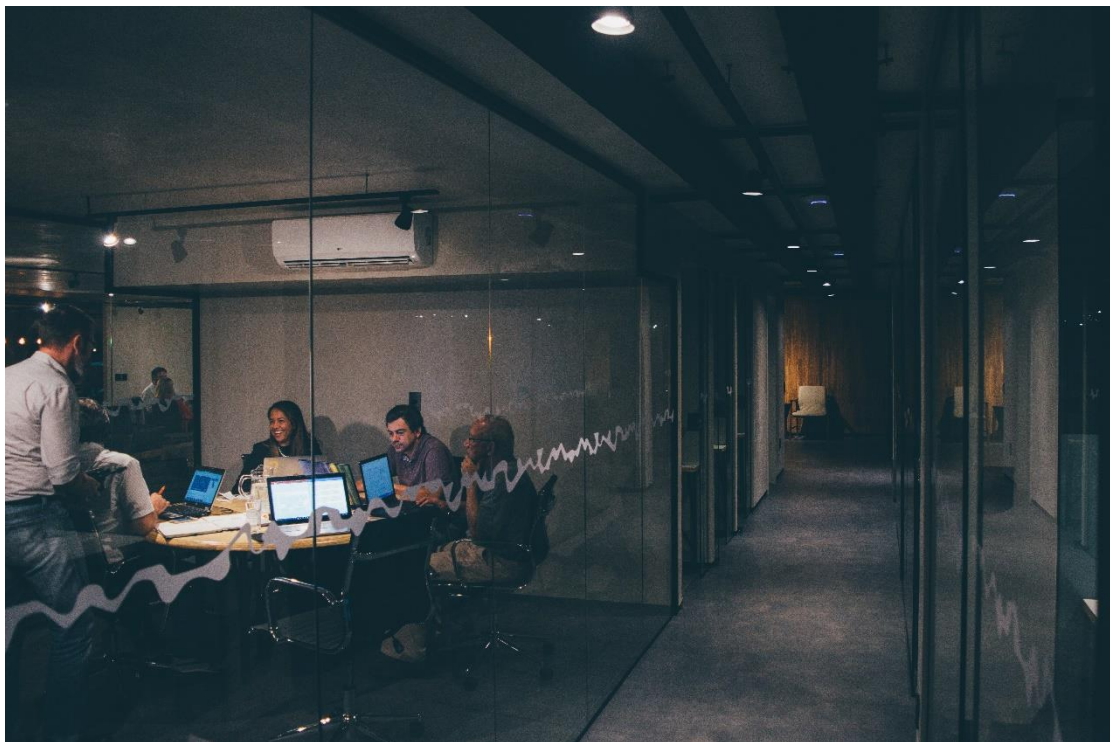




Legal Aid
Agency



IMPROVING YOUR QUALITY IN IMMIGRATION & ASYLUM

A guide to common issues identified through Peer
Review

Foreword to the guide

Improving Your Quality in Immigration Law

A guide to common issues identified through peer review

We are pleased to introduce this updated edition of 'Improving Your Quality – Immigration & Asylum', which is intended to give the profession access to peer review findings and help support those wishing to achieve a good level of quality of legal advice and work. Changes in law and procedure have been taken into account.

The focus of the delivery of legal aid is firmly on the provision of consistently good quality services for clients. The peer review process has provided a unique opportunity with access to a wealth of information directly related to the quality of legal advice and information given to clients and work carried out on behalf of clients. It allows us to identify areas of good practice and areas in need of improvement.

The guide will be considered and taken into account by Peer Reviewers in assessing work seen on peer review.

The guide makes available common quality issues identified by Immigration & Asylum Peer Reviewers. Derived from the entire body of peer review reports, analysis has concentrated on those issues frequently contributing towards lower ratings at Peer Review. Each issue considers:

- A brief description of why the issue has been identified as important.
- The process by which an organisation can identify if the quality concern affects their work and advice.
- Outline suggestions on activities/methods which could assist improvement.

These suggestions for making improvements are not suggesting a standard approach. Nor are they an exhaustive list; they are only some of the ways that improvements can be made. Your organisation may have other ways of resolving the issues raised in the guide, it is not our intention to invalidate those approaches.

Some of the suggestions have also led to a more general debate concerning standard setting, and the best approaches to dealing with specific quality of advice issues. We continue to welcome the opening up of the world of legal competence to such scrutiny and debate.

