



Home Office

**REVIEW OF THE OFFICE OF THE
IMMIGRATION SERVICES COMMISSIONER**

Executive summary

The Office of the Immigration Services Commissioner (OISC) was established by the Immigration Act 1999¹ in order to regulate the provision of immigration advice and services by practitioners who are not practising lawyers and are therefore not regulated by another body. This Review has concluded that there is still a need for this function. The Review also concludes that this function requires impartiality and needs to be delivered at arms length from Ministers, and therefore that the OISC should continue as a non-departmental public body at arms-length from Government.

The OISC regulates a diverse range of individuals and organisations from those providing basic advice in community organisations to more specialist advisers. It seems to do this with a light touch while maintaining the integrity of the regulatory system. Successes in recent years have included the introduction of a new, more robust competence assessment and taking a more active role in sharing intelligence and information with other law enforcement bodies. However, there are changes which should be made as to how the OISC does business to improve efficiency and reduce the burden on the public purse. Currently the majority of funding for the OISC is from the taxpayer, with immigration advisers effectively being subsidised in a way that other legal professionals are not. The OISC's costs are higher than necessary through some inefficiency, providing unfunded services and some unnecessary bureaucracy. A degree of uncharged for activity takes place that needs to stop or be charged for, and fees must increase so that immigration advisers, who benefit from the regulatory activities undertaken by the OISC, are paying for these benefits and not being subsidised by Government.

The Review has assessed how the OISC meets its obligations under the Immigration and Asylum Act 1999 (as amended), and concludes that it is a satisfactory regulator which seeks to provide a good quality service to those it regulates through quick and efficient processing of applications, complaints and other contacts. It is hard to judge from the available evidence how effective the OISC has been in driving up standards in the regulated sector and removing those who have been found unfit or incompetent to provide immigration advice. This points to shortcomings in the collection of Management Information. The OISC is aware of these shortcomings and now has actions in train to re-assess its Key Performance Indicators and remedy the problems with data availability, and this Review recommends that this work should be taken forward urgently. The Review also makes recommendations on the Home Office's Sponsorship.

¹ Subsequently amended, most notably by the Immigration Act 2014 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

Turning to the way in which the work is delivered, the Review makes a number of more detailed recommendations around caseworking efficiencies to build on the successful Reform and Remodel programme between 2008 and 2010. The OISC currently undertakes a number of activities such as continued professional development seminars at the taxpayer's expense, and action now needs to be taken either to stop this activity or to start charging those who benefit from it. The Home Office also needs to continue its existing work with the OISC and HM Treasury to recover as much as possible of the costs that are chargeable to those regulated.

The Review then considers how the OISC engages with various other bodies and individuals. It considers the place of the OISC in the legal services regulatory framework and recommends that the Legal Services Board and the OISC should continue to work together to strengthen links between the OISC and other regulatory bodies. It assesses how the OISC engages with, and provides protection to, those seeking immigration advice, and also how the OISC relates to the advisers it regulates, recommending resolving the current ambiguous role of the Commissioner's Advisory Panel.

Stage 2 of the Review concluded that the corporate governance of the OISC is satisfactory, although the now unusual structure with the Commissioner as a corporation sole means that there is not as much external challenge to her decisions as would be found in the more common structure of a Chair, Chief Executive and non-executive Board and recommendations are made in order to strengthen this within the corporation sole framework.

Summary of conclusions and recommendations

The conclusion of this Review is:

- that there is a continued need for regulation of immigration advice (paragraph 25);
- that two of the three tests are met and therefore the OISC should continue as a non-departmental public body (paragraph 30).

A number of recommendations for the OISC and the Home Office are made in the Review. They are listed here by organisation:

Recommendations which are the primary responsibility of the OISC:

- The OISC should consider whether its current approach to monitoring CPD compliance is the most proportionate and appropriate one. A review of this approach should be completed and agreed with the Home Office within six months of the publication of this report, with any potential savings as a result of increased efficiencies clearly identified and built into future budget allocations (paragraph 49).

- Building on the successful 2008-10 Reform and Remodel programme which streamlined the processes for new applications and re-registrations, the OISC should work with the Home Office to apply the same value for money principles to its other large-scale processes, most notably complaints and upward review. A revised, more risk-based process should be developed with efficiency savings clearly identified. This should include a robust cost benefit analysis of reduced caseworking time set against possible increased risk of appeals. The new process should be implemented within 18 months of the publication of this report so that any identified savings can be realised in the following financial year (paragraph 54).
- The OISC should review its legal costs with reference to other organisations doing similar work within 12 months of the publication of this report and, if necessary, work with the Home Office to improve value for money in representation at appeals (paragraph 52).
- The OISC should consider within 12 months of the publication of this report whether there is an appropriate light-touch way of assessing consumer satisfaction. This would have to be clearly distinct from the complaints scheme (paragraph 68).
- The status of the Commissioner's Advisory Panel should be clarified, either by making it more representative and having regular meetings, perhaps to discuss the findings of the advisers' survey; or alternatively, if it serves no purpose, by discontinuing it (paragraph 70).
- The OISC should keep under review mechanisms for engagement with registered advisers, whether via the Commissioner's Advisory Panel or other routes, and also should consider engagement with the public (paragraph 82).
- The Review recommends that the OISC should continue to consider how they can best meet Cabinet Office guidelines on transparency and open data (paragraph 83).
- The OISC should assess trends in its own efficiency over time and should compare to other similar organisations, and publish this benchmarking activity in its Annual Report, starting with the next one (paragraph 87).
- The Review recommends that the incoming Commissioner should provide his or her preferred option for rationalisation of the OISC's management structure to the Home Office within 3 months of taking up post (paragraph 90).
- The OISC should keep in touch with Government work on shared services so as to take advantage of any future opportunities for rationalisation. In addition, the OISC should consider the scope for sharing some services locally, for

example with other occupants of the building they use at 21 Bloomsbury Street (paragraph 92).

Recommendations which are the primary responsibility of the Home Office or another body:

- The Home Office should work with the OISC to ensure that its outcome-based objectives are appropriate for the organisation, and that the proposed data collection is adequate to support assessment of those objectives. A detailed set of performance indicators should be agreed within three months of the publication of this report and the data should be available to measure performance against these indicators by the end of Autumn 2017 (paragraph 43).
- The Home Office should, with the OISC, assess the impact of electronic applications in the year after they are implemented, and any necessary further changes or improvements should be agreed at that stage (paragraph 47).
- The Home Office should work with HM Treasury and the OISC as a matter of priority to minimise the cost to the public purse of financing the OISC by i) seeking to make efficiency savings with a view to continuing the current year-on-year reduction in the OISC's grant from the Home Office and ii) by maximising fee income with a view to getting as close as possible to full cost recovery by 2020. (paragraph 62).
- The Home Office should engage with the work being led by the Legal Services Board on the future of the framework for legal regulation, and ensure that proper consideration is given to the place of the OISC in any wider review, in particular considering whether the OISC could in due course become a qualifying regulator under the Legal Services Act 2007 if the devolution requirements could be dealt with (paragraph 65).
- The Legal Services Board and the OISC should continue to work together to ensure that they are both effectively contributing to, and benefiting from, proactive sharing of experience and information with other regulatory bodies (paragraph 66).
- The Home Office should consider whether there would be value in strengthening the governance framework, possibly by introducing a formal non-executive role. (paragraph 78).
- The Home Office Senior Sponsor should attend one meeting of the Audit and Risk Assurance Committee every year (or one meeting of the non-executive board if such a board is established in future) (paragraph 80).

- A new Framework Document should be drawn up by the Home Office and published on the OISC website as quickly as possible after the publication of this review and the appointment of the new Commissioner, and certainly within 6 months (paragraph 81).
- This Review recommends that the Home Office works as a matter of urgency to ensure that targets for delivering electronic applications to the OISC are achieved in line with the implementation plan in place in early 2017. (paragraph 88).

INTRODUCTION AND PURPOSE OF THE REVIEW

1. It is Government policy that a non-departmental public body (NDPB) should only be set up, or remain in existence, where the model can be clearly evidenced as the most appropriate and cost-effective way of delivering the function in question.
2. In April 2011, Cabinet Office announced that all NDPBs still in existence following the reforms brought about by the Public Bodies Act 2011 would have to undergo a substantive review at least once every three years. These triennial reviews would have two purposes:
 - To provide a robust challenge of the continuing need for individual NDPBs – both their function and their form, employing the ‘three tests’ discipline; and
 - Where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance.
3. All triennial reviews are carried out in line with Cabinet Office guidance “Guidance on Reviews of Non Departmental Public Bodies”, updated in 2014². This guidance states that reviews should be proportionate, timely, challenging, inclusive, transparent and value for money.
4. This Review of the Office of the Immigration Services Commissioner was announced by the Home Secretary by Written Ministerial Statement on 16 October 2014³.

PROCESS

5. The Terms of Reference for the Review are at Annex A. The Review was undertaken by the OISC Triennial Review team within the Home Office, overseen by Tyson Hepple, previously the Acting Director General of HM Passport Office and formerly a Director in the International and Immigration Policy Group.
6. Key stakeholders were consulted directly with the option of a conversation with the Review team. The Home Affairs Select Committee was informed of the

²

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332147/Triennial_Reviews_Guidance.pdf

³

<http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm141016/wmstext/141016m0001.htm>, COL 46WS

Review and given an opportunity to comment. The public call for evidence for the Review ran from 16 October to 14 November 2014, and was flagged on the GOV.UK website⁴ and linked from the OISC website. 84 responses were received from individuals and organisations. Wider evidence gathering included discussions with relevant policy teams within the Home Office and other Government departments, a review of background literature and an analysis of previous reviews of the OISC.

7. The Review team worked closely with the OISC and its Home Office Sponsorship Team during the course of the Review. This included a large number of meetings with individuals and groups at all levels in the OISC as part of the evidence-gathering process.

BACKGROUND TO THE OISC

8. The concept of the OISC was first mooted in 1998 in the White Paper 'Fairer, Faster and Firmer'⁵ in which the then Home Secretary, Jack Straw, identified a need for 'statutory control of unscrupulous immigration advisers who exploit individuals and undermine the control'. This translated into Part 5 of the Immigration and Asylum Act 1999 which provides the statutory basis for the role of the Immigration Services Commissioner.
9. The OISC was established in May 2000 and became fully operational in April 2001. Since then it has been subject to a number of reviews including the UK Border Agency consultation on Oversight of the Immigration Advice Sector in 2009 and the Public Bodies Review⁶ in 2010 which have repeatedly concluded that the OISC provides a necessary function and that to do that it needs to be at arms length from Government.
10. As of April 2015 the OISC employs 62 people (60 full-time equivalents). Expenditure in 2014/15 was just over £3.9m, of which approximately £2.5m was staff costs. In the same year it remitted approximately £1m of fee income back to the Home Office⁷. The OISC's 2015/16 Grant-In-Aid from the Home Office is just over £3.7m and trends over time are shown in the figure below. Further details of

⁴ <https://www.gov.uk/government/consultations/triennial-review-of-the-office-of-the-immigration-services-commissioner>

