the protection of the vulnerable client and supporting an efficient justice system. However as it currently stands the immigration and asylum scheme fails to achieve that. The primary driver for a solicitor to obtain accreditation is that it is a compulsory requirement for public funding from the LSC.

In addition the SRA should also focus on ensuring that any accreditation process takes into account the views of practitioners and practitioner organisations in its design and method of accreditation and account should be taken of the likely cost to practitioners and their employers of accrediting staff (both the costs of examination and preparation for examination and the time taken away from practice to do this). The greater the extent to which practitioners identify that a scheme is providing real quality control, and that accreditation provides support for developing skills rather than being just a burdensome (and costly) box to tick, the greater the 'buy-in' from the profession is likely to be and the more the scheme is likely to drive up standards, promote a culture of excellence, and achieve its primary objectives,

Question 4

Which, if any, of the SRA's existing schemes (see above) do you think fall within the scope suggested in question 3?

ILPA can only comment on the Immigration and Asylum Scheme and it is the view of ILPA that the current Immigration & Asylum Scheme does not meet the requirement in Q3.

Question 5

Are there any areas of law which fall within the scope suggested in question 3 where the SRA does not currently operate an accreditation scheme?

Yes/No

If yes, please give details.

This is outside ILPA's area of specialist expertise and ILPA does not therefore comment on this question.

ILPA is aware from cases within the asylum and immigration field that the representation of children and of people suffering from a mental illness require special skills. Such clients may be found in many different areas of law and the questions that arise may be different in different areas.

Question 6

Do you think that the SRA should also operate accreditation schemes in areas of publicly funded law in order to facilitate the requirements of procurers, where appropriate?

Yes/No

Please explain your reasons.

ILPA's view is that it is not the SRA's role to provide an accreditation scheme to facilitate the requirements of the LSC. The LSC should be held accountable for its own audit process and quality assurance. This is all the more the case in the light of the LSC's abandonment of the peer review process.

Question 7

Should the SRA be concerned with accrediting solicitors in any areas of law which fall outside of the scope proposed in questions 3 and 6?

Yes/No

If yes, please give details and explain/give examples

This is outside ILPA's area of specialist expertise and ILPA does not therefore comment on this question.

Question 8

Do you agree that the SRA should retain the current non-compulsory approach to accreditation schemes until the issue has been fully considered as part of the wider quality assurance debate?

Yes/No

Please explain your reasons

ILPA agrees with the proposal of the retention of non-compulsory approach to accreditation until there has been full consideration of the wider quality assurance debate. ILPA also calls for an empirical study on the impact of past accreditation schemes. In the context of immigration and asylum it is difficult to reconcile the key compulsory driver (public funding) and the SRA's current "non-compulsory" approach to accreditation. The question of quality assurance is linked to the quality and utility of the current complaints schemes by various regulators. The creation of the SRA is as direct result of the separation the regulatory role played by the solicitors' professional body.

It is of important note that there has been cross-fertilisation between the OISC's Code of Conduct and the SRA's Rules of Conduct, which to an extent mirror each other. There is a convergence of approach by the SRA and the OISC in the way accreditation and re-accreditation takes place. It is important for public confidence in any scheme that it is more about substance than form.

Question 9

Do you agree that all accreditation schemes should be based on a set of clear and transparent competence standards?

Yes/No

Please explain your reasons

ILPA agrees in so far as Immigration and Asylum scheme is concerned that accreditation should be based on a set of clear and transparent competence standards. However the standards must be also transparently uniform across all regulators. In this context immigration and asylum law is unique because of the dual and sometimes overlapping regulators (OISC and SRA); yet the authorised levels do not match each other (for example someone can be Level 3 for the OISC and Level 2 for the SRA). An OISC regulated provider wishing to hold an LSC contract in immigration and asylum currently has to be regulated under both schemes.

ILPA understands from recent correspondence with the SRA and LSC that there was a previously a division of roles between the SRA/Law Society and the LSC as to who held details of who was accredited and at what level. We understand that the SRA now has responsibility for holding this information (albeit that the SRA helpline was initially confused about this and directed ILPA to the LSC). However, the only way for an individual to access it is through the Law Society's 'findasolicitor' website, which will generate a list of those accredited in Immigration and Asylum by the SRA, but not a list of who is accredited at a particular level. To discover this information it is necessary to inspect the information held about each individual accredited firm on the Law Society's findasolicitor website. ILPA has suggested that either lists should be made available or that the 'findasolicitor' search mechanisms should be refined. We understand the advantages of 'findasolicitor' as a database that is constantly updated, however it appears to us that only being able to identify accredited persons on the Law Society's website sits ill with the division between the SRA and the Law Society.

Question 10

Do you think that it is possible to identify a set of generic standards which would be common to all accreditation schemes?

Yes/No

Please explain your reasons.

ILPA's view is that it is over-simplistic to identify a set of generic standards which are common because different fields of law are not identical in practice. Each scheme must be tailored to its individual needs. Within the field of immigration and asylum law there is a great diversity of practice: from business immigration lawyers specialising in work for large corporate clients but also advising individuals, to those advising individual migrants and would-be migrants to those dealing with forced migration cases.

It is important that the SRA should consult with practitioner organisations on the design and method of assessment and should set up a “user group” for each accreditation scheme to ensure that there is a forum for feedback about the scheme – and its inevitable problems – during its lifetime. The absence of such a “user group” from the Immigration and Asylum Scheme has, in ILPA’s view, been to the detriment of the effective operation of the scheme as a whole.