Professor Avrom Sherr

Institute of Advanced Legal Studies

On behalf of the Peer Reviewer Panel in Immigration

June 2023

Contents

1. Communication with the Client.....	3
2. The advice given.....	7
3. The work/assistance.....	9
4. Controlled Work, Exceptional Case Funding and Legal Representation.....	12
5. Issues commonly identified on Peer Review.....	15
6. Useful Resources.....	16



Communication with the client

Who is the Client?

- Providers should identify at the outset who the Client is, or if there is more than one Client, and be mindful of the potential for conflicts of interest but also for the existence of separate claims e.g., by a person who has been designated as a dependant.
- Where there is the potential for conflict, Clients should be advised of the Provider's professional duties at the earliest possible opportunity, usually in the Client Care letter, to avoid any misunderstanding that could lead to an actual conflict arising.
- The duty of disclosure to any Client of information known to the Provider that is material to the Client's matter should be explained, so for example family members who are multiple Clients are aware that the Provider may not be able to keep information by one of them confidential from another.
- It is particularly important when representing children that both the Provider and the child understand that it is the child (rather than a carer or support worker) that is the Client and can provide instructions, and that both Provider and child understand the extent of the relationship of confidentiality between them. This is particularly important where there is a risk of conflict between the child and those caring for them (for instance because of an age dispute).

Obtaining information

- Information taken from the Client directly (taking instructions) is, in most cases, key to understanding the case.
- In an asylum claim, obtaining sufficient detail about the claim is usually best achieved by the taking of a statement at the earliest possible stage. This is likely to assist the Client to present the claim clearly, chronologically, and comprehensively and will also be a useful process in terms of preparing the Client for the asylum interview process and the likely focus of questioning at the substantive interview.
- Consideration should always be given as to whether to submit a statement prior to the substantive asylum interview. It is accepted that there is a range of opinion amongst immigration and asylum lawyers about the benefit of submitting a full witness statement in an asylum claim prior to the full asylum interview and the Home Office decision, and it is a question of professional judgment as to whether any statement should then be submitted to the Home Office in a particular case. It nevertheless remains essential that a representative has a detailed

understanding of clients' reasons for applying for asylum, and that the Client has an opportunity to provide a full account of their experiences before attending their full asylum interview so that they can understand the relevant issues, and any aspects of their account which may attract particular attention. This is particularly important when representing children or vulnerable individuals who may struggle to provide a clear account of their experiences to a stranger on first meeting.

- Following the Nationality and Borders Act 2022 (NBA 2022) coming into force, it is now particularly important to take instructions on the Client's journey to the UK, connections with third countries, reasons for not claiming asylum en route to the UK, the lawfulness of their entry and residence in the UK, and vulnerabilities and other reasons for resisting removal to third countries, such matters being relevant to whether a claim is admitted at all (or whether the Client faces removal outside the jurisdiction of the UK and the ECHR, with no right to return), and if a claim is admitted, and is successful, what duration of leave, progress to settlement, and family reunion they will have ('differential treatment').¹
- The importance of putting forward a comprehensive account of an asylum or human rights claim, raising all grounds for leave to remain, has always been important, and will become even more so when the Priority Removal Notices² regime comes into force, the effect of which will mean that any grounds raised beyond a specified cut-off date will lead to, among other things, an abbreviated appeals process, with appeals going straight to the Upper Tribunal.
- Providers should be alert to indicators of exploitation, trafficking and modern slavery in Clients' presentation or account of their basis of claim or journey to the UK and should take detailed instructions in relation to this with a view to raising such issues with the Home Office as early as possible. Such issues may be relevant to the reasonableness of claiming asylum en route to the UK. Providers should also be aware that Clients who are screened shortly after arrival may not feel able or have sufficient understanding to provide accurate information in this regard at the screening interview and should revisit this issue when reviewing the notes of the screening interview. Any new information disclosing indicators of trafficking or exploitation should be notified to the Home Office as soon as possible.
- When obtaining information from children or vulnerable Clients it is important to bear in mind developmental or psychological factors which may impact upon their ability to provide clear and consistent information. Where a child or vulnerable client's ability to provide information is impaired, the Provider must give consideration to obtaining additional

¹ Should the Illegal Migration Bill be passed into law, in its current form, it will apply retrospectively to people whose claims were made on or after 7 March 2023. The effect will reach an even wider group of asylum seekers, and challenges will be even more difficult than under the NBA 2022. Taking instructions on e.g. mental health issues and other vulnerabilities becomes even more important.

² Section 20-25 of the Nationality and Borders Act 2022

sources of objective and subjective evidence to support the claim, such as child-specific country information or medical/expert reports.