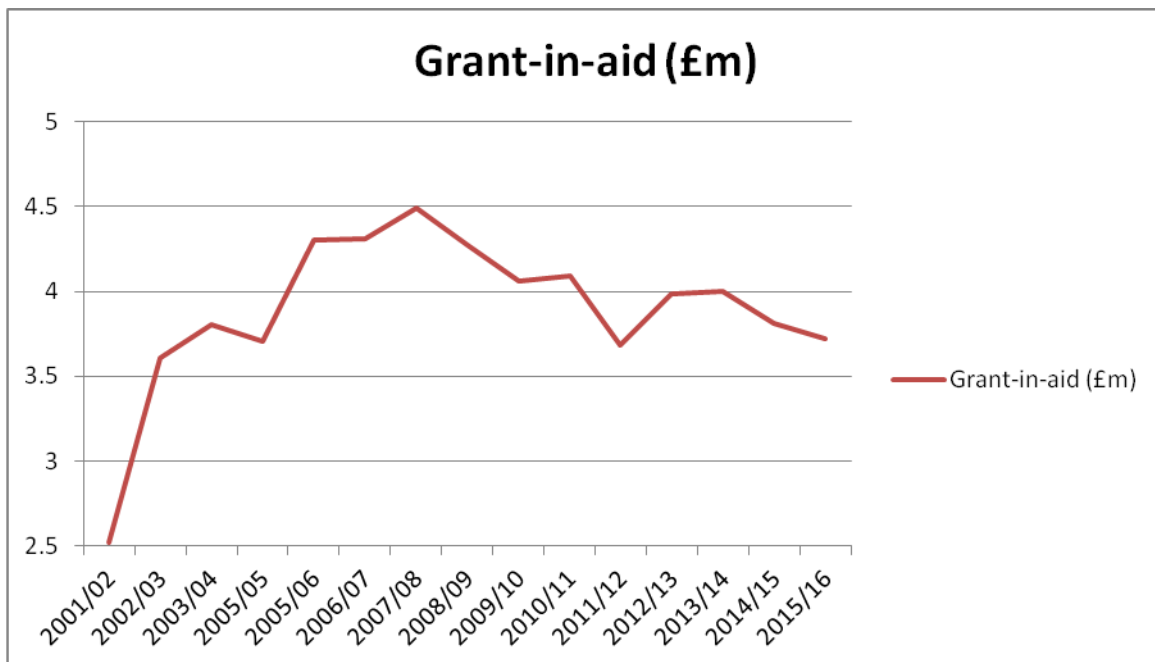
⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264150/4018.pdf

⁶

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62125/Public_Bodies_Reform_proposals_for_change.pdf

⁷ All figures from the 2013/14 Annual Report.

the OISC's budget and spending are provided in the section on Benchmarking and Efficiencies (paragraphs 84 and onwards).



11. As well as the Commissioner and Deputy Commissioner, the OISC has six operational teams overseen by the Director of Operations, as well as four corporate support teams. The operational teams are:

- 2 x Compliance and Complaints Teams
- Operational Services and Support Team
- Applications and First Contact Team
- Intelligence and Investigations Team
- Legal Team

and the corporate support teams are:

- Finance
- Human Resources
- Information and Communications Technology
- Policy, Publications and Stakeholders.

12. Advisers and organisations are assessed and registered at one of three 'levels' depending on the complexity of advice they wish to give. The levels allow advisers to provide advice as follows:
- Level 1: these advisers are authorised to make applications as allowed under the Immigration Rules;
 - Level 2: as Level 1 and in addition more complex cases including applications outside the Rules and under discretionary and concessionary policies;
 - Level 3: as Level 2 and also work relating to an appeal lodged against a Home Office decision.

Comparisons with other similar bodies

13. As part of the research for the Review, the Review Team contacted the Australian Migration Agents Registration Authority (MARA), the Immigration Consultants of Canada Regulatory Council (ICCRC) and the New Zealand Immigration Advisers Authority (IAA). All three organisations very generously shared their information with the Review Team and particular thanks are due to Bob Brack, President and CEO of the ICCRC, who kindly took time to explain in person the model which operates in Canada.
14. Unfortunately, because of the very different models which operate in the countries in question, it has proved impossible to draw meaningful conclusions in terms of how regulation is conducted. There are broad similarities in terms of the functions performed by the regulator but the details vary: OISC staff conduct more audits, and deal with more complaints, per staff member than the IAA, but fewer than MARA. They deal with more new registrations per staff member each year than the ICCRC or MARA (data for the IAA was not available).
15. As noted above, the models for regulation vary. The one striking point, however, is that regardless of the details of how regulation is conducted, in Canada, Australia and New Zealand fee income exceeds expenditure. Although it is not possible to make direct comparisons, it is fair to observe that the OISC is the only organisation in the sample which is subsidised by the taxpayer. This is discussed further in later parts of the report.
16. It is similarly difficult to compare the OISC to other legal regulatory bodies in the UK. For example, the range of educational backgrounds experienced by immigration advisers will be much greater than those who are qualified solicitors, due to the less stringent requirements and the much narrower range of areas where advice is given. The OISC believes that this provides individuals in need of immigration advice with a wider range of options in terms of cost and meeting customer needs.

REVIEW FINDINGS

Assessment of the OISC's functions

17. Summarising the provisions of Part V and Schedule 5 of the Immigration Act 1999, the OISC was set up to:

- ensure that people who provide immigration advice or immigration services in the course of a business are registered with the Commissioner (or regulated by another designated body), and that action is taken against those who provide immigration advice or immigration services without being registered;
- ensure that those who are registered are competent and fit to provide immigration advice, and investigate complaints that allege that advisers (regulated or not) are not;
- to report to the Home Secretary on other designated bodies that regulate immigration advisers.

18. The Commissioner has the specific duty to promote good practice by those who provide immigration advice or immigration services.

19. The first step in conducting a Triennial Review is to establish whether there is still a need for the function performed by the public body. If there is, the Review can then go on to consider whether the body is performing that function effectively, and whether there is a better model for delivering that function.

20. Evidence presented to the Review was overwhelmingly in favour of regulation of immigration advice, although there was less consensus about how this regulation should be provided. The reasons given for the need for regulation advice remain those raised in both Houses of Parliament during the second reading of the Bill that became the Immigration Act 1999: that those subject to immigration control are often among the most vulnerable in society and that regulating the provision of advice is important to protect these vulnerable people from incompetent or corrupt advisers. According to the Regulatory Impact Assessment⁸ published in 1999, the types of behaviour that the OISC was set up to address included:

- Incomplete, inaccurate or misleading advice

⁸ Regulatory Impact Assessment: Control of Unscrupulous Immigration Advisers 1999. Not available online.

- Unprofessional relationships with clients
- Deception of the client or encouraging deception by the client
- Unfair charging for services and materials.

21. Two specific offences were created by the Immigration and Asylum Act 1999:

- Section 91 makes it an offence to provide immigration advice or immigration services unlawfully (that is, to do so while unregulated)
- Section 92 makes it an offence to advertise the provision of such unlawful immigration advice or immigration services.

22. The OISC differs from some other regulatory bodies in having responsibility for prosecutions. The OISC prosecutes in serious cases and has a Key Performance Indicator (KPI) by the OISC alone of 25 prosecutions per year. This KPI is based on the historic maximum number of OISC prosecutions in any previous year. Between 2001 and 2014 the OISC successfully brought 182 prosecutions and administered 110 formal cautions. Without the requirement for regulation and the associated offences, it would be much harder to tackle advisers who were providing poor or misleading advice.

23. It is difficult to collect evidence on whether the OISC contributes effectively to preventing crime and fraud in the immigration advice sector, since it is impossible to know what would happen if the OISC did not exist. However, the audits run by the OISC as part of the regulatory process identify irregular and criminal activity which can lead to advisers being removed from the Register of people authorised to provide immigration advice. In addition, the independent complaints system run by the OISC enables members of the public to provide information about advisers who may be behaving in a fraudulent or criminal manner, against whom the OISC can then take appropriate action. Parliament agreed to strengthen the OISC's enforcement powers in the Immigration Act 2014, for example by introducing a new power of entry.

24. The extent to which the function performed by the body being reviewed meets the Government's objectives is an important consideration for a Triennial Review. The OISC collects information about incompetent, unscrupulous and potentially fraudulent or criminal advisers through, for example, its complaints scheme, audits, intelligence sharing and continued registration, and also is able to prosecute those who seek to circumvent the requirement for regulation. In this way, it drives up quality in the regulated sector and tackles abuse, contributing to

the Government's objective to tackle abuse in the immigration system. If the Government stopped regulating immigration advice and the OISC ceased to exist, then people could set themselves up as immigration advisers with no experience or training, and migrants would risk paying high fees for poor advice. With no audits or oversight of the sector it is also likely that there would be an increase of criminality in the sector, both at an individual level and by involvement of organised crime.

25. The conclusion of this Review is that there is a continued need for regulation of immigration advice. The next section considers whether this needs to continue to be provided by a non-departmental public body or whether there is an alternative delivery model which would be more appropriate.

Assessment of alternative delivery models

26. The Review considered the full range of alternative delivery models, as set out in the Cabinet Office's Triennial Review Guidance, for delivering the OISC's functions. Some of these could be readily rejected as not appropriate, as recorded in the table below, but more detailed consideration has been given to the options which seemed potentially more viable.

Option	Conclusion	Reasoning
Abolish	No	As per the assessment above, there remains a need for this function which is established in primary legislation.
Move out of Central Government	No	The type of work the OISC does could not effectively be delivered at a local level as it relies on using evidence and intelligence at a national level. It also has specialised functions, including for investigation and prosecution, which would be extremely resource-intensive to replicate at a local level.
Commercial Model	Maybe in part	See paragraphs 94 to 102 for a discussion of the possibility of commercialising part of the OISC's current activities.
Bring in-house	No	As per the assessment at the beginning of this review, this function needs to be politically impartial and independent of Ministers.
Merger with another body	No	This option was considered as part of the Public Bodies Review in 2010 and subsequently discounted as not viable, and the situation has not changed since

		then.
Less formal structure	No	This is a statutory body with statutory functions and requires a formal structure to ensure compliance with legislation.
Delivery by a new Executive Agency	No	An Executive Agency would mean bringing the functions of the OISC into a Government Department and therefore would risk compromising its independence which the Review considers is necessary, as below.
Continued delivery by an NDPB	Yes	The Review considers that two of the three tests for an NDPB are met, as below.

The Three Tests

27. Government policy states that a body should only exist at arm's length from government as a non-departmental public body if it meets one or more of three tests:

- It performs a technical function which needs external expertise
- Its activities require political impartiality
- It needs to act independently of Ministers to establish facts.

28. In 2011 the Government's Public Bodies Reform: Proposals for Change⁹ report concluded that the OISC should be retained as an NDPB because it performs functions which require impartiality. 77% of respondents to the call for evidence for this Review agreed that this is still the case, with only 15% disagreeing (the others were undecided). No reasons were given for these views. This Review agrees with the majority and concludes that the OISC should remain as an NDPB for this reason. Clients are entitled to receive legal advice in confidence, and this means that the organisation which regulates immigration advisers must be impartial and be seen to be impartial. It is also important that those who have suffered at the hands of unscrupulous advisers should feel confident in complaining to the regulatory body, regardless of their immigration status.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62125/Public_Bodies_Reform_proposals_for_change.pdf

Someone who is in the country illegally, or who has submitted a dishonest application to the Home Office, might not wish to complain about their adviser to the Home Office or indeed any other Government department and so this Review concludes that it remains necessary for the OISC to be an NDPB, politically impartial and at arms-length from Government.

