



Delivering Advice, Information and
Legal Representation Services

UK Border Agency consultation: Oversight of the Immigration Advice Sector

August 4th 2009

About BAN

BAN (BME Advice Network) is an integrated network of quality assured advice services delivered by and for people from London's migrant and refugee communities. All BAN member services are quality assured, including services with a Community Legal Service Quality Mark or registered with the Office of the Immigration Services Commissioner. BAN currently has 43 members, 19 of which comprise a sub-group delivering the London Councils funded Advice Integration Project. BAN delivers free and confidential advice services across London in the following areas of law:

- Asylum
- Welfare benefits
- Immigration
- Housing
- Homelessness
- Debt/money
- Education
- Employment
- Health
- Racial discrimination
- Domestic violence
- Community Care
- Tax credits

In addition, BAN members provide legal representation services in:

- Asylum
- Asylum Support
- Immigration
- Welfare Benefits

Services are accessible through drop-ins, appointments, telephone and home visits arranged through the partner agencies. BAN members have multilingual staff and access to interpreters and translators to provide services in community languages.

Consultation response

Due to the nature of the work we deliver, BAN would like to respond to this consultation in detail. Overall, we are concerned that any form of fee connected with OISC accreditation will present serious financial challenges for voluntary sector/not for profit providers of immigration services to deliver immigration advice. Voluntary sector/not for profit providers are the very group who have been delivering excellent immigration advice to the most vulnerable members of society, taking on complex cases and working at great cost efficiency in order to assist migrants to access quality immigration advice.

Voluntary sector/not for profit providers are the group that will be most affected by any form of fee due to the constricted and ever-reducing budgets on which we operate. Fee charging, even at £400 per year, will impact to a highly detrimental extent on voluntary sector/not for profit providers and result in a decrease in the quantity of excellent immigration advice available in the voluntary/not for profit sector. This in turn will render vulnerable migrants more dependent on private sector providers, and more liable to the exploitation that the proposals in this consultation aim to overcome.

Option 2 as outlined in this proposal, which includes charges of varying amounts, will, in the long term, impact on the development of quality immigration advice. BAN is concerned that the proposal does not outline three options equally, but instead presents Option 2 as a foregone conclusion. We would like to ask that Options 1 and 3 are re-drafted to allow full consideration and question the presentation of Option 2 as a preferred option.

BAN would in addition like to raise the issue that the UKBA's role is not an impartial one, and therefore their leading role in this consultation is concerning. UKBA is responsible for managing the UK's borders, but seeks to demonstrate this through numbers refused asylum or deported. BAN would like to ask why UKBA are consulting on restructuring the OISC, when in fact immigration advice should be seen as a legal right, and thus within the Ministry of Justice. BAN feels that these proposals aim to demonstrate to the public that immigration is being made to fund itself, and thus its purpose is to respond to an increasingly inflammatory debate around immigration. Ultimately, we have serious concerns that the proposals in this consultation, particularly Option 2, do not aim to protect vulnerable people from rogue immigration advisors and will instead achieve the exact opposite, by forcing the voluntary/not for profit sector out of immigration advice.

We would like to respond to the consultation in more detail:

Question 1: Do you agree that it is beneficial for the immigration advice and services sector to remain regulated? If yes, do you think current regulation works and, if not, why not?

BAN believes that it is highly beneficial for the immigration advice and services sector to remain regulated in order to protect vulnerable people from unregulated agencies and potential exploitation.

We believe that the current regulatory systems in place are effective for voluntary sector/not-for-profit organisations, due to the client-focused nature of the sector, which aims to deliver a high level of service to vulnerable groups. Voluntary and not-for-profit organisations have worked hard to meet the standards of OISC regulation and to demonstrate their commitment to the vulnerable groups with which they work. The voluntary and not-for-profit sector has a number of additional regulatory systems with which it complies, and thus often encounters a disproportionate burden of administration in order to demonstrate its efficiency.

The absence of fees for OISC regulation has allowed voluntary/not-for-profit organisations to gain recognition for the excellent and effective services they deliver without causing any further financial burden. It has thus contributed greatly to allowing the voluntary and not-for-profit sector to expand and professionalize immigration advice services, and thus to enable vulnerable individuals to access services away from the potentially exploitative for-profit sector. Any introduction of fees for the voluntary/not-for-profit sector will impact against the continued provision and development of regulated immigration advice outside of private sector firms. BAN feels strongly that, if the OISC and UKBA wish to ensure the interests of vulnerable migrants are met, then they will chose not to incur fees against the voluntary/not for profit sector.

Question 2: (Option 1 Leave OISC and the Regulation of Immigration Advice and Services broadly as it is)

Do you think the existing regulatory structure should be retained without any changes?

BAN believes that the existing regulatory structure is effective for voluntary/not for profit organisations. However, BAN feels that there is a strong discrepancy between the regulation required by the OISC for the voluntary/not for profit sector and that required for the private sector. For example, solicitors working in the voluntary/not for profit sector are regulated by both the OISC and by the Solicitor's Regulatory Authority, thus creating additional bureaucratic burdens for voluntary/not for profit organisations operating on restricted budgets and resources. Amendments made to the existing structure should aim to avoid incurring additional administrative or bureaucratic tasks for these organisations, and should seek to redress the issues highlighted here.