- Child clients are entitled to be represented by a legal representative at all interviews with the Home Office (screening and substantive/full) and funding is available for Providers to attend interviews with child clients. All child clients seeking asylum should be represented at their interviews. It is best practice that the child meets with the person that will be attending with them before the interview. Providers should always meet with child clients prior to interview to ensure that they understand the procedure at interview, and the likely issues that will arise.
- Clients should be advised and, if appropriate, assisted to consider the written transcript of any interview, advised on whether submitting clarifications or corrections may be helpful, and assisted if wishing to do so. In each case consideration should be given to the desirability of post asylum interview representations being submitted to the Home Office arguing the Client's claim into the Refugee Convention. For asylum claims lodged post coming into force of the NBA 2022, consideration should also be given post asylum interview to making representations relevant to admissibility and differential treatment given that the Home Office refers to details provided by applicants at their asylum interview when reaching admissibility and Group 2 / differential treatment decisions.
- Using checklists can help to ensure that information that it is necessary to discover in most or all cases is not missed, but exploration of the case should not be unduly restricted by templates or standard checklist. It is often better to allow the facts to unfold through a natural flow of question and answer, avoiding questions which lead the Client towards a particular answer, or which assume facts. Non-leading questions may start with "Tell me about..." or 'Who. . .', 'What. . .', 'Where. .', 'Why. . . ' or 'When. . . '.
- The use of chronologies of key events can assist the Client to establish the correct order of events.
- In asylum cases, consideration should be given to Home Office policy, Country Guidance case law and country materials to ensure that information taken from the Client covers all material issues and to identify areas of potential dispute where support around case building may be needed by the client.
- The Provider should consider whether there are any discrepancies within the account given by the Client or between the account given by the Client and the background information and advise the Client accordingly.
- When representing someone who has had an earlier refusal decision ('fresh claims'), it is important to understand that, if the case went to appeal, the earlier judge's findings of fact will be the starting point, and, whether or not the case went to appeal, the claim can be rejected without

a right of appeal, either because there has been an appeal on the same issues previously, or an opportunity to appeal that the client did not take up. This almost always requires a detailed understanding of the Client's account put forward in the previous claim, and detailed engagement with the reasons why the previous claim was rejected. It also requires consideration as to how the client can overcome any previous negative findings of fact.

Barriers to communication

- Providers should consider the Client's ability to comprehend advice, provide information and give instructions, and communicate generally. Where barriers are identified, consideration should be given to any reasonable adjustments that could be made and these should be readily apparent to all members of the Provider's staff who may have need to communicate with the Client.
- Potential barriers can include language, literacy, mobility, physical and mental health, a history of trauma or torture, mental capacity (including due to young age), developmental considerations (particularly in relation to child Clients) and problems with communication where the Client is detained.
- Independent, professional interpreters and translators should always be used where appropriate and the language of communication recorded on the file. This includes when attending asylum interviews with children.
- Reasonable adjustments should be made for Clients who may feel intimidated by the information gathering process; for example, a Client who may need to provide details of sexual assault may feel less comfortable doing so in the presence of a caseworker and/or interpreter of a certain sex or other characteristics, or in the presence of a family member.
- Providers should also demonstrate awareness of the potential for barriers arising from cultural factors, which may make Clients less likely to correct errors or contradict or question perceived authority figures such as males, professionals, and Government agents or, in the case of children, adults generally.

Keeping the Client informed

- Contact with the Client should be maintained at a level of frequency that is appropriate to the progression of the case bearing in mind Home Office and Tribunal backlogs, and the Client should be advised of likely time frames and how to make contact if any issues arise. Clients' expectations should be managed with clear communication to counter myths and misinformation the client may be exposed to. The required checks for inactivity should be carried out at appropriate intervals and records of this retained on the file, potentially to support requests for

expedition should this become necessary based on the Client's individual circumstances.

- Confidentiality should be ensured at all times, for example through the use of encrypted digital communications or the implementation of Rule 39 measures when communicating with a detained Client, and Providers should have an awareness that detention telecommunications and digital communications may be monitored.
- Providers should act swiftly to try and resolve any breakdown of communication with the Client (for example, where the Client has not replied to letters).

Why is communication with the Client and obtaining sufficiently detailed instructions important?

- The Client's legal issues need to be understood as early as possible, so that the Provider can determine whether the issues are capable of being resolved and, if so, what steps might be required to work towards that, whether on the part of the Provider, the Client, or by third parties.
- If a claim does not include a sufficient level of detail, the Client is less likely to be found credible and/or important elements of the applicable legal test or criteria may not be accepted as met.
- The plausibility of a claim will be considered against available country evidence and any reliable expert evidence, and other familiar factors, such as consistency with what the Client has said before, and with other factual evidence (where there is any).
- An adequate level of contact with the Client is essential to ensuring that material developments are not missed, and that Clients have understood and are taking agreed steps.