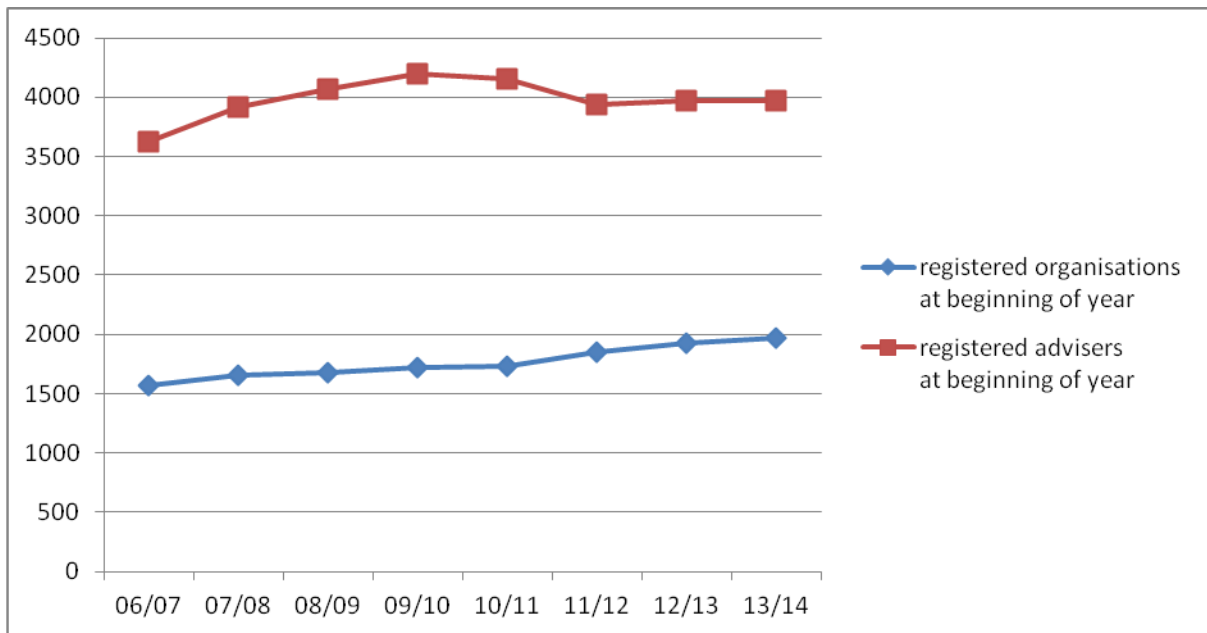
29. 78% of respondents also agreed that the OISC needs to act independently to establish facts, and this Review has already concluded that an element of independence is essential to the OISC's position as an arbiter of complaints. This is because the OISC regulates those who make applications to the Home Office, and appeal against Home Office decisions, on behalf of clients, and therefore needs to have some degree of independence from the decision-making arms of the Home Office. Technical expertise is less relevant to the OISC: while it has some specialist knowledge and functions, there are similar functions performed in the Home Office and other Government departments so the Review does not consider that this test is met.
30. **This Review concludes that two of the three tests are met and therefore the OISC should continue as a non-departmental public body.**

Is the OISC achieving its objectives?

31. Having established that the OISC should continue to exist as a non-departmental public body (NDPB) and fulfil its statutory functions, the next question is whether it fulfils those functions effectively and whether its activities are prioritised to achieve the most appropriate outcomes.
32. The OISC has a number of Key Performance Indicators (KPIs) against which it assesses its own achievements. These have remained broadly the same since 2006. The KPIs focus strongly on processes and workflows, concentrating more on ensuring that cases (applications, complaints etc) are dealt with by the OISC in a timely fashion than in the actual content and outcome of the OISC's decisions (e.g. the outcome of a complaint or an audit). It is to the OISC's credit that it seeks to minimise the regulatory burden on (often small) businesses by dealing with routine regulatory tasks speedily. The Commissioner issues a statutory Code of Standards and Commissioner's Rules with which regulated organisations and advisers are required to comply. This ensures that they are fully aware of the OISC's expectations before they apply to be regulated as well as once they are regulated.

Audits

33. The number of organisations regulated by the OISC rose year on year from 2006 to 2014, as the chart below shows.



At first, the audit target kept pace with this rise, as it was originally expressed as a percentage of organisations, although only those registered at Levels 2 and 3 (i.e. those organisations providing more complex advice: see paragraph 12 above for more details). This was because it was considered that Level 2 and 3 organisations posed a higher risk to clients since they dealt with more complex cases. However, the OISC’s approach to audits changed in response to changes in the sector, and in particular substantial increases in the number of organisations regulated to offer advice at Level 1 (from 58 in 2004 to 643 in 2010, an increase from 23% to 31% of total organisations regulated in the for-profit sector). In response to this change and to their own intelligence, the OISC developed a more risk-based approach to audits, focussing more on compliance with the Commissioner’s Code and Rules rather than just the organisation’s Level. In 2010/11 the target was changed to a flat target of 350 audits per annum, a significant increase from the previous number of 100-130 per annum. The risk-based approach is best practice in accordance with the current Regulators’ Code¹⁰. Going forward, the OISC should continue to keep their approach under review and in particular should keep under consideration whether 350 is the appropriate target for audits, taking into account the number of registered organisations and advisers.

Referrals and Complaints

34. An important element of the work of a regulator is investigating complaints against those regulated, and this was clearly envisaged when the OISC was set

¹⁰Department for Business and Skills, April 2014:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

up since Schedule 5 of the 1999 Act makes explicit provision for a complaints scheme where a complaint is relevant to competence or fitness, or breach of the Commissioner's Code or Rules. The OISC has in place a robust system for ensuring that complaints are either re-directed back to the relevant organisation or investigated in a timely fashion. In this respect, their regulatory function is being adequately fulfilled.

35. Historically the OISC kept no searchable record of the outcome of different types of complaints. This means that the OISC is unable to say how many complaints in the past fell into which category (e.g. competence, client care, misleading authorities, unregistered advisers) and what the outcomes were in terms of action taken against the adviser or organisation. This in turn means that it is hard to assess how effective the OISC has been in driving up quality in the regulated sector and removing those who have been found unfit or incompetent to provide immigration advice. The Review considers that this means that the current management information was not adequate and welcomes the recruitment of an additional IT developer to remedy this.
36. Matters can be referred to the OISC by parties other than clients (e.g. the Home Office or Treasury Solicitors). This happens infrequently, and while correspondence is retained on file such instances are handled on an individual basis so there is no way of assessing the numbers and types of these cases other than by manual counting. The OISC has demonstrated that it has systems in place to deal appropriately with these cases but it is difficult for them to document this given the lack of recorded information, and there is no way of assessing the outcomes of such referrals.

Unregulated/Prosecutions

37. The situation is similar when it comes to complaints and investigations against unregulated advisers. The systems in place now seem robust, and the most serious cases are assessed on a fortnightly basis by a group of senior managers. Information about investigations and prosecutions is monitored manually using a series of spreadsheets, as the Themis¹¹ database has no current facility for recording information about unregulated advisers or prosecutions.
38. This means that a manager spends a significant amount of time keying the same data into several different Word and Excel documents, manually updating figures such as the current number of open prosecutions in a number of different places. This is clearly a waste of time and effort and risks introducing errors as data is repeatedly keyed in. It also means that there is no automatic tracking of

¹¹ Themis is the name of the OISC's in-house database where details are recorded of applications, registrations, complaints etc.

information and the data held cannot be manipulated or interrogated. A question such as 'what are the outcomes of Home Office reports of unregulated advisers?' is unanswerable without manually trawling through case files. This in turn has limited the OISC's ability to assess what works and to keep track of its own performance. The Review welcomes the fact that the OISC identified these issues, and recruited an additional developer who joined the OISC in early 2015 and is working on amending these parts of the Themis database as a priority. Going forward, the OISC will be able to use the information which they will be able to record on the improved Themis database to assess their effectiveness in addressing incompetence, fraud and criminality.

Intelligence

39. The OISC over the past 18 months has made substantial improvements in improving intelligence sharing and now has in place good arrangements for sharing intelligence about unscrupulous advisers with a variety of other organisations, including the police and the Home Office. There are now regular meetings between the OISC and Immigration Enforcement (IE) to share intelligence and allow for IE to share concerns about individual advisers which have been identified through the caseworking processes.

Assessment of effectiveness

40. The absence of searchable data and a reliance on manual searches for information about relevant cases mean that it is difficult to assess whether the OISC is being effective in achieving its outcomes. The Themis database has not adequately supported outcome measurement in all OISC activities and so the OISC has not always recorded useful data, and cannot currently access the data that it does hold to inform its future activities. The OISC has been able to provide details of numbers of convictions, sources of intelligence and numbers of complaints to the Home Office. Where information has been required about individual cases then a manual search of records has been carried out. The absence of data collection systems has meant it is difficult for the Home Office to hold the OISC fully to account in terms of whether it is effectively addressing unscrupulous and fraudulent advisers. The data has not been available to answer questions about their activity in this area, and this should have been identified by the Home Office earlier as part of their Sponsorship function.
41. As above, the OISC is aware of this and other problems around recording information and measuring outcomes, and has recently taken steps to rectify this. An additional IT developer has been recruited to enable them to make changes to the database, and they have worked with the National Audit Office as a 'critical friend' to develop more effective KPIs for the Intelligence and Investigations Team. In addition they have developed 4 outcome-based objectives which are being piloted this year. These are:

- that only those applicants who demonstrate they are fit and competent will be authorised to practise under the OISC regulatory scheme;
 - that OISC regulated organisations and advisers comply with the *Code of Standards* and the *Commissioner's Rules* for the benefit of clients and other stakeholders;
 - that the OISC takes action to counter the provision of illegal immigration advice; and
 - that the OISC is a fit-for-purpose public service regulator.
42. They are currently developing a range of data which will be evaluated in relation to these objectives and this development should be welcomed as it will help the OISC going forward to analyse more effectively whether it is actually delivering the functions it was established to deliver. While the Review welcomes this activity, the outcomes that the OISC is now seeking to measure are the same as those set out in statute in 1999 and it is not clear why it has taken this long for the OISC to identify that it does not collect the necessary data and to take steps to remedy this. This work must now be taken forward as a matter of priority so that the OISC can target its limited resources most effectively to achieve its outcomes.
43. **Going forward, the Home Office should work with the OISC to ensure that these outcome-based objectives are appropriate for the organisation, and that the proposed data collection is adequate to support assessment of those objectives. A detailed set of performance indicators should be agreed within three months of the publication of this report and the data should be available to measure performance against these indicators by the end of Autumn 2017.**

Caseworking Efficiency

First applications and applications for continued registration

44. In 2013/14, the OISC Annual Report shows that 758 advisers joined the regulatory scheme for the first time, and 785 advisers left. 627 advisers left in 2012-13 and 258 advisers left in 2011-12. This represents a significant amount of churn in the sector, and anecdotal evidence from OISC staff indicates that they believe a significant proportion of advisers set up as sole traders after registering but quickly go out of business. While in a full cost recovery model this is not of financial concern to the taxpayer, it is inefficient and will have other effects for the individual concerned and potentially for clients whose adviser goes out of business. The OISC is working to reduce churn through a stricter competence assessment and pre-registration audit, and might want to consider whether there is even more that can be done to help advisers at an early stage

of setting up a business, possibly by signposting on their website the 'Setting up a Business' pages on gov.uk and the wide variety of funding and support available from the Government¹².

45. The current application form, while necessarily asking for a certain amount of detailed information (e.g. the legal status of the organisation seeking registration) is clear and straightforward, and includes a helpful checklist so applicants can check that they have answered all necessary questions and provided all the required documentation. In 2013/14, in a small survey of first-time applicants for registration, 83% had been notified that they had submitted incomplete applications¹³. This was up from 76% in 2012/13 which itself was up 9 percentage points on the previous year. The caseworking process involves up to two chasing letters before an application is refused as incomplete. With an estimated 600 organisations receiving at least one such letter last year, there remains potential for saving of time and money if the application process can be simplified.
46. The OISC is keen to implement a new electronic application process, which they believe will solve the problem of incomplete applications. If this does turn out to be the case, then this is clearly the best outcome. The introduction of electronic applications for the OISC by the Home Office has unfortunately been subject to delay, although a plan is now in place for the Home Office to implement them, under the supervision of the Senior Sponsor.
47. **The Home Office should, with the OISC, assess the impact of electronic applications in the year after they are implemented, and any necessary further changes or improvements should be agreed at that stage.**
48. There is a similar problem with applications for continued registration where caseworkers spend time following up applicants who have not completed their required Continued Professional Development (CPD) hours. As with the failure to complete a form for first application, it is the opinion of this Review that a failure to complete the required CPD hours indicates that the adviser is not competent to practise and should be automatically refused, but the same arguments apply with respect to Tribunal appeals. Electronic applications should also solve this problem but more generally the OISC should consider whether evidence of CPD is necessary for re-registration, or whether it could instead be assessed as part of the audit process or in a spot-checking process.
49. **The OISC should consider whether its current approach to monitoring CPD compliance is the most proportionate and appropriate one. A review of this**

¹² <https://www.gov.uk/business-finance-support-finder/search>

¹³ Data from the OISC's Advisers' Survey.

approach should be completed and agreed with the Home Office within six months of the publication of this report, with any potential savings as a result of increased efficiencies clearly identified and built into future budget allocations.

