ILPA's Response to the Law Society's proposal for an Immigration Law Accreditation Scheme

April/May 1998

1. We broadly welcome the Law Society's proposal, and the opportunity to make this submission.

2. ILPA's membership includes, but is not confined to, practising solicitors. It is a condition of ILPA membership that a practitioner be subject to professional discipline, whether as an individual member of a professional body exercising a disciplinary function or as an employee of an approved organization. In the case of solicitors the relevant professional body is the Law Society and accordingly we welcome any realistic steps taken by that body to improve the standard of service expected of its members.

3. We also welcome the positive approach of the consultation paper, with its emphasis on the encouragement of quality, which is an essential complement to the control of unscrupulous immigration advisers. ILPA has already set out its views on the Home Office's consultation papers on this subject and a copy is available if required.

4. The Law Society's consultation paper begins with some background on which we have no comment, and then, at

paragraph 7, lists reasons why it believes an immigration accreditation scheme should be developed, on some of which we comment as follows:

5. We are pleased to see that vulnerable clients are given top priority, but regret the inference that may be drawn from the wording of sub-paragraph 7(i) that it is only, or primarily, vulnerability to unscrupulous or incompetent advisers that is in issue. That is certainly a serious problem which arises all too often, but we need to remember the underlying reasons and that these clients are also vulnerable to hostile, politically motivated and often unlawful Home Office decision making.

6. In our view the fundamental problem is the overall shortage of competent and suitably qualified advisers, particularly in asylum law. It is this which drives many applicants into the hands of the unscrupulous, the incompetent or the merely mediocre or, almost equally worryingly, to struggle alone through the initial asylum determination process with often disastrous results with statements of case being presented, in written questionnaires and/or at interviews, without any legal advice as to the Convention criteria applicable to the case, or as to which aspects of an applicant's life history are relevant to an asylum claim. We hope that a main aim of the Law Society's scheme will be to increase the numbers of those practising asylum law competently so that all applicants who wish to do so actually have the opportunity to instruct an accredited

solicitor instead of, as at present, wasting scarce cash on fruitless phone calls only to be told by reputable firm after reputable firm that they have no capacity to take on the case.

7. We endorse what is said in subparagraph 7(ii) about the unsatisfactoriness of complaint to the OSS as a remedy against poor service in immigration cases. This accords with the experience of those of our members who have advised clients with cause to make such complaint. We are uncertain how this weakness can be improved per se, and support the view that the better way forward is to seek to ensure a more copious supply of competent solicitors.

8. We endorse what is said in subparagraph 7(iii) about the low status and remuneration of legally aided immigration work. We hope that the proposed scheme will have the desired profile raising effect. We fear, however, that this will not be achieved by PR alone but also needs vigorous campaigning to improve remuneration rates, however outlandish an aspiration this may seem in the present political climate.

9. Paragraph 9 of the consultation paper summarises arguments for and against establishing an accreditation scheme for solicitors. Amongst ILPA's members there are some who find the arguments against establishing a scheme persuasive for the reasons set out in paragraph 9(1). This is, however, the view of a minority. ILPA as an Association strongly

endorses the principles of the proposed scheme, and finds that the arguments against are convincingly answered by those set out in paragraph 9(ii). Our further comments on the issues addressed in these subparagraphs are:

a. The qualification of solicitor: We have already indicated our majority view that there is a good case for establishing the scheme because of the particular vulnerability of many immigration clients, and because the qualification of solicitor has not up to now always been a guarantee of competence in immigration law.

b. Exclusivity: We understand that the proposal put out for consultation is not that accreditation should be a requirement for the practice of immigration law so far as the Law Society is concerned, but we would expect that those who became accredited would gain an advantage in competing for immigration work. If the scheme works well this is only to be expected. We would not see it as a disadvantage of the scheme that those without accreditation may be less likely to receive referrals, or may have to demonstrate their suitability in some other way for the benefit of a discerning client. As proposed we understand that the scheme will provide a route to accreditation for those who wish to start practising immigration law by allowing then to acquire the necessary skill and competence from an existing practitioner or in some

other way. Our hope is that if access to accreditation is sufficiently flexible and properly managed it could and should lead to an overall increase, not a decrease, in the number of competent practitioners.

c. Administration and cost: Competent practitioners will already be incurring costs in courses and publications to keep up to date. The actual fee for joining and the time spent completing whatever tests of competence are devised will be additional costs, but given what is said elsewhere in the document about administration of the scheme this seems likely to be less prohibitive than the government's proposed scheme which appears likely to be our fate if the Law Society cannot "sell" its scheme as a viable alternative for solicitors.