- It is reassuring for Clients to know that their cases are being progressed with appropriate speed and diligence. If there are delays in their cases being progressed by a third party (such as the Home Office or the Tribunal), it is important to ensure that the Client understands that this is the reason for the delay.
- The penalties for failing to provide a comprehensive account at an early stage are escalating, particularly post implementation of NBA 2022, with new laws and policies having consequences (such as a removal outside the jurisdiction of the UK or potential exclusion from trafficking protections) that are extremely serious and potentially irreversible.

2. The advice given

Awareness, knowledge and understanding

- Caseworkers conducting casework in the Immigration and Asylum Category of Law must be accredited at the appropriate level of the Immigration and Asylum Accreditation Scheme and advice given to Clients should display a level of awareness, knowledge and understanding of the law, policy and procedure that accords with the standards of that scheme.
- Awareness, knowledge and understanding of law, policy and procedure should be maintained through continuing professional development and supervision by the Immigration and Asylum Supervisor, who must take account of any changes in legislation and case law, ensuring that changes are disseminated, and procedures and precedents kept up to date. Providers are required to maintain access to at least one nationally published specialist resource containing updates on immigration and asylum case law and statutes.

Clear, concise, and relevant

- Advice provided should be clear, concise, and relevant.
- The Client should be given a clear and reasoned assessment of the prospects of resolving the legal issues (merits), identifying any problematic areas. Where alternative options exist, advice should be given on the advantages and disadvantages of each.
- Standard or generic advice should be kept up to date and advice should always be tailored to the individual Client and the case. It may assist to use headings in template letters to prompt caseworkers to record advice on merits, strengths and weaknesses, steps to be taken, and timeframes. This also makes it easier for the Client to understand and absorb the advice and manages expectations.
- Advice should be given on what steps could be taken by the Client, Provider and/or third parties to improve the prospects of success, and agreement reached where possible on who is responsible for taking such steps and within what time frame.
- Advice given to the Client should be updated to reflect material developments such as following a decision or determination, material information or evidence coming to light, or following changes in case law, policy, and country conditions.
- Advice should be confirmed in writing unless this is impracticable, so that the Client can refer back to the advice and consider it carefully, and so that any steps to be taken are clear. Legal jargon should be avoided

wherever possible. Reasons for not providing written confirmation of advice should be retained on the file. Advice provided to a child Client should be written in terms that are relatively straightforward and easy to understand.



- Clients should be advised of relevant exemptions from application fees, NHS surcharge, appeal fees and other court and tribunal fees, or of the possibility of obtaining fee waivers.
- A detained Client must always be advised on the availability and appropriateness of making a bail application (including when appeal rights have been exhausted) and the outcome of this advice must be recorded. Where an application to the SSHD for bail is refused, the Provider should always consider making a further application to the appropriate Tribunal. Providers should be aware of characteristics that suggest someone is not suitable for detention (such as being a victim of torture or trafficking), the Rule 35 process to seek a medical assessment in detention centres, and Providers should raise such matters when seeking release from detention.
- Child Clients who are granted limited leave to remain in the UK following the refusal of asylum, due to inadequate reception arrangements in their country of origin, must be clearly advised so that they understand that their asylum claim has been refused. An appeal of the asylum refusal must be considered in all cases with the usual application of the CLR merits test. The temporary nature of the grant of UASC limited leave to remain must be explained, and the prospect of obtaining further leave to remain on expiry of that must be explored in the context of the Client's claim. It is important that child clients in this situation (and those caring for them, if appropriate) understand that they have not been recognised as refugees and are given advice on the impact that turning 18 may have on the merits of a future appeal if further leave to remain is refused.
- Victims of trafficking and modern slavery, should be advised on the advantages of being recognised as such, including in relation to enhanced financial and other support, and the ways in which such recognition can form the basis of claims for leave to remain and/or support other claims for leave to remain.

Why is the advice given important?

- The Client should be enabled to make informed decisions and to give instructions regarding any necessary steps.
- Problematic or unclear issues need to be addressed as early as possible.

- Clients may originate from countries or areas which mean that they have limited experience or understanding of legal processes and will require detailed and clear advice in order to be full participants in the legal process.