Refusals, upward review and appeals

50. A number of the decisions taken by the OISC are appealable to the First Tier Tribunal (Immigration Services). These include decisions to refuse registration or continued registration or to remove an adviser or organisation from the scheme. In 2014/15 137 appealable decisions were made by the Commissioner, of which 11 resulted in appeals to the Tribunal¹⁴. KPI 5 is that 75% of the Commissioner's decisions stand following an appeal to the First Tier Tribunal. This target has been met or exceeded almost every year with 100% of appeals being upheld in 2013/14 and 94% in 2014/15.
51. Between 2012 and 2014, the OISC's record of Tribunal cases indicates that of 23 cases which have been heard, 10 of them (44%) used external legal advice. The OISC has a legal team of 5 people led by a barrister and including a solicitor. The OISC's view is that external legal advice is required for more complex cases and for cases in the higher courts where OISC staff do not have rights of audience. An attempt to analyse the available data has not led to any helpful conclusions, since the sample size is small and the situation is complex. A conclusion which can possibly be drawn from the data supports the OISC's view that Counsel is used for the more difficult cases (between 2012 and 2014, 8 appeals have been dismissed of which 7 did not use Counsel, and none of the 3 withdrawn cases in that period used Counsel). Most of the cases in that period which have involved Counsel do not yet have final outcomes, again suggesting that Counsel are only engaged for the more complex cases.
52. This suggests that Counsel are not being used for the very straightforward cases. However, the fact remains that OISC deals with a limited area of law and has some highly qualified legal practitioners on its staff. **The OISC should review its legal costs with reference to other organisations doing similar work within twelve months of the publication of this report and, if necessary, work with the Home Office to improve value for money in representation at appeals.**
53. Another relevant element to this assessment of the OISC's work on appeals is the internal process which they go through before the appeal stage is ever reached. All decisions that involve a right of appeal go through an 'upward review' process which in most cases is a three stage process involving two team

¹⁴ OISC Annual Report and Accounts 2013/14

managers and the legal team. This process has been successful in improving the percentage of decisions being upheld at the Tribunal. However, in the interests of ensuring efficiency and value for money the Review recommends re-considering whether this process is proportionate in all cases.

- 54. Building on the successful 2008-10 Reform and Remodel programme which streamlined the processes for new applications and re-registrations, the OISC should work with the Home Office to apply the same value for money principles to its other large-scale processes, most notably complaints and upward review. Building on recent work to improve the complaints process, a revised, more risk-based process should be developed with efficiency savings clearly identified. This should include a robust cost benefit analysis of reduced caseworking time set against possible increased risk of appeals. The new process should be implemented within 18 months of the publication of this report so that savings can be realised in the following financial year.**

Cost recovery and services provided

Fees and cost recovery

55. The OISC receives approximately £3.7m funding as grant in aid from the Home Office, and remits approximately £1m back from fee income.
56. The Regulatory Impact Assessment for the Consultation on the Control of Unscrupulous Immigration Advisers in 1998, which was the precursor to the existing statutory scheme, was clear that the scheme was intended to be self-funding¹⁵ in the for-profit sector. The assumptions set out in that document led to the conclusion that each non-legally qualified adviser registering under the scheme would pay on average a fee of £6,236 with the precise fee being weighted according to the number of advisers covered by the registration. The expectation was furthermore that the cost of an annual audit for re-registration would be £1,350. The first fee order did contain a fee of £6,236 but only for an organisation with more than 20 advisers, and it was subsequently removed as it was not used. The costs of regulating not-for-profit organisations were explicitly not included in the original impact assessment.
57. These figures, which were designed to achieve full cost recovery, are strikingly different from the current application fees ranging from £575 for a Level 1 adviser (the majority of applications) to £2370 for a large organisation providing more complex advice which were set in 2011. The fees for continued registration are similar. While they are not directly comparable to the current scheme, they

¹⁵ This original scheme envisaged just over 30 staff.

do indicate the original intention of full cost-recovery and the high fees which were envisaged for advisers operating as a for-profit business.

Services which are not charged for

58. A number of aspects of regulation are currently provided to applicants and advisers free of charge. For example, the competence assessment which is a requirement of registration is provided to the applicant without a charge, with the OISC meeting the cost of administering and marking these assessments from Home Office funding. This is also true of ongoing provision of Continued Professional Development (CPD) resources and a range of workshops and seminars which are provided free of charge.
59. Where these activities are requirements of registration, as the competence assessment is, then in order to recover the cost from applicants the Home Office needs to provide for it to be included in the application fee. The OISC has previously explored the possibility of charging separately and found that it was not legally possible. The Home Office's intention is now to include the cost of providing assessments, which is relatively small, in the cost base for registration in the next set of fees, and this is welcomed.
60. Since CPD workshops and training are provided on an ongoing basis, and are not compulsory, it would not be possible under the current legislation to include them in the fee for registration and so they are currently provided free of charge. While it could be argued that these activities form part of the Commissioner's statutory duty to drive up standards and promote good practice in the sector, this is essentially using taxpayers' money to subsidise the activities of some businesses and is not appropriate in the current climate of tightly controlled public spending. There is a range of options available for further consideration such as the OISC withdrawing from provision of assessments and CPD in favour of accrediting a number of providers who could then charge for their services, or alternatively the OISC finding a way of charging for the services they provide. Due consideration would need to be given to the position of not-for-profit organisations when any changes were made.

Not-for-profit organisations

61. During the course of making the OISC self-funding, difficult policy decisions will need to be made with respect to the position of not-for-profit organisations which provide immigration advice free of charge and are not currently charged fees for registration by the OISC. The Government reiterated their intention to continue the current policy during the passage of the Immigration Act 2014¹⁶ and so

¹⁶Lords Hansard 17 March 2014, Column 39: Earl Attlee (speaking for the Government): 'Amendment 73A seeks to define the organisations which will benefit from an exemption from paying a registration fee to the Immigration Services Commissioner. I can assure the Committee that there is no intention

consideration will need to be given to whether increased fees can be charged to for-profit advice organisations in order to continue to regulate not-for-profits at no charge, or whether the not-for-profits should be required to pay fees for regulation with the associated risk of reduced availability of advice for those who need immigration advice or services and who can't afford to pay.

62. The Home Office is currently working with the OISC to gather the evidence needed to move closer to a full cost-recovery model, taking into account the current policy commitment to not charging not-for-profit organisations for OISC registration. It should also be noted that moving the OISC closer to full cost recovery might have implications for its classification as an Executive Non-Departmental Public Body. **The Home Office should work with HM Treasury and the OISC as a matter of priority to minimise the cost to the public purse of financing the OISC by i) seeking to make efficiency savings with a view to continuing the current year-on-year reduction in the OISC's grant from the Home Office and ii) maximising fee income with a view to continuing the current year-on-year reduction in the OISC's grant from the Home Office and getting as close as possible to full cost recovery by 2020.**

Regulation of legal services

63. The OISC is somewhat unusual, being a regulator of legal services but not part of the legal services regulatory framework overseen by the Legal Services Board under the Legal Services Act 2007 for England and Wales. There have been a number of reviews and consultations about the place of immigration advice in the wider regulatory framework since 2007, including a UK Border Agency consultation on Oversight of the Immigration Advice Sector in 2009, the Public Bodies Review¹⁷ in 2010, the Legal Services Board's consultation on Regulation

to add a financial burden to charities, voluntary organisations or other non-profit making organisations that offer immigration advice and services.

The Government understands that if these organisations were to be charged a fee, these measures could restrict the ability of such organisations to provide services and this would have an impact on the availability of free immigration advice for those not able to pay. The intention is to continue the principle of exempting advisers who do not charge a fee for services from paying the OISC a registration fee. The discretion conferred on the commissioner in the original clause in the Bill will be consistent with the discretion that currently exists in determining exempt status.'

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62125/Public_Bodies_Reform_proposals_for_change.pdf

of immigration advice and services¹⁸ in 2012, and the combined Triennial Review of the Legal Services Board and Office for Legal Complaints, also in 2012.

64. The Public Bodies Review in 2010 recommended that the OISC should be considered for a merger with another public body, but after consideration the Government decided that this was not a viable option for a variety of reasons, including a desire to keep the OISC's immigration and intelligence functions closely linked with the Home Office, the OISC's prosecution function, and the devolution issue. Legal services are devolved whereas immigration is a reserved matter, meaning that the OISC has jurisdiction in England, Wales, Scotland and Northern Ireland whereas other legal regulators only have jurisdiction in England and Wales, or Scotland, or Northern Ireland.
65. The Legal Services Board is considering at the moment the future of the framework for legal regulation, in the context of reduced legal aid, an increasingly online market, and business offerings which package together a number of services (e.g. accountancy and immigration advice).¹⁹ **The Home Office should engage with this process and ensure that proper consideration is given to the place of the OISC in any wider review of legal regulation, in particular considering whether, in the interests of efficiency and reducing duplication, the OISC could in due course become a qualifying regulator under the Legal Services Act 2007 if the devolution requirements could be dealt with.**
66. The OISC already shares information and best practice with the various qualifying regulators²⁰ overseen by the Legal Services Board (in practice the Solicitors Regulation Authority, the Bar Standards Board and Ilex Professional Standards) and other organisations in the legal services regulatory framework. The Legal Services Consumer Panel has, for example, recently published a guide on *Recognising and Responding to Consumer Vulnerability*²¹ where there are obvious areas of overlap with the OISC's work, and the OISC reflected LSB

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http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20120727_reg_if_imm_vice_to_publish.pdf

¹⁹ Legal Services Board consultation on 2015-18 Strategic Plan, published 10 December 2014: http://www.legalservicesboard.org.uk/news_publications/LSB_News/PDF/2014/20141210_LSB_Launches_Consultation_On_2015_18_Strategic_Plan_And_2015_16_Business_Plan.html

²⁰ The Law Society, The Bar Council and the Chartered Institute of Legal Executives (CILEx) are qualifying regulators. They have delegated that function to the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and Ilex Professional Standards (IPS) respectively.

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<http://www.legalservicesconsumerpanel.org.uk/ourwork/vulnerableconsumers/Guide%20to%20consumer%20vulnerability%202014%20final.pdf>

work in changes to the Adviser Finder Facility. The Legal Services Board (LSB) noted in 2012 that the OISC scheme is similar to the risk-based system of regulation that the LSB is encouraging across the legal services market, and ‘therefore suggest that there may be lessons to be learnt by qualifying regulators from OISC’s approach. Indeed, we see this as an area where OISC and qualifying regulators might more generally seek to pool experience and practice on a regular and more systematic basis than at present.’²² **The Legal Services Board and the OISC should continue to work together to ensure that they are both effectively contributing to, and benefiting from, proactive sharing of experience and information with other regulatory bodies.**

Consumer protection

67. Under the Immigration Act 1999, the Commissioner has a statutory duty to promote good practice by those who provide immigration advice or immigration services.²³ The Commissioner fulfils this by providing information on the OISC website and by running workshops and seminars. The OISC also runs an annual survey of advisers to check their satisfaction with the service provided by the OISC. The OISC has no mechanism to assess the level of consumer satisfaction with OISC-registered advisers which would help the OISC to assess whether the duty to promote good practice was having an effect. The OISC is not bound by the Regulators’ Compliance Code (established by the Legislative and Regulatory Reform Act 2006). In most ways the OISC is compliant with the code but it should consider whether there is any best practice deriving from the code which the OISC should adopt, for example consulting citizens and engaging with those regulated.

