

**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

**Summary of responses to the rule change  
consultation for barristers supervising immigration  
advisers**

**February 2020**

## Introduction

1. During October and November 2019, the Bar Standards Board (BSB) launched a consultation which proposed a restriction on barristers supervising immigration advisers who are subject to serious sanctions with the Office of the Immigration Services Commissioner (the OISC), an approved regulator under the Legal services Act 2007 or a professional body designated under the Immigration and Asylum Act 1999 ('the Act').
2. The consultation closed on 8 November 2019. We received a total of 24 responses to the consultation. Responses were received from the following:
  - The Office of the Immigration Services Commissioner (OISC)
  - The Bar Council
  - The Solicitors Regulation Authority (SRA)
  - The Chartered Institute of Legal Executives (CILEx) Regulation
  - 19 barristers
  - The Immigration Law Practitioners' Association
3. This paper summarises the responses we received, the key issues raised and the BSB's response.

### **Question 1: Do you agree that we should prohibit barristers from supervising immigration advisers in the circumstances described above and with our proposed wording of the prohibition?**

#### *Full support of the proposals*

4. The overwhelming majority of respondents agreed with our proposed rule, both in terms of the policy position (that certain sanctioned advisers should not be allowed to provide immigration services under the supervision of a barrister) and the wording of the rule itself. This full support was received from the majority of the profession (76% of the barristers who responded), the Immigration Law Practitioners' Association, the Bar Council, the OISC and the SRA.
5. The support was provided on the grounds that immigration consumers are potentially vulnerable and high risk advisers should not be able to continue to provide immigration services under the supervision of a barrister.

*'We agree, and strongly support, that the BSB should prohibit barristers from supervising immigration advisers in the circumstances described in the proposed rule rC85A. We cannot think of any circumstance in which it would be appropriate for a barrister to supervise an unregulated immigration advisor who has been subject to one of the sanctions listed in the consultation document or who has been struck off or disbarred or is currently suspended by their approved regulator or designated professional body. We also agree with the proposed wording of the prohibition.'*

*Barrister*

*'I support the new proposed rule. Immigration clients are vulnerable and so should be protected to the maximum extent from unsuitable advisors. It undermines the idea of regulation if barristers can supervise those sanctioned.'*

*Barrister*

*"As an immigration and asylum practitioner I am all too well aware of the vulnerability of clients in this field. I also agree with the basic principle that regulatory regimes should not undermine each other. On both grounds I support the proposed amendments'.*

*Barrister*

6. Two respondents, whilst agreeing with our proposals, felt that the BSB should be informed of any sanctions from the relevant organisation and that these should be included on our website, so it is more efficient for barristers to check. In the absence of this, they suggested direct links be provided to where the barrister can find the information. One of these respondents also suggested that advisers should annually declare to the barrister whether they have been subject to any sanctions.

#### *Partial support of the proposals*

7. One respondent agreed with the principle of the proposed change but emphasised the need for barristers to undergo training before they are able to supervise immigration advisers, and for an authorisation process to be in place.
8. One respondent, whilst acknowledging that changes are needed in this area, suggested the proposed rule may be too restrictive, and that a sanctioned adviser could be supervised by a barrister to facilitate re-training. They suggested that supervision could take place during the final month of the sanction.

#### *Opposition to the proposals*

9. One respondent did not agree with our proposals. They felt that our regulation should either allow barristers to supervise any adviser, regardless of sanctions, or to prevent supervision of unregulated advisers entirely. They supported the supervision of sanctioned advisers because it provides protection for the public if the barrister is overseeing the work. They also raised concerns that the issue is not widespread and therefore questioned the proportionality of the proposed rule.

#### **BSB response**

10. We welcome all of the responses we received and the overwhelming support for this rule change. We acknowledge the suggestions and concerns which have been raised and we have set out our response to these below.
11. As the Act permits barristers to supervise unregulated advisers, we consider that an outright ban would undermine the intention of the legislation and may undermine competition in legal services and/or access to justice. Our proposal is the least

restrictive rule necessary to protect consumers against advisers who would not otherwise be able to provide immigration services due to their sanctions.

12. Any barrister wishing to supervise in accordance with the Act will need to notify the BSB and provide evidence of their suitability to enter these arrangements. This will provide our Supervision Team with an opportunity to engage with the barrister if there are any concerns, such as their experience or whether they have the systems in place to supervise robustly. This will also enable us to monitor the arrangements and determine whether further regulatory action (such as mandating training) may be necessary in the future.
13. We will publish updated guidance, setting our expectations of any arrangements, so that barristers are clear what is expected of them. This will emphasise that they are personally responsible for the work of the adviser.

**Question 2: Do you have examples of good supervision arrangements which could be used to inform our guidance and case studies?**

14. We had a limited number of responses to question two. Of those who did respond, many did not feel they were able to comment.
15. Two respondents emphasised the importance of training for the barrister supervising the adviser to ensure they have the skills to do this properly. We also received a response from one chambers, which detailed the range of measures it had implemented to ensure appropriate supervision of unregulated advisers.

**BSB response**

16. The responses we received to this question have provided useful evidence to support our guidance and to develop examples of good practice.