3. The work / assistance

Appropriate and effective

- Assistance should be provided to the Client to resolve the legal issue identified, if appropriate including on assessment of merits of any proposed course of action / application, and such work should be executed effectively and efficiently.
- An assessment of the Client's present immigration status and relevant history should be carried out at the outset, any further steps that are necessary to understand this should be clearly recorded and any potential urgency noted and flagged on the file.
- Key dates such as the expiry of leave to enter or remain and other time limits should be clearly noted, as should any other factors requiring urgent action in the Client's best interests, and procedures should be in place to ensure that any necessary action is taken accordingly.
- Immigration decisions and notices, and judicial directions and decisions should be swiftly considered and acted upon.
- Deadlines should not be missed, and extensions of time should be sought where appropriate and/or necessary.
- Obtaining and perusing key documents should be done in a timely fashion, with consideration given as to whether to request further documents from the Client, or, with the Client's consent, from the previous legal representative, the Home Office and/or any other persons or agencies. The receipt and perusal of any material documents should be clearly recorded, and the items should be retained, in the original or a copy, and easily accessible on the file. As noted above, in the Obtaining Information section, this is particularly important in fresh claim cases.
- Consideration as to whether to obtain documents (including the decision whether incur to disbursements) should be timely: delays in disclosure of data are common and the identification and engagement of suitable experts can be slow and problematic. Sufficient time must be allowed for obtaining authority from the Legal Aid Agency to increasing upper costs limits where necessary, which may require the provision of more than one "quote" where the expert rate is not prescribed.
- Tailored lists of types of evidence that could be obtained to help to corroborate the claim should be used.

- Providers should assist Clients to give detailed, coherent accounts of their reasons for claiming asylum, which remain, insofar as is possible, consistent with the applicant's own account over time and with the country evidence (or for inconsistencies to be explained). In many cases, this will require taking detailed instructions over multiple attendances, ensuring Clients are given the opportunity to correct errors in asylum interview records and witness statements, and that they are able to respond to issues raised by the Home Office at interview or in the refusal letter. It will also often require identifying vulnerabilities and making sure these are taken into account throughout the asylum claim/appeal process to ensure clients give their best evidence. Where poor health is a factor in a Client's ability to recall events or provide a consistent account of experiences, consideration should be given to obtaining medical evidence to support such an assertion, particularly where issues arising are material to the prospects of the claim succeeding, where there is a risk that claim may be certified as without foundation, or whether there is the potential for other penalties or adverse effect in relation to delayed disclosure.
- Witness statements should be drafted in the witnesses' own words. This is not only to comply with Tribunal and professional conduct rules, but also because such statements are more persuasive. In the context of appeals, but good practice also at other stages, the Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal at PD 5.5, says that witness statements must be drafted "in the intended witness's own words and must in any event be drafted in a language they understand". Statements should ring true. They should reflect the Client's experiences from their perspective based on their perceptions. Statements should not include legal submissions.
- Marked up copies of draft statements, chronologies, and written submissions with notes or comments can identify problematic issues or areas where further information and/or investigation is required as well as evidence of work carried out on the file.
- Assistance may include further fact-finding work by the Provider. It must always be borne in mind that it may have been difficult for an asylum Client to bring evidence with them when fleeing from the country of nationality or main residence, and difficult and even dangerous for them to seek to obtain evidence from outside of that country thereafter. Similar considerations will often apply to those fleeing situations of domestic violence and making applications on that basis.
- Legal submissions should be clear and succinct, tailored to the client, and should avoid over reliance on generic or not clearly relevant content.
- Bundles of evidence should be well ordered and easy to navigate, and where these are relied on in court proceedings should meet the requirements of the relevant court in relation to hard copy or electronic bundles as appropriate.

Disbursements

- Disbursements should be considered and incurred where appropriate, such as to fund any necessary reasonable adjustments relating to the Client's ability to communicate, and for expert evidence such as country reports, forensic psychological, psychiatric, and medical reports.