68. The OISC should consider within 12 months of the publication of this report whether there is an appropriate light-touch way of assessing consumer satisfaction. This would have to be clearly distinct from the complaints scheme.

Stakeholder engagement

69. The Commissioner issues a Code of Standards and Rules under Schedule 5 of the Immigration Act 1999, and consults widely on these as she is required to do. This is usually done in writing only. There is an informal ‘Commissioner’s Advisory Panel’ which is made up of approximately 20 advisers from around the country. They have apparently been selected to represent a range of business

²² Para 42 of

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62125/Public_Bodies_Reform_proposals_for_change.pdf

²³ Immigration Act 1999 section 83(3)

types and geographical locations, but are not considered by the OISC to be a representative body. The OISC has supported the existence of a membership organisation, ARIA (Association of Regulated Immigration Advisers).

70. **Best practice would be to clarify the status of the Advisory Panel, either by making it more representative and having regular meetings, perhaps to discuss the findings of the advisers' survey; or alternatively, if it serves no purpose, by discontinuing it. The incoming Commissioner will want to take an early view on this.**
71. The OISC has good relationships with a number of similar organisations in other countries such as the Office of the Migration Agents Registration Authority in Australia and the Immigration Consultants of Canada Regulatory Council. The OISC is seen internationally as a source of good practice and has been involved in providing informal advice to a number of countries who are considering setting up similar regulatory organisations.

STAGE TWO

72. Stage Two of a Triennial Review involves two components: assessing the strength of the organisation's corporate governance, and examining whether there is scope for further efficiencies in the organisation.

Corporate Governance

73. The Corporate Governance assessment has included:
- A roundtable meeting with the Commissioner, Deputy Commissioner and Sponsorship team;
 - Follow-up meetings with the OISC Heads of Finance, ICT, and HR & Facilities;
 - A follow-up meeting with the Sponsorship team;
 - A discussion with the Chair of the OISC's Audit and Risk Assurance Committee.

Relevant documents and websites have also been examined.

74. The overall finding of the Review is that the corporate governance framework for the OISC is satisfactory. It is well managed and procedures are followed. The Commissioner and her Deputy are aware of their duties as stewards of public funds, and are aware of the need to ensure value for money in their activities.

There is an excellent relationship with the Sponsorship team in the Home Office with frequent communications at all levels of the organisation and a good mutual understanding.

75. During the course of the assessment, a number of points came to light which would benefit from some changes, and these are dealt with in turn here:

- Structure of the OISC
- Oversight by the Home Office
- Communications with the public and with stakeholders
- Transparency and open data

Structure of the OISC

Corporation sole

76. The Immigration Services Commissioner was established in legislation as a corporation sole and is unusual in still being incorporated as such. The corporation sole structure means that all legal powers are vested in the Commissioner personally and she is responsible for all decision-making and governance. There is no Board to oversee the work of the Office of the Immigration Services Commissioner: this is entirely the responsibility of the Commissioner herself. The Commissioner is a statutory Ministerial appointment as is the Deputy Commissioner, who is appointed to assist the Commissioner and act for her when she is unable to act.

77. This means that a number of the questions usually asked about the governance of an NDPB are not relevant for the OISC, which has no Board and therefore no non-executive members of the Board. Instead, the Commissioner is advised by the independent members of the Audit and Risk Assurance Committee, who are appointed by the Commissioner in a similar way to non-executive Board members and who fulfil some but not all of those functions. In addition, the Senior Management Team of the OISC acts as the Executive Board for the organisation, with the Commissioner as Chair. For the purposes of the Corporate Governance checklist at Annex B, the Audit and Risk Assurance Committee was treated as the non-executive board members where possible.

Non-Executive Board members

78. The Review has not found any problems with this approach, and commends the Commissioner on her decision to extend the role of the original Audit Committee to include Risk as well, thereby encompassing more of the duties of non-executive Board members. However, given the weaknesses identified in Stage One of the report with respect to management information, performance

outcomes and caseworking efficiencies, **the Review recommends that the Sponsorship Team should consider whether there would be value in strengthening the governance framework**, possibly by introducing a formal non-executive role. The Review does not want to recommend change for change's sake, and a proper cost-benefit analysis should be undertaken before making any expensive changes, but it is the opinion of the Review that a Board with non-executive members who were responsible for setting the strategic direction of the organisation might provide an additional challenge function and help the OISC especially as it moves towards increased self-funding status over the next 5 years. It is possible that arrangements could be made in a revised Framework Document for the Secretary of State to appoint a number of non-executives to oversee the work of the OISC, which would fulfil this function without the need for primary legislation. If this proved to be possible it would be an attractive option.

Home Office oversight

79. In general Home Office oversight of the OISC works well, with a very good day-to-day working relationship between the Sponsorship team and the OISC. There is a good framework of regular meetings in place, with the Senior Sponsor meeting the Commissioner and Deputy Commissioner every 6 weeks, and an annual meeting between the Commissioners and the responsible Minister. Officials from the Home Office Sponsor Unit attend a formal quarterly meeting with members of the OISC's Senior Management Team to review all aspects of the organisation's business such as finance, staffing, policy, internal audit and risk management. In addition to these formal meetings, there are a number of less formal subject-based meetings, such as for example between Immigration Intelligence in the Home Office and the intelligence team in the OISC.
80. However, best practice would dictate that the Home Office Board should consider a regular item on the work of its arms-length bodies, and that senior Home Office staff should attend OISC Board meetings on a regular basis. Since the OISC does not have a formal Board, the Commissioner and Senior Sponsor should agree between them which meeting would be most appropriate for the Senior Sponsor to attend, but **the Review recommends that Senior Sponsor attendance at one meeting of the Audit and Risk Assurance Committee (or a new non-executive board if one is created) every year would be an appropriate frequency**. This could replace one of the regular meetings with the Commissioner in order not to take up additional senior time with the associated cost to the public purse.
81. It is also worth noting that the OISC's Management Statement and Financial Memorandum have not been updated by the Home Office since 2006. There have been a variety of reasons for this including internal reviews, the 2010

Public Bodies Review and then the forthcoming Triennial Review, but once this Review is completed and the new Commissioner has been appointed the Sponsorship team should as a matter of urgency replace the out-of-date documents with a new Framework Document which should be published on the OISC website. **This should be done by the Home Office as quickly as possible after the publication of this review and the appointment of the new Commissioner, and certainly within 6 months.**

Public and stakeholder engagement

82. The Corporate Governance checklist (Annex B) requires the Review to consider how effective the organisation is in communicating with the public and engaging with stakeholders. The Review has already made some observations about the role and future of the Commissioners' Advisory Panel (see paragraph 69 above). There are currently no public meetings because when the Annual Conference and regional advisers' meetings were run they were expensive and had low attendance rates. Instead there are periodic workshops for advisers to provide information and discussion of matters of interest which are always oversubscribed and provide an effective mechanism for stakeholder engagement. **The Review recommends that mechanisms for engagement with registered advisers are kept under review, whether via the Commissioner's Advisory Panel or other routes, and also that engagement with the public is considered** (see below on Transparency).

Transparency and Open Data

83. The OISC seeks to comply with Government principles in this respect. It works with the Home Office Sponsorship team to ensure that the required staff data is provided, and the Sponsorship team arranges publication of the data sets through the Cabinet Office. The OISC's organisational information appears on the data.gov.uk website. They have found that the enforced move to the gov.uk website has made it harder for them to publish transparency data since it is no longer within their control to publish it. They have no explicit commitment to openness and have not considered publishing transparency data such as spend information since they were not aware that this was best practice. Now that it has been brought to their attention they are working to remedy this, and **the Review recommends that they continue to consider how they can best meet Cabinet Office guidelines in this area.** They are already working on publishing responses to Freedom of Information requests on their website (hosted on gov.uk), which should be live by the time this Review is published, and they should be commended for that.

Benchmarking and efficiencies

84. As well as the meetings detailed above for the corporate governance assessment, questionnaires were sent to the Heads of Finance, ICT and HR & Facilities and a number of meetings were held with Cabinet Office experts on particular areas of interest such as commercial models and shared services.
85. The OISC has recently moved into more efficient accommodation and has transferred its website onto the gov.uk platform. It is working towards electronic applications for registration and re-registration. Areas for consideration now and in the future are the workforce size and composition, including corporate services staff, and also the possibility of providing some services currently provided by the OISC on a commercial footing. It is worth noting under this heading that the OISC was required in 2014 to move its bank account from a commercial provider to the Government Banking Service. They objected on the grounds that it would be more expensive for them to do so but were required to under Government rules. The extra expense is currently £800 per annum.
86. The findings of these discussions are arranged under the following headings:
- Benchmarking
 - ICT and Digital by Default
 - Workforce
 - Corporate services
 - Property
 - Commercial models

Benchmarking

87. As noted above (paragraph 14) it is difficult to compare the work done even by very similar bodies, because of the differences in the ways that caseworking is done (e.g. an organisation that focuses more on audits and inspection visits will inevitably need more staff per case than an organisation which concentrates more on paper-based assessments). However, best practice is for an organisation to conduct benchmarking of its activity, both historically in terms of its own performance but also comparing itself to other similar organisations. The OISC could consider cases processed per member of staff internally over time, taking into account changes in caseworking practice. In addition, the OISC could choose a selection of other regulators against whom to compare their performance in terms of efficiency. This would require a certain amount of work to understand the work done by the other organisations and to establish how the comparison could be done, but is a worthwhile exercise when considering how to

be as efficient as possible. **The outcome of this benchmarking activity should be published in the next and future Annual Reports.**

ICT and Digital by Default

88. The OISC has recently moved its website onto the gov.uk platform. There have been some teething problems but the site seems to work reasonably well and provides registered advisers and members of the public with access to the information they need. The OISC is now working on introducing a system of electronic applications and electronic complaint forms. Electronic applications are, in the opinion of this Review, critical for improving efficiency in processing applications. However, Home Office technical implementation has been repeatedly delayed and there is currently no fixed timetable for implementation. **This Review recommends that the Home Office works as a matter of urgency to ensure that targets are achieved in line with the implementation plan put in place in early 2017.**

Workforce

89. The OISC has a hierarchical structure which is apparent from its organogram (at Annex C). As well as a part-time Deputy Commissioner and part-time Commissioner, there are also a Director of Operations and a Head of Operational Regulation. With individual team managers for the caseworking teams as well, this means in effect that there are three layers of management between most caseworkers and the Deputy Commissioner (Head of caseworking team, Head of Operational Regulation, Director of Operations). The current Commissioner reaches the end of her term in September 2015. As budgets are likely to reduce over the coming years, the incoming Commissioner will want to consider whether these layers of management are all necessary or whether some could be combined. Possible options might be to:

- divide the role of the Director of Operations between the Deputy Commissioner and the Head of Operational Regulation; or
- remove the role of the Head of Operational Regulation and give more responsibility to heads of caseworking teams with oversight by the Director of Operations; or
- remove the Heads of caseworking teams and require the Head of Operational Regulation to oversee all caseworking operations.