10. Eligibility and criteria for membership:
These are dealt with in paragraphs 11-18 of the discussion paper, on which we comment as follows:

11. In paragraph 11 of the consultation paper it is suggested that a higher level of criteria may be required by an immigration scheme than by other Law Society accreditation schemes, but it is unclear how the term "general competence" in this paragraph relates to the terms "Basic Competence" and "Specialised Knowledge" in paragraph 16. Our view is that comparison with the criteria of the other accreditation schemes is less likely to be useful than a

realistic assessment of the overall general standards actually required by practitioners in the various specialised areas of immigration law as discussed further under "Breadth of Experience" in paragraph 16 below.

12. Eligibility:

This is covered in paragraphs 12-14 of consultation paper, in which there appears to us to be an anomaly in that none of the 3 categories in paragraph 12 caters for the newly qualified solicitor who has extensive previous relevant experience, while paragraph 14 does not meet the case of, for example, a voluntary sector immigration caseworker who qualifies and moves into private practice. We suggest that for a solicitor holding a current practising certificate the 3 years admission criterion in paragraph 12(i) be modified to take account of appropriate experience as an immigration practitioner prior to admission. We note that at present this is covered under "exceptional circumstances" in paragraph 18, and accept that there may be difficulty in defining what amounts to appropriate experience, but feel that this is a pattern of career development sufficiently common, and to be encouraged, as to warrant inclusion in the mainstream of the scheme if possible.

13. We agree that those acting in a supervisory capacity within the scheme should hold current practising certificates. We note that the proposal does not require such supervisors themselves to have any immigration experience. This has

caused some disquiet within ILPA, but we recognize the reality that to insist upon all supervising solicitors being immigration experts would be to bar access to the scheme to many able non-certificated practitioners. We consider that the proposal as it stands is a workable means of valuing and including non-certificated experience, while providing the necessary safeguard to specifically professional standards and thus enabling the Law Society to perform its own supervisory and disciplinary functions. It seems to us to be central to the potential effectiveness of the proposed scheme that accreditation be of individuals, not firms, in recognition of personal competence which is tested by the various criteria of membership. So it will not be for immigration expertise that the newly qualified and uncertificated will need to look to their supervisors, but for guidance and support in professional standards. We hope and anticipate that the Law Society will develop criteria and checks to ensure that supervisory arrangements within firms employing newly qualified and uncertificated members of the scheme are satisfactory.

14. Minimum experience:

We accept that a requirement of 350 chargeable hours of immigration law work in each of the 3 years preceding the accreditation application is probably as good a way as any of ensuring an adequate threshold of experience.

15. Breadth of experience:

The following comments on paragraph 16 of the consultation paper should be read with our comments on "general competence" in paragraph 11 above.

16. a. Assuming that paragraph 11's "general competence" equates to this paragraph's "basic competence", we agree that this is the appropriate threshold standard for paragraphs 16(i)(a) (general knowledge of the legal framework) and 16(i)(b) (knowledge of EU/ECHR law), but believe that a higher standard should be required for the specialisms in paragraph 16(ii).

b. We do not agree that basic competence in both business and asylum law is necessary (para.16(i)(c)), unless "basic competence" is defined at such a low level as to mean only knowledge of the Rules without experience of the practice. Too many competent asylum practitioners will be excluded if experience of business applications is insisted upon, and vice versa. The purpose of requiring knowledge outside the specialism claimed is surely so that the practitioner is able to identify a potential problem or recognize a potential solution to the client's situation and make an appropriate referral for expert advice. This can be achieved without insisting, for example, that a business immigration lawyer must have demonstrated competence in actually making a refugee family reunion application, or that the asylum lawyer must have made

Training and Work Experience Scheme applications. We suggest that 16(1)(c) be amended accordingly.