Working with third parties

- Providers should, where possible and appropriate, work collaboratively with other professionals (such as trauma specialists, medical and other mental health professionals, support and social workers, and other lawyers acting for clients in other legal matters) and carers, in order to prepare an adequately detailed and evidenced case. The duty of confidentiality must however be maintained at all times; and permission sought to share information where appropriate.
- Consideration should be given as to whether any third parties might be useful witnesses.
- Witnesses and/or bail sureties should always be carefully assessed, including for potential conflicts, adverse character and/or credibility issues, and should be notified as early as possible of any hearing dates and relevant procedural matters and these activities should be clearly recorded. Witness statements should be taken by the Provider with reference to the knowledge and experience of the witness, and the purpose for which their evidence is required. Witnesses should not be left to draft their own statements or letters in support, without detailed advice about the material issues they are expected to address.
- Expert instructions should be clear and considered, and should explain the expert's role; for example, in Tribunal proceedings, the expert should be referred to the relevant part of the Practice Direction. Draft reports should be analysed, and the expert should be politely challenged on areas of weakness, lack of clarity and inappropriate content, while remaining mindful of the expert's independence and their duty to the court.
- Caseworkers should work collaboratively with external and in-house advocates, including the use of briefs of appropriate content and level of detail.
- Conferences between the Client and/or witnesses with external or in-house advocates should be considered where it is proposed to call oral evidence. This is particularly the case when outcome is likely to turn predominantly on the credibility assessment or where the Client is particularly vulnerable by reason of age or health. Where it is not possible to arrange a conference with external advocates (for example due to distance, time frame or any other issue), it is important for the caseworker to ensure that proposed evidence is talked through with the Client and any witnesses well in advance of the hearing and any potential

issues discussed with the advocate. If it has not been possible for a conference between the client and the advocate to take place on a day prior to the hearing, an interpreter should be booked to attend the hearing centre on the day of the hearing so that the advocate can resolve any issues of evidence or other matters on the morning of the hearing.

- The Provider should consider and advise and/or act on the need for referral to other professionals such as trauma specialists, medical and other mental health professionals, support, and social workers. This should also be done for legal advice and assistance where the Client has a need for advice about a legal problem falling within a different category of law; consideration of referral for family, housing, community care, welfare rights and criminal law is often appropriate in this Category of work.
- It is important to note that the Immigration Specification places an obligation upon Providers acting for unaccompanied asylum-seeking children who experience problems relating to the exercise of a local authority's duty, to ensure that the Client receives appropriate legal advice in relation to this.

Use of resources

- The Provider's organisation should use resources effectively, including the allocation of less experienced staff to appropriate casework tasks and under an appropriate level of supervision.

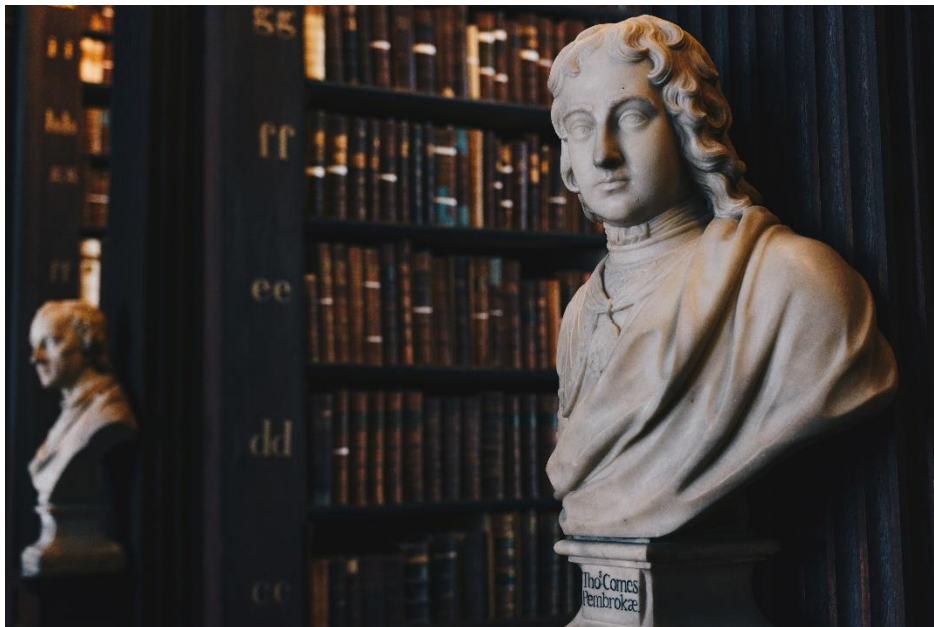
Why is the work / assistance important?

- The Provider's work should assist the Client to resolve the legal issue or issues identified, in their best interests, maintaining professional standards and public confidence, upholding the Rule of Law, and promoting Access to Justice, and ensuring regulatory compliance.
- Providers should always strive to achieve best practice.

4. Controlled Work, Exceptional Case Funding and Legal Representation.

Scope and Exceptional Case Funding

- Eligibility for Controlled Work may depend on issues of prospects of success, sufficient benefit, financial eligibility, and scope, i.e., whether the civil legal services applied for are described in Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- A common issue in relation to scope is the misapprehension that applications for settlement in the UK by a person with refugee leave or leave on grounds of humanitarian protection (SET(P)) are not in scope, they are. For asylum seekers lodging claims for asylum after 28.06.22, providers will be aware that the Immigration Specification provides for a new matter start paid at hourly rates for work in relation to the differential treatment provisions of NBA 2022 (Group 2 Rebuttal). There is provision for advice in relation to referrals into the National Referral Mechanism for victims of trafficking (limited in scope to existing clients only) and up to seven hours of non-means tested advice in relation to Priority Removal Notices.