Question 11

Is it desirable for applicants for accreditation schemes to be assessed against these competence standards rather than on the basis of their length of experience or size of caseload?

Yes/No

Please explain your reasons.

In the context of immigration and asylum law practice it is difficult to assess competence across all sub-areas by virtue of the differences of practice and the vast subject area. Equally, it may be difficult to assess competence solely on the basis of length of experience or size of caseload if a generalist viewpoint is taken.

Any accreditation schemes needs to reconcile differences in market- driven specialisms and different practices. It is difficult to separate artificially the individual competence from a firm’s competence as, for example, the OISC does now (i.e. the individual can only practice at level authorised for the firm and not higher).

Hence the importance that, within the immigration and asylum field, that the SRA not only consults with practitioners but also set up user/’stakeholder’ groups with whom to discuss design, development, monitoring and evaluation of any accreditation scheme and from whom to collect feedback.

Question 12

Do you agree that the SRA should set accreditation at competent practitioner level?

Yes/No

Please explain your reasons.

It is difficult to reconcile what the SRA proposes in terms of “competent” practitioner level with the historical emergence of accreditation in the immigration and asylum field following the Immigration and Asylum Act 1999 and the creation of the OISC under that act, and the subsequent Law Society/SRA immigration and asylum scheme.

ILPA can see the merit of a single competence practitioner level for the reasons given by the SRA for entry level. However, this needs to be reconciled with the current parallel scheme run by the OISC.

Equally an accreditation scheme needs to reconcile market-driven specialisms and practices. In addition it should not be a barrier to competition. Therefore ILPA calls for further consultation on accreditation in the context of immigration and asylum.

Question 13

Do you think that the SRA should be concerned with setting a higher or specialist level of accreditation?

Yes/No

Please explain your reasons.

There is a dichotomy in the issues raised by this question and it should be viewed in the light of the reply to Q6. On one hand the public funding driver requires a higher or specialist level accreditation; on the other hand this creates unnecessary barriers to competition.

ILPA supports a voluntary higher/specialist level as an essential component of supporting an efficient justice system by retaining experienced practitioners in legal aid as long as it is on voluntary basis and does not create barrier to competition.

Question 14

Do you think that the SRA should consider setting an introductory or probationer level of accreditation in some areas of law?

Yes/No

Please explain your reasons.

It is ILPA's view that in the context of asylum & immigration a probationary level of up to one year's duration is arguably necessary because of the vulnerable clientele. It is also essential for organisations who recruit trainee solicitors and trainee caseworkers for there to be a probationer level to ensure that these people can undertake remunerative work. Any accreditation scheme needs to take account of the needs of recruitment and training, the need for those individuals to be able to accumulate experience, and to be paid for the work they do.

If you answered yes, in which areas of law would this be appropriate?

ILPA restricts its comments to the question of immigration and asylum.

Question 15

Do you agree that the role of the SRA, as a regulator, should be to set the standards for assessment of practitioners rather than to prescribe the format of assessments or to provide the assessments itself?

Yes/No

Please explain your reasons.

ILPA agrees the role of the SRA should be to set out the standards for assessment. The assessment standards and methods must be appropriate to the skill and knowledge to be assessed with appropriate input from practitioners.

Question 16

Is it desirable for all organisations providing assessments for the purposes of accreditation to be subject to a set of common principles and standards which will be set and monitored by the SRA?

Yes/No

Please explain your reasons.

ILPA agrees it is desirable for all organisations providing assessment to be subject to a set of common principles and standards. There should be practitioner and practitioner organisation input into setting the common principles and standards and the means by which these are to be reviewed periodically.

Question 17

Will a robust monitoring regime implemented by the SRA against a common set of principles and standards provide assurance that consistency is being achieved across assessment organisations and that standards are being upheld?

Yes/No

Please explain your reasons.

ILPA agrees that a robust monitoring regime and enforcement of common set of principles and standards can provide assurance and integrity of the assessment process and organisations. It will also underpin both the profession's and the public's confidence in the scheme.

Question 18

Do you agree that all accredited practitioners should be subject to reaccreditation after a fixed period of time?

Yes/No

Please explain your reasons.

ILPA agrees that accredited practitioners should be subject to reaccreditation on fixed intervals. ILPA calls for further consultation on the appropriate fixed interval.

In the context of the Immigration and Asylum scheme re-accreditation should be postponed for further 12 months and then be well structured so that there is no repeat of past mistakes. ILPA is very aware that accredited practitioners in immigration and asylum were 'left hanging' on the question of reaccreditation and ILPA's own attempts to obtain further information, following enquiries from our members, met with the response that there would be further information 'in due course'. Practitioners need clear information when they accredit about the requirements of reaccreditation. If these are set to change, then even if the changes have not been finalised, all accredited practitioners should be informed that changes are afoot at the earliest possible date and kept informed.

Question 19

Should the re-accreditation process seek to assess:

Practitioners' up to date knowledge only

Practitioners' up to date skills only

Both practitioners' up to date knowledge and skills

None of the above

Comments:

ILPA's view is that the reaccreditation process should seek to encourage retention of up to date knowledge by the practitioner. The current format of assessing skills is only appropriate for entry level accreditation.

It is also ILPA's view that the criteria for re-accreditation should be attendance on Continuing Professional Development course(s) that meet the purpose of re-accreditation, to ensure knowledge is updated.

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Chair, ILPA
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