90. These options would need to be carefully thought through by the incoming Commissioner in the light of budgetary allocations and potential redundancy costs and processes, but in the opinion of the Review they are set out in order of

preference. **The Review recommends that the incoming Commissioner should provide his or her preferred option for rationalisation of the structure to the Home Office within 6 months of taking up post.**

Corporate Services

91. The OISC has the following staff carrying out corporate services functions: 1.8 in Finance, 3 in HR&Facilities, and 2 in ICT (not including two developers who support the in-house database, Themis). This is a total of 6.8 corporate service staff for 61.6 employees. As a comparison, a UK regulator of similar size carrying out similar regulatory and enforcement activities has just over 6 corporate services staff for 68 employees, a ratio of 1:11 instead of 1:9 in the OISC. This is not a substantial difference but the OISC should consider its corporate service staffing, especially in the event of departures of existing staff.
92. Under the current approach to central Shared Services it is not cost-effective at the moment for a small body to transfer to Shared Services without its parent department. Since the Home Office already uses Shared Services, this is not currently an option as the transfer cost would be too high. However, the Government is working on its approach to Shared Services and **the OISC should keep in touch with this work so as to take advantage of any future opportunities for rationalisation. In addition, the OISC should consider the scope for sharing some services locally, for example with other occupants of the building they use at 21 Bloomsbury Street.**

Property

93. The OISC moved accommodation in 2013 from Tooley Street, London into an office shared with a number of other Government organisations at 21 Bloomsbury Street, London. This move was overseen by the Home Office Property Group and means that the OISC now complies entirely with the Government Property Unit's requirements for efficient use of Government estate. The move to smaller accommodation has also resulted in a project to move to a largely paperless office by scanning all incoming paperwork, which in turn should in time generate efficiencies as copies of correspondence and other documents are stored electronically and linked directly to cases on Themis.

Commercial Models

94. As discussed above in paragraph 60, the OISC currently offers a number of services to registered advisers which cannot be charged for under current rules and so provision will have to be re-considered or offered under a different model if the OISC is to achieve full cost recovery. These services are competence assessment (required for an adviser to be registered) and continued professional

development (CPD) activities as well as workshops and seminars for registered advisers.

95. The OISC had previously considered offering competence assessments on a commercial basis and were prevented from doing so by their governing legislation. Since 2012 the OISC has contracted out their competence assessments to a private sector organisation which separately offers optional training to those who wish to pass the assessment. There is evidence that the new competence assessments, particularly in respect of Level 1 assessments, are better quality, more difficult to pass and therefore ensure a higher quality of successful candidates. OISC monitors this arrangement to ensure that those undertaking training with the assessment provider do not have an advantage.
96. Going forward, the Home Office's intention is to include the competence assessment in the cost-base for registration so the cost will be covered by the registration fee. However, this will not be possible for CPD activities and other activities for registered advisers. As discussed in the section above (paragraphs 58 to 60) the obvious option is to stop offering these services that cannot be charged for. However, another option would be to investigate the possibility of generating income from these services, for example by creating a joint venture between the OISC and a private sector training provider to offer training, assessments, CPD and other development and training opportunities. It is not obvious that this would be worthwhile as the target audience would be small, but the Review considers that it would be worth some investigation when the future of these services is under consideration anyway. In the event that it was successful and, for example, the model was used by another country, any profits made would be shared by the Government in a joint venture arrangement.

Conclusion

97. Along with the rest of the public sector, the OISC faces difficult decisions about prioritisation and efficiencies in order to live within its means as public spending continues to reduce. The OISC has made a good start in responding to these pressures, as demonstrated in their falling budget, more efficient accommodation and initiatives such as scanning all incoming documents and moving to electronic applications. The Triennial Review process and forthcoming arrival of a new Commissioner offer a good opportunity to consider the structure and processes afresh and reconsider which activities really need to be undertaken in order to deliver the Government's objectives.

List of Annexes

Annex A: Terms of Reference	Pages 37 to 41
Annex B: Corporate governance checklist	Pages 42 to 63
Annex C: OISC organogram	Page 64
Annex D: Stakeholders interviewed as part of the Review	Page 65
Annex E: data collected as part of Stage 2 of the Review	Pages 66 to 67

Terms of Reference

Triennial Review of the Office of the Immigration Services Commissioner (OISC)

Objective of the Review

To carry out a Triennial Review of this Non-Departmental Public Body (NDPB) in accordance with published Cabinet Office guidance.

Background

A Triennial review is the process for reviewing the form and function of Non-Departmental Public Bodies, the appropriateness of the body's delivery mechanism to fulfil its function effectively and efficiently, and its governance arrangements.

The aims of a Triennial Review are:

- a) to provide a robust challenge for the continuing need, in terms of both their form and functions, for individual NDPBs; and
- b) where it is agreed that a particular body should remain as a NDPB, to review:
 - the control and governance arrangements in place to ensure it is complying with recognised principles of good corporate governance, including an assessment of its performance; and
 - its capacity for delivering more effectively and efficiently, including identifying potential for efficiency savings and its ability to contribute to economic growth.

The Home Secretary agreed with the Minister for the Cabinet Office that a review of the OISC would be commenced in 2014.

Scope

The review will be conducted in accordance with the published Cabinet Office guidance: Guidance on Reviews of Non-Departmental Public Bodies.

Stage 1 will assess the continuing need for the OISC. In particular, the review will:

- identify the key functions of the body and assess how it contributes to the core business of the Home Office and, where appropriate, other government departments;
- assess its capacity for delivering more effectively and efficiently, including identifying potential for efficiency savings and its ability to contribute to economic growth;
- assess the requirement for the functions to continue;

- if they are to continue, assess the delivery options and how the function might best be delivered. This should include a cost and benefit analysis where necessary, and consideration of whether related functions delivered through two or more bodies could be amalgamated and delivered through one; and
- apply the government's "three tests" if the body is to remain as an NDPB. The tests are:
 -
 - 1. is this a technical function (which needs external expertise to deliver)?
 - 2. Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions)?
 - 3. Is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity?

Stage 2 will review the control and governance arrangements.

If at stage 1 it is determined that a body should continue as an NDPB, the second stage of the review will look at the control and governance arrangements. The lead reviewer will work with the Immigration Services Commissioner and the OISC's sponsorship team within the Home Office to ensure they are operating in line with the recognised principles of good corporate governance²⁴.

Consideration will also be given to the potential for securing efficiencies from within the OISC and whether some or all of its functions could be merged with another body or bodies.

Review Approach and methodology

The review is conducted on behalf of the Secretary of State and will be overseen by the Home Office Director of International Criminality and Extradition who is independent of the body and sponsorship function. The review is divided into two stages.

For both stages, the review team will consist of:

Tyson Hepple (Director, International Criminality and Extradition, Home Office) – senior oversight

Nicola Thomas (International and Immigration Policy Group, Home Office) – lead reviewer

Ben Foyle (Public Bodies Team) – challenge

Ken Sutton (Director, Diversity) – senior independent challenge

Cabinet Office – challenge

²⁴ Section 5 of the Cabinet Office's Supplementary Guidance on Reviews of Non-Departmental Public Bodies,
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332151/Triennial_Reviews_Guidance_-_annexes.pdf

Stage 1

In addition to a public call for evidence, the stakeholders listed at Annex A will be consulted.

Evidence gathering for this stage will comprise:

- a) A review of documents encompassing papers from the 2010 Public Bodies Review exercise, annual reports, published reports, relevant statute, terms of reference of the OISC
- b) Meetings/teleconferencing with external partners and interested parties identified below.
- c) Written request for comments from the Home Affairs Select Committee.
- d) Call for evidence from the public and stakeholders on gov.uk.

The sponsor team and the Immigration Services Commissioner will have the opportunity to check the factual accuracy of the report at this stage. Cabinet Office will also be invited to provide comments at this stage.

Emerging findings will be discussed with the Sponsorship team during the course of the review and Cabinet Office's Public Bodies Reform Team. Home Office Ministers will be informed of the outcome of stage 1.

Should the review determine that the OISC should remain as an NDPB, it will be reviewed under stage 2 as set out below.

Stage 2

If the review proceeds to stage 2, this stage will include:

- a) A meeting of the reviewers, senior sponsor and the sponsorship team to go through Cabinet Office guidance 'Executive NDPBs: Corporate Governance Arrangements' to inform an assessment of compliance;
- b) An assessment of the OISC's capacity for delivering more effectively and efficiently, including identifying potential for efficiency savings and its ability to contribute to economic growth;
- c) Further discussion of the reviewers with the Immigration Services Commissioner to cover any issues emerging from meeting sponsors, and any advice the Commissioner might have on challenges and risks to the effectiveness of the OISC.

The sponsor team and Immigration Services Commissioner will have the opportunity to check the factual accuracy of the report at this stage. Cabinet Office will also be invited to provide comments at this stage.

Communications:

Press Office, Communications Directorate, Parliamentary Unit have had sight of this document and have been consulted on communication with the public, stakeholders and Parliament.

Interested Parties:

The following will be consulted as part of the review and will be asked to agree the review before it is published.

- Permanent Secretary
- Home Secretary
- James Brokenshire MP, Minister for Immigration and Security
- The Rt Hon Francis Maude MP, Minister for the Cabinet Office and Paymaster General

Major Deliverables

- Written Ministerial Statement
- Call for Evidence questionnaire
- Final Report

Review Project Schedule

Stage 1: October 2014 – December 2014

Stage 2: January 2015 – March 2015

Annex Ai

Office of the Immigration Services Commissioner Stakeholder list
Regulated advisers
Members of the public
ARIA (Association of Regulated Immigration Advisers), a trade organisation representing advisers
ILPA (Immigration Law Practitioners Association)
Law Society of England and Wales
Law Society of Scotland

Law Society of Northern Ireland
Bar Council for England and Wales
Bar Council for Northern Ireland
Faculty of Advocates
CILEX (Chartered Institute of Legal Executives)
First Tier Tribunal (Immigration services)
Home Office: IBPD
Home Office: Immigration Enforcement
Treasury Solicitors

Corporate Governance Checklist

	No	Yes	Notes
ACCOUNTABILITY			
Statutory Accountability: The public body complies with all applicable statutes and regulations, and other relevant statements of best practice.			
Does the public body comply with all statutory and administrative requirements on the use of public funds? (This includes the principles and policies set out in the HMT publication “Managing Public Money” and Cabinet Office/HM Treasury spending controls).		✓	
Does the public body operate within the limits of its statutory authority and in accordance with any delegated authorities agreed with the sponsoring department?		✓	
Does the public body operate in line with the statutory requirements and spirit of the Freedom of Information Act 2000?		✓	
Does the public body have a comprehensive Publication Scheme?		✓	There is a scheme but it is not currently available on the OISC website since it moved to the gov.uk platform. This should be remedied.
Does It proactively release information that is of legitimate public interest where this is consistent with the provisions of the Freedom of Information Act 2000?	✓		There is a plan in place to do this on the OISC website, and this should be happening by the time this Review is published.
Is the public body compliant with Data Protection legislation?		✓	

	No	Yes	Notes
Is the public body subjected to the Public Records Acts 1958 and 1967?		✓	
Accountability for Public Money: The Accounting Officer of the public body is personally responsible and accountable to Parliament for the use of public money by the body and for the stewardship of assets.			
Is there a formally designated Accounting Officer for the public body? This is usually the most senior official (normally the Chief Executive).		✓	
Are the roles, responsibilities and accountability of the Accounting Officer clearly defined and understood?		✓	
Has the Accounting Officer received appropriate training and induction?.		✓	
Is the public body compliant with the requirements set out in "Managing Public Money", relevant Dear Accounting Officer letters and other directions		✓	
Has the public body established appropriate arrangements to ensure that public funds: - are properly safeguarded; - used economically, efficiently and effectively; - used in accordance with the statutory or		✓	

	No	Yes	Notes
other authorities that govern their use; and - deliver value for money for the Exchequer as a whole?			
Are the public body's annual accounts laid before Parliament?		✓	
Are the Comptroller and Auditor General the external auditor for the body?		✓	
Ministerial Accountability: The Minister is ultimately accountable to Parliament and the public for the overall performance of the public body			
Do the Minister and sponsoring department exercise appropriate scrutiny and oversight of the public body?		✓	
Are the Appointments to the board made in line with any statutory requirements and, where appropriate, with the Code of Practice issued by the Commissioner for Public Appointments?			N/A There is no Board - see paragraphs 80-81 of the main report.
Does the Minister appoint the Chair and all non-executive board members of the public body?			N/A There is no Board - see paragraphs 80-81 of the main report.