c. We do however feel strongly that asylum law practitioners must be required to demonstrate in-depth knowledge of ordinary immigration law as it is likely to affect asylum claimants, it being a common weakness of advisers to fail to consider and advise upon the implications of their clients' immigration status at the various stages of the asylum process. This should be built into the specification at para 16(ii)(b).

d. The proposed insistence on advocacy experience seems particularly unnecessary for business immigration law specialists, but even in those areas more likely to lead to appeals or other litigation we do not see the necessity or justification for this prescription. Some familiarity with the immigration appellate process is undoubtedly necessary and experience of advocacy may be an effective means to that end, but it is not the only one. Furthermore, non-solicitor members of the scheme would require leave to appear before the Immigration Appellate Authority on a case by case basis and while it may be difficult to imagine this being refused it nevertheless makes it anomalous to insist upon advocacy as a threshold criterion. We recommend that 16(1)(d) be either omitted entirely or replaced with a requirement for basic knowledge of the immigration appellate and judicial review processes.

17. Training and Keeping Knowledge Up to Date:

We agree with the approach of this paragraph.

18. Exceptional Circumstances:

Please refer to our comments in our paragraph 12 above concerning newly admitted solicitors with prior immigration law experience.

19. Selection Assessment:

a. The questionnaire procedure seems potentially adequate and practical, given the need to be realistic about the cost, in both time and money, of running the scheme, but we do not consider it adequate to assess only case management and procedural matters to the exclusion of anything substantive. In a telephone conversation with Philip Trott of ILPA on 21 April 1998 Richard Dunstan of the Law Society accepted that the wording of this proposal, and its related question on the "Questions for Consultees" questionnaire, is misleading in that it was intended to deal with the assessment of professional competence rather than office management systems. For the avoidance of doubt we therefore state that we envisage that such an assessment could be made by questionnaire, backed up by interviews in borderline cases and by references (with the provisos indicated below), but that questions to verify casework experience and knowledge of substantive law and practice must be included.

b. We do not agree that approaches should be made to government departments to provide references, and do not accept that the Law Society should "reserve the right" to do so. We believe it would raise invidious questions of confidentiality and the assessment of responses from such sources. We do, however, accept that in some cases, depending on the nature of the applicant's practice, the appellate authority and referral agencies may have useful comments to make provided steps are taken to ensure appropriate interpretation of responses and applicants given an opportunity to deal with adverse issues raised.

20. Approach to Immigration Law Work:

We are generally happy with the draft scheme leaflet, which is consistent with ILPA's own guidelines. We particularly welcome the manner in which the requirement to advise of the non-availability of legal aid at appeal hearings, and to inform clients of sources of free representation, is worded, and that it does not seek to impose a rigid deadline for coming off the record in such cases.

21. Reaccreditation:

We generally agree with the sub-paragraphs under this heading, and welcome the provision that no one would be removed from the scheme with the opportunity of attending an interview. As to feedback from other practitioners, clients and referral agencies, however, we make the proviso that it is important to ensure that reaccreditation

applicants are treated fairly and given an opportunity to respond. It must also be borne in mind that it could be very difficult to deal effectively with a complaint that, as a result of the proposed feedback procedure, was first elicited sone years after the events in question.

22. Suitability, & Investors in People:

We welcome the comments about monitoring performance (subject to our provisos about references and feedback set out in our paragraphs 19b and 21 above), and sanctions. We also support the decision to keep control directly in the Law Society's own hands rather than via, for example, Investors in People.

23. Administration and Cost:

Given that membership will be personal to individual members, and that this is often a poorly remunerated area of law, we hope that everything possible will be done to reduce the cost of membership below the projected £200 for 3 years. We wonder whether there is room for a sliding scale of fee that would distinguish, for example, between the business and the asylum specialist or according to the percentage of legal aid work done.

24. Conclusion & Questions for Consultees:

As an Association our answers to the questionnaire are as follows, with references to relevant paragraphs in the above substantive response:

Question	Answer	Our paragraph reference
1	yes	1-9
2	partly	11 & 16(a)-(b)
3	yes	13
4	yes	13
5	(b) - about right	14
6	only with the proviso stated in our para 19a	
7	no to government departments - otherwise yes but with the proviso stated in our para 19b	
8	yes	20
9	yes	20
10	yes	21
11	yes	21
12	yes	21
13	iv - ILPA	
14	n/a	

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