- Where the Client presents with a relevant legal issue that is not included in Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012, consideration should be given to applying to the Legal Aid Agency for Exceptional Case Funding ('ECF') under section 10(3)(a) or 10(3)(b) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. These provisions allow civil legal services other than those described in Part 1 of Schedule 1 to that Act to be made available where it is necessary to do so because the failure to provide

such funding would be a breach of the individual's Convention rights (within the meaning of the Human Rights Act 1998) or any rights of the individual to the provision of legal services that are enforceable rights, or where it would be appropriate to do so having regard to any risk that failure to do so would be a breach of Convention rights or enforceable rights. *NB – ECF is a form of legal aid and it is inaccurate to advise clients or potential clients that legal aid is not available for matters for which an application for ECF can be made. Providers have a duty to advise clients of the availability of ECF for a new stage of a client matter (e.g. family reunion following a grant of refugee status), regardless of whether the Provider is will to proceed on that basis.*

- Immigration matters commonly engage the substantive right to respect for private and family life conferred by Article 8 of the Convention and, where Article 8 is engaged in relation to a particular decision-making process, Providers should consider whether legal aid is required. This will depend on the particular facts and circumstances of each case, including (a) the importance of the issues at stake; (b) the complexity of the procedural, legal and evidential issues; and (c) the ability of the individual to represent himself or herself (or to participate in the relevant process) without legal assistance, having regard to his or her age and mental capacity. Similar considerations apply to EU law matters which remain relevant for many people following the end of the Brexit transition period on 31.12.20.
- Examples of matters where ECF applications are routinely successful are family and private life cases, family reunion cases, pre-reasonable grounds trafficking/modern slavery cases and EU law matters of relative legal and/or procedural complexity.
- Providers should be aware that since 25 October 2019, all non-asylum immigration and citizenship matters for separated children are within the scope of legal aid. An ECF application is not necessary in such matters. Care leavers will still need to make an application for ECF.
- Where the Provider decides against assisting the Client to make such an application, the Client must be advised of that decision and of the possibility of making an application to the Legal Aid Agency by themselves or with the assistance of others and a referral to an organisation offering assistance with this should be considered. A database of organisations helping with ECF applications can be found on the website of Public Law Project³.

Controlled Legal Representation

- Where a decision is made that a Client is eligible for Controlled Legal Representation (CLR), the merits of the case must be considered as set out in the Civil Legal Aid (Merits Criteria) Regulations 2013 (the Merits

³ <https://publiclawproject.org.uk/current-projects-and-activities/legal-aid/exceptional-funding-project/database-of-organisations-supporting-ecf-applications/>

Regulations) at each stage of the proceedings and a record made, and the decision should be communicated to the Client.

- Where the Provider has made a decision that a Client is not eligible, or has ceased to be eligible for CLR, the Client must be advised of the right to a review of the decision including details of the CW4 procedure.
- The Client must be provided with a copy of the completed CW4 form which clearly states the date and reason for the determination and a copy must also be kept on the file. The form must be given to the Client as soon as possible and in any event within 5 days of the decision. This requirement presently applies to all stages of the proceedings, including e.g., where an appeal has been dismissed and the Provider is advising the Client of the merits of an application for permission to appeal to the appropriate court.

Merits and bail work

- Even where the Client's substantive Immigration or Asylum appeal lacks merit as set out in the Merits Regulations and therefore would not warrant the making of a determination that the Client qualifies for CLR, the case may still warrant the making of a determination that the Client qualifies for CLR for a bail application and CLR can be granted for the sole purpose of making a bail application.
- Where there is an appeal listed before the Tribunal, the Provider must always consider making a bail application at the appeal hearing and, if it is decided not to do so, the reasons should be given to the Client and recorded on the file.



Legal Representation for Judicial Review proceedings

- Consideration should be given in appropriate cases to applying to the Legal Aid Agency for Legal Representation to assist the Client with an application for permission to bring Judicial Review proceedings.
- Where the Provider decides against assisting the Client to make such an application, the Client should be advised of that decision and 1) that another Provider might be prepared to make such an application to the Legal Aid Agency for Legal Representation and 2) that there is the possibility of making an application or permission to bring Judicial Review proceedings without representation. Importantly, the Client must be advised of the duty to act promptly and the maximum 3 month time limit for the submission of an application for judicial review.