	No	Yes	Notes
Is the Minister able to remove individuals whose performance or conduct is unsatisfactory?			N/A There is no Board - see paragraphs 80-81 of the main report.
Is the Minister consulted on the appointment of the Chief Executive and does he/she approve the terms and conditions of employment?		✓	The Commissioner, as a corporation sole, effectively has the role of Chief Executive.
Does the Minister meet the Chair and/or Chief Executive on a regular basis? (please state how many times they have met in the last 12 months)		✓	The Minister meets the Commissioner annually.
Does the public body consult the Minister on the corporate and/or operational business plan?		✓	
Is the exercise of particular functions subjected to guidance or approval from the Minister?	✓		There are no functions which require specific Ministerial approval.
Is there a general or specific power of Ministerial direction over the public body?	✓		
Is the Minister consulted by the public body on key financial decisions? This should include proposals by the public body to: (i) acquire or dispose of land, property or other assets; (ii) form		✓	

	No	Yes	Notes
subsidiary companies or bodies corporate; and (iii) borrow money; and			
Does the Minister have the power to require the production of information from the public body which is needed to answer satisfactorily for the body's affairs?		✓	This power is contained in the Management Statement.
Is there a requirement to inform Parliament of the activities of the public body through publication of an annual report?		✓	

	No	Yes	Notes
ROLES AND RESPONSIBILITIES			
<p>Role of the Sponsoring Department: The departmental board ensures that there are robust governance arrangements with the board of each arm's length body. These arrangements set out the terms of their relationship and explain how they will be put in place to promote high performance and safeguard propriety and regularity.</p>			
Is scrutiny of the performance of the public body included in the departmental board's regular agenda?	✓		The Board's agenda has not up to now included scrutiny of the performance of the OISC, which is done by the Sponsorship Team.
Has the departmental board established appropriate systems and processes to ensure that there are effective arrangements in place for governance, risk management and internal control in the public body?		✓	
Is there a Framework Document in place which sets out clearly the aims, objectives and functions of the public body and the respective roles and responsibilities of the Minister, the sponsoring department and the public body? This should follow relevant Cabinet Office and HM Treasury guidance	✓		There is a Management Statement and a Financial Memorandum, both of which date from 2006 and have not been reviewed. A Framework Document is in the process of being developed, but it was postponed pending the conclusion of the Triennial Review.
Is the Framework Document published?	✓		The existing documents are not published.
Is the Framework Document accessible and understood by the sponsoring department, all board members and by the senior management team in the public body?		✓	The Management Statement and Financial Memorandum meet this criterion.

	No	Yes	Notes
Is the Framework Document regularly reviewed and updated?	✓		See above
Is there a dedicated sponsor team within the sponsor department?		✓	
Is the role of the sponsor team clearly defined?		✓	
Is there regular and ongoing dialogue between the sponsoring department and the public body?		✓	
Do senior officials from the sponsoring department as appropriate attend board and/or committee meetings?	✓		No. As explained elsewhere, there are no Board meetings as such.
Are there regular meetings between relevant professionals in the sponsoring department and the public body?		✓	
<p>Role of the Board: The public body is led by an effective board which has collective responsibility for the overall performance and success of the body. The board provides strategic leadership, direction, support and guidance.</p>			
Does the Board – and its committees – have an appropriate balance of skills, experience, independence and knowledge?		✓	
Is there a clear division of roles and responsibilities between non-executive and executives?			N/A See paragraphs 80-81 of the main report.

	No	Yes	Notes
Does the Board of the public body meet regularly?		✓	
Does the Board of the public body retain effective control over the body?			N/A This is done by the Commissioner and Deputy Commissioner.
Does the Board of the public body effectively monitor the senior management team?			N/A This is done by the Commissioner and Deputy Commissioner.
Is the size of the Board appropriate?			N/A See paragraphs 80-81 of the main report.
Are Board members drawn from a wide range of diverse backgrounds?			N/A But members of the Audit and Risk Committee come from a range of backgrounds, as do members of the Senior Management Team.
Has the Board established a framework of strategic control (or scheme of delegated or reserved powers)? This should specify which matters are specifically reserved for the collective decision of the Board.			N/A See paragraphs 80-81 of the main report.
Is this framework understood by all Board members and by the senior management team?			N/A See paragraphs 80-81 of the main report.
Is it regularly reviewed and refreshed?			N/A See paragraphs 80-81 of the main report.
Has the Board established formal procedural and financial regulations to govern the conduct of its business?		✓	
Has the Board established		✓	

	No	Yes	Notes
appropriate arrangements to ensure that it has access to all such relevant information, advice and resources as is necessary to enable it to carry out its role effectively?			
Has the Board made a senior executive responsible for ensuring that appropriate advice is given to it on all financial matters?		✓	Within the limitations of the corporation sole structure. The Head of Finance attends all Audit and Risk Committee and Senior Management Team meetings.
Has the Board made a senior executive responsible for ensuring that Board procedures are followed and that all applicable statutes and regulations and other relevant statements of best practice are complied with?			N/A There are no formal Board procedures. See paragraphs 80-81 of the main report.
Has the Board established a remuneration committee to make recommendations on the remuneration of top executives?	✓		This is done by the Home Office as sponsoring department.
Is information on senior salaries published?		✓	
Does the Board ensure that the body's rules for recruitment and management of staff provide for appointment and advancement on merit?		✓	
Is the Chief Executive accountable to the Board for the ultimate performance of the public body and for the implementation of the Board's policies?			N/A The Commissioner and Deputy Commissioner are accountable to Ministers.

	No	Yes	Notes
Is the Chief Executive responsible for the day-to-day management of the public body?			N/A The Commissioner and Deputy commissioner fulfil this role.
Does the Chief Executive have line responsibility for all aspects of executive management?			N/A The Commissioner and Deputy Commissioner have line management responsibility for staff in the organisation.
Is there should an annual evaluation of the performance of the board and its committees – and of the Chair and individual Board members?	✓		The Commissioner has not been formally reviewed by the Senior Sponsor although they meet regularly. The Chair of the Audit and Risk Committee reviews other members of the Committee but the Chair himself is not formally reviewed.
Role of the Chair: The Chair is responsible for leadership of the board and for ensuring its overall effectiveness.			
Is the Board led by a non-executive Chair?			N/A See paragraphs 80-81 of the main report.
Is there a formal, rigorous and transparent process for the appointment of the Chair? This should be compliant with the Code of Practice issued by the Commissioner for Public Appointments.		✓	The Chair of the Audit and Risk Committee was appointed by a formal process.
Does the Chair have a clearly defined role in the appointment of non-executive board members?			N/A See paragraphs 80-81 of the main report.
Are the duties, role and responsibilities, terms of office and remuneration of the Chair set out clearly and formally defined in writing?			N/A See paragraphs 80-81 of the main report.

	No	Yes	Notes
Are Terms and Conditions in line with Cabinet Office guidance and with any statutory requirements?			N/A See paragraphs 80-81 of the main report.
Does the Chair represent the public body in discussions with Ministers?			N/A See paragraphs 80-81 of the main report.
Does the Chair advise the sponsoring department and Ministers about board appointments and the performance of individual non-executive board members?			N/A See paragraphs 80-81 of the main report.
Does the Chair ensure that non-executive board members have a proper knowledge and understanding of their corporate role and responsibilities?			N/A See paragraphs 80-81 of the main report.
Does the Chair ensure that new members undergo a proper induction process?		✓	There is an induction process for members of the Audit and Risk Committee.
Is the Chair responsible for undertaking an annual assessment of non-executive board members' performance?			N/A See paragraphs 80-81 of the main report.
Does the Chair ensure that the Board, in reaching decisions, takes proper account of guidance provided by the sponsoring department or Ministers?		✓	The Commissioner ensures that the Senior Management Team takes proper account of guidance.
Does the Chair ensure that the Board carries out its business efficiently and effectively?		✓	The Commissioner ensures this for the OISC.
Does the Chair represent the views of the board to the general public?		✓	The Commissioner ensures this for the OISC.
Does the Chair develop an effective working relationship with the Chief Executive and			N/A See paragraphs 80-81 of the main report.

	No	Yes	Notes
other senior staff?			
The roles of Chair and Chief Executive should be held by different individuals.			N/A See paragraphs 80-81 of the main report.
Role of Non-Executive Board Members: As part of their role, non-executive board members provide independent and constructive challenge.			
Are there a majority of non-executive members on the Board?			N/A See paragraphs 80-81 of the main report.
Is there a formal, rigorous and transparent process for the appointment of non-executive members of the board? This should be compliant with the Code of Practice issued by the Commissioner for Public Appointments		✓	This applies to members of the Audit and Risk Committee.
Are the duties, role and responsibilities, terms of office and remuneration of non-executive board members set out clearly and formally defined in writing? Terms and Conditions must be in line with Cabinet Office guidance and with any statutory requirements.		✓	
Do the non-executive board members (including the Chair) establish the strategic direction of the public body (within a policy and resources framework agreed with Ministers)?			N/A It is not appropriate for the Audit and Risk Committee to establish strategic direction. See paragraphs 80-81 of the main report.
Do the non-executive board members (including the Chair) oversee the development and implementation of strategies, plans and priorities?		✓	Insofar as Audit and Risk Committee members behave as Non-Executive Directors, they perform this function. See

	No	Yes	Notes
			paragraphs 80-81 of the main report.
Do the non-executive board members (including the Chair) oversee the development and review of key performance targets, including financial targets?		✓	As above
Do the non-executive board members (including the Chair) ensure that the public body complies with all statutory and administrative requirements on the use of public funds?		✓	As above
Do the non-executive board members (including the Chair) ensure that the Board operates within the limits of its statutory authority and any delegated authority agreed with the sponsoring department?		✓	As above
Do the non-executive board members (including the Chair) ensure that high standards of corporate governance are observed at all times (this should include ensuring that the public body operates in an open, accountable and responsive way)?		✓	As above
Do the non-executive board members (including the Chair) represent the Board at meetings and events as required?	✓		This would not be appropriate for members of the Audit and Risk Committee. See paragraphs 80-81 of the main report.
Are all non-executive Board members properly independent of management?		✓	To the extent that members of the Audit and Risk Committee can be considered non-executive Board members. See paragraphs 80-81 of the main report.
Do all non-executive Board members allocate sufficient		✓	As above

	No	Yes	Notes
time to the Board to discharge their responsibilities effectively?			
Are details of Board attendance published (with an accompanying narrative as appropriate)?		✓	As above
Is there a proper induction process for new board members?		✓	As above
If yes, is this led by the Chair?			N/A The Commissioner is involved in the induction process. See paragraphs 80-81 of the main report.
Are there regular reviews by the Chair of individual members' training and development needs?			N/A See paragraphs 80-81 of the main report.