Question 3: (Option 2 Consolidate OISC legislation, amend its functions and revenue raising ability)

Do you agree that individuals who have been convicted of illegally providing immigration advice and services should be prevented from owning or participating in a regulated immigration advice organisations. If so, how long should that ban last?

BAN agrees that all individuals who have previous convictions regarding illegal provision of immigration advice should be prohibited from participation or ownership of regulated immigration advice organisations.

BAN proposes that bans given to those convicted of providing immigration advice illegally should be awarded according to the seriousness of the crime. Further advice should be sought from organisations such as Companies House in order to set transparent and pre-determined penalties terms that apply across sectors.

Question 4

Do you think combining regulated and exempted advisors into a single register would be helpful.

Yes, this would be a useful development. However, the register should also contain information on whether an organisation is from the private or voluntary/not for profit sector, and whether advice services are free or charged for. This will enable vulnerable people in need of immigration advice to identify and decide upon the correct immigration advice service for their needs before approaching any agencies.

Question 5

Do you think the introduction of Improvement and Prohibition Notices would be helpful?

BAN would welcome this proposal but would require further information and clarification regarding the terms under which Improvement and Prohibition Notices would be issued.

Question 6

Do you feel the existing audit arrangement of the OISC are effective, would additional powers be helpful? If so, please explain.

BAN feels that generally, existing audit arrangements are effective. However, it would advise that other quality standards held by advice organisations should be recognized as an integral part of the auditing process, in order to reduce the bureaucratic burden on voluntary/not for profit organisations.

Question 7

Do you agree that the cost of regulation should be paid for by the sector? Do you have any preferences on how fees are levied (eg per organisation/per advisor etc)?

BAN feels strongly that, ultimately, regulation should be paid for through public finances as it is in the interests of all that people in need of immigration advice do not face exploitation. BAN proposes that, should the current economic climate be affecting this, then it should not be the sector as a whole that is liable to bear the financial burden of regulation. Instead, the fundamental difference between the private and not-for-profit sectors should be recognized, and any costs incurred should be absorbed by the private sector. BAN believes that this will constitute a significant recognition of the effective service provided by the voluntary/not for profit sector and of the private sector's vastly differentiated financial capacity.

Question 8

Do you think full cost recovery should be sought from the not for profit sector/ If not please explain why you think a public subsidy would be appropriate.

BAN is strongly against any charges being incurred against the voluntary/not for profit sector. This is due to the fact that the voluntary/not for profit agencies delivering immigration advice, due to their very nature, are unlikely to be guilty of any crimes. By incurring full cost recovery on the voluntary/not for profit sector, the OISC would essentially be penalizing them for the problems caused mainly by private sector practice.

In addition, the voluntary/not for profit sector is operating on highly limited financial resources and thus may be unable to afford the costs of regulation. This will lead to highly detrimental outcomes, as the voluntary/not for profit sector would be unable to maintain or develop immigration advice provision, reinforcing dependence on the private sector and thus exacerbating the potential for exploitation.

BAN would also like to reiterate the increased challenges facing the voluntary/not for profit sector currently. The combination of LSC fixed fees and the new audit costs for CLS Quality Mark accreditation are already posing serious and occasionally insurmountable challenges to the sector. If the OISC go ahead with charging any amount of fees to the voluntary/not for profit sector, it will signal the beginning of the end for a number of services.

Question 9

Do you think a sliding scale for recovering costs from the not for profit sector would be helpful? What factors should it take into account?

BAN would like to re-emphasise the points made in our response to Question 8. Any fees charged to the voluntary/not for profit sector will be hugely damaging. In addition, BAN believes that, due to

the holistic nature of services offered in addition to immigration advice services by the majority of its members, a number of long-term cost savings are made to the UK's financial resources.

BAN proposes that all voluntary/not for profit immigration advice services are exempted from the costs of regulation. Any costs should instead be incurred on the private sector, in which the majority of exploitation occurs, thus recognizing which sectors pose the most risk for the exploitation of vulnerable people.

Question 10: (Bring regulation of immigration advice under the Legal Services Act)

Do you think making immigration advice and services should be a reserves activity under the Legal Services Act? Please give your reasons

BAN is opposed to any significant change of immigration advice regulation that would lead to the change in regulatory body. BAN members are generally pleased with OISC regulation. Our concern is to ensure that the voluntary/not for profit sector is not constricted or restricted due to the issues brought about by the private sector. However, BAN would like to re-emphasize the concern that this option has not been thoroughly outlined due to the pre-ordained nature of a "preferred option" contained within a consultation. It is thus difficult to give this full consideration.

BAN would like to thank you for the opportunity to respond to this consultation and will look forward to receiving feedback on how this consultation has been responded to.

Yours sincerely,

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