Why is the approach to Controlled Work, Exceptional Case Funding and Legal Representation important?

- Unsafe eligibility decisions and Clients being uninformed of the possibility of Legal Aid funding or applications made in person can risk breaches of Clients' Convention rights (within the meaning of the Human Rights Act 1998), and put at risk access to justice.

5. Issues commonly identified in Peer Review.



The following matters routinely arise for comment:

- Over reliance on standard materials in attendance notes and correspondence with clients: While the use of proformas and templates ensures all necessary matters are covered, it is essential that such materials are amended and added to in each case so that they are tailored to accurately record the individual Client's history and circumstances, their instructions and the advice given. This is important so that files are a transparent and an accurate record of the Provider's contact with the Client, so as to ensure that key matters are not overlooked.
- Insufficient investigation of Client's journeys to the UK, the risk of third country / inadmissibility, action being taken and out of date understanding of the law: e.g., a failure to apply for asylum in the first safe country reached / connection to a third country. It is important that if there is a risk that a Client's claim for asylum may not be substantively processed in the UK on the basis of inadmissibility due to a connection with, or having passed through, a third country, that any possible grounds for resisting removal are investigated and progressed at the earliest possible opportunity. For asylum claims registered after 28 June 2022, inadmissibility results in removal outside the jurisdiction of the UK and the European Convention on Human Rights, with no possibility of return; a change some Providers are unaware of. Even for those able to have their claims processed in the UK gathering such information is necessary to ensure that any basis to resist recognition as a Group 2 refugee is identified and communicated to the Home Office at the earliest opportunity and the client fully advised.

- Files not demonstrating an awareness of the procedural protections that need to be in place when representing minor clients: for instance the need for an Appropriate Adult to be in attendance at all interviews with the Home Office and for robust steps to be taken when age is disputed, including if necessary, referral on to a specialist Provider.
- Files not demonstrating an awareness of indicators of trafficking and the procedures to be followed when a claim for asylum is referred to the Single Competent Authority.
- A lack of critical analysis of claims and documentation: For example, Providers will often take limited instructions, fail to probe for more information or address inconsistencies, or consider how the claim might be received. One result of this is that witness statements are short, with unexplained inconsistencies (either with other statements or interview records) with no thought being given to how this might impact on the outcome of the case. A matter of concern is where attendance notes or correspondence indicate that a Client has been informed that they should provide 'evidence to support their claim' without being advised as to what that evidence might consist of, where it might be obtained from, or the role that the Provider might play in obtaining this. Another common example is fresh claims being made with little or no consideration to what was said in the earlier claim or what the findings of fact were by the earlier tribunal – the Provider simply puts forward a claim for asylum without addressing the fact that a client has been found to be not credible in an earlier claim on the same or similar issues, or the new claim contradicts the previous claim. It is recognised that Providers can only act on instructions, but without a critical analysis of clients' cases, clients are not being given an opportunity to put forward their best possible case.
- Providers sending letters with confidential information and important advice to detention centres after they are aware that the Client has been moved or released on bail.

6. Useful resources

- Independent Peer Review Process Document November 2021⁴: The Ratings indicators provide an outline of the standards against which work is reviewed across all areas of peer reviewed work.
- Law Society Immigration and Asylum Accreditation Scheme Immigration and Asylum Accreditation – Candidates’ Guidance (Assessment Guidelines)⁵: All legal aid immigration providers are required to be accredited under this scheme. As such, Providers are expected to demonstrate knowledge to the level expected under the scheme. See in particular the Senior Caseworker, and Supervising Caseworker exam syllabus standards (at 10.3 and 10.4).
- Solicitors Regulation Authority Guidance and support⁶: Guidance to help immigration solicitors understand their professional obligations and how to comply with them.
- Office of the Immigration Services Commissioner’s Code of standards⁷: For those regulated by the OISC, see this guidance for the professional obligations required.
- Law Society’s News and guidance for immigration practitioners⁸: This resource provides useful updates and practice notes on key issues in immigration and asylum work.
- Electronic Information Network Best Practice Guide to Asylum and Human Rights Appeals⁹: As well as providing useful guidance on the preparation of appeals, this extremely useful resource (which is provided free of charge), is particularly useful in relation to the preparation of witness statements (at section 12).
- Free Movement¹⁰: While Providers will not be assessed with reference to the content of this resource, in an area of law as fast-changing as immigration and asylum, it is recommended that Providers stay up-