	No	Yes	Notes
Effective financial management: The public body has taken appropriate steps to ensure that effective systems of financial management and internal control are in place.			
Annual Reporting			
Does the body publish on a timely basis an objective, balanced and understandable annual report?		✓	
Does the report comply with HM Treasury guidance?		✓	
Internal Controls			
Has the public body taken steps to ensure that effective systems of risk management are established as part of the systems of internal control?		✓	
Has the public body taken steps to ensure that an effective internal audit function is established as part of the systems of internal control?		✓	
If yes, does this operate to Government Internal Audit Standards and in accordance with Cabinet Office guidance? (The effective internal audit function could be provided by a cross-government supplier)		✓	

Are there appropriate financial delegations in place?		✓	
If yes, are these financial delegations understood by the sponsoring department, by board members, by the senior management team and by relevant staff across the public body?		✓	
Are there effective systems in place to ensure compliance with these delegations?		✓	
Are these systems regularly reviewed?		✓	
Are there effective anti-fraud and anti-corruption measures in place?		✓	
Are there clear rules in place governing the claiming of expenses? These should be published. Effective systems should be in place to ensure compliance with these rules.		✓	
Does the public body proactively publish information on expenses claimed by board members and senior staff?		✓	The cost of the Audit and Risk Committee is published in the Annual Report.
Does the annual report include a statement on the effectiveness of the body's systems of internal control?		✓	
Audit Committee			
Has the body taken steps to ensure that an objective and professional relationship is maintained with the external auditors?		✓	

	No	Yes	Notes
Communications: The Public Body is open, transparent, accountable and responsive.			
Communications with Stakeholders			
Has the public body identified its key stakeholders?		✓	
Has the public body established clear and effective channels of communication with these stakeholders?		✓	
Communications with the Public			
Has the public body made an explicit commitment to openness in all its activities?	✓		OISC are now planning to remedy this omission. They are committed to openness but have not explicitly stated this.
Does the public body engage and consult with the public on issues of real public interest or concern? This might be via new media		✓	
Does the public body publish details of senior staff and Board members together with appropriate contact details?		✓	
Does the public body hold open Board meetings or an annual open meeting?	✓		There are no Board meetings as such. In the past annual open meetings have been held but they are expensive. The current

	No	Yes	Notes
			programme of workshops and seminars is open to all registered advisers. However, the Commissioner's Advisory Panel does not have a forward plan of meetings.
Does the public body proactively publish agendas and minutes of Board meetings?			N/A There is no Board. See paragraphs 80-81 of the main report.
Does the public body proactively publish performance data?		✓	
In accordance with transparency best practice, has the public body considered publishing their spend data over £500? Do they do so? By regularly publishing such data and by opening their books for public scrutiny, public bodies can demonstrate their commitment to openness and transparency and to making themselves more accountable to the public.	✓		The OISC had not considered this but are now doing so as a result of the Triennial Review.
Has the public body established effective correspondence handling and complaint procedures? These should make it simple for members of the public to contact the public body and to make complaints.		✓	

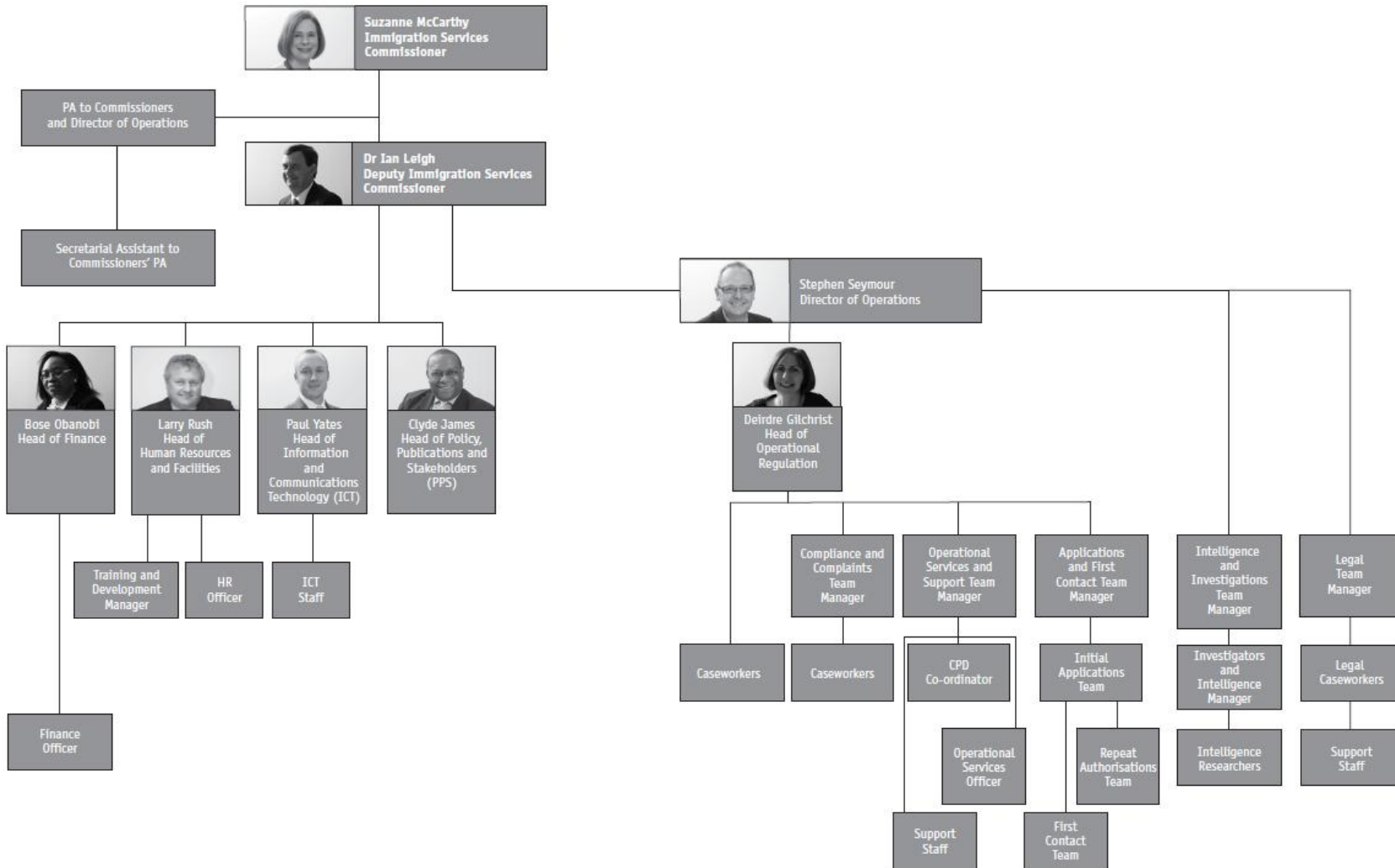
	No	Yes	Notes
Are complaints taken seriously?		✓	
Where appropriate, are complaints subjected to investigation by the Parliamentary Ombudsman?		✓	
Does the public body monitor and report on its performance in handling correspondence?	✓		The OISC receives almost no correspondence that is not related in some way to its business: all this correspondence is logged and dealt with appropriately, and performance is monitored and reported on to the Senior Management Team.
Marketing and PR			
Does the public body comply with the Government's conventions on publicity and advertising?		✓	
Are these conventions understood by board members, senior managers and all staff in press, communication and marketing teams?		✓	
Are there appropriate rules and restrictions in place limiting the use of marketing and PR Consultants?		✓	
Has the public body put robust and effective systems in place to ensure that the public body is not, and is not perceived to be, engaging in political lobbying?		✓	

	No	Yes	Notes
This includes restrictions on board members and staff attending Party Conferences in a professional capacity			

	No	Yes	Notes
<p>Conduct and Behaviour: The board and staff of the public body work to the highest personal and professional standards.</p> <p>They promote the values of the public body and of good governance through their conduct and behaviour.</p>			
Conduct			
Is there a Code of Conduct in place setting out the standards of personal and professional behaviour expected of all board members		✓	
If so, does this follow the Cabinet Office Code?		✓	
Are all members aware of the Code?		✓	
Is the Code part of the terms and conditions of appointment?		✓	

	No	Yes	Notes
Has the public body adopted a Code of Conduct for staff?		✓	
If so, is this based on the Cabinet Office model Code?		✓	
Are all staff aware of the provisions of the Code?		✓	
Is the Code part of the terms and conditions of employment?		✓	
Are there clear rules and procedures in place for managing conflicts of interest?		✓	
Is there a publicly available Register of Interests for board members and senior staff?		✓	
If so, is this regularly updated?		✓	
Are there clear rules and guidelines in place on political activity for board members and staff?		✓	
Are there are effective systems in place to ensure compliance with any restrictions?		✓	
Are there rules in place for board members and senior staff on the acceptance of appointments or employment		✓	

	No	Yes	Notes
after resignation or retirement?			
If so, are these effectively enforced?			No senior staff or Audit and Risk Committee members have left the OISC for a number of years so this has not been tested.
Leadership			
Do board members and senior staff show leadership by conducting themselves in accordance with the highest standards of personal and professional behaviour and in line with the principles set out in respective Codes of Conduct.?		✓	



Stakeholders interviewed

Crispin Passmore, Solicitors Regulation Authority

Legal Services Board

Terry Price, Chair of the OISC's Audit and Risk Assurance Committee

Immigration Law Practitioners' Association

National Audit Office

Ministry of Justice

Cabinet Office

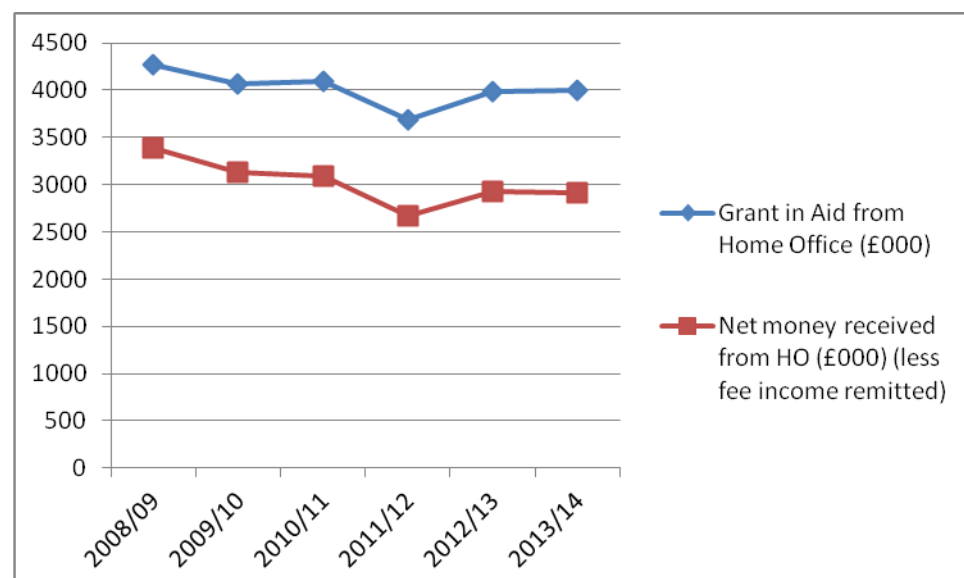
Director of Strategy, Gangmasters' Licensing Authority

Bob Brack, President and Chief Executive of the Immigration Consultants of Canada
Regulatory Council (ICCRC)

Stage 2 data

All data in this annex is taken from OISC Annual Reports unless otherwise attributed.

	Grant in Aid from Home Office (£000)	Fee income remitted in £000	Net money received from HO (£000) (less fee income remitted)
2008/09	4270	885	3385
2009/10	4061	925	3136
2010/11	4092	1002	3090
2011/12	3681	1008	2673
2012/13	3988	1055	2933
2013/14	3998	1090	2908



Staff costs

	staff costs £000	% change in staff costs	number of FTEs	% change no of FTEs	cost per FTE (£000)	% increase in cost per FTE
2010/11	2495		61		41	
2011/12	2584	4	60	-2	43	5
2012/13	2539	-2	60	0	42	-2
2013/14	2515	-1	58	-3	43	2

There is no strong trend in staff costs at the OISC over time.

Sickness data

	sickness days lost	number of FTEs	days lost per FTE	days lost as % of days available
2010/11	543	61	8.9	4.14
2011/12	417	60	7.0	3.21
2012/13	384	60	6.4	3.01
2013/14	282	58	4.9	2.23

This compares to 4.4 days per worker in 2013, or 1.8% of hours in the private sector compared to 2.9% of hours in the public sector lost to sickness. This means that the OISC data of 4.9 days, or 2.2% of available days, lost to sickness compares favourably to the public sector. (Data about sickness from the ONS report *Sickness Absence in the Labour Market*, published in February 2014²⁵.)

²⁵ http://www.ons.gov.uk/ons/dcp171776_353899.pdf

ISBN: 978-1-78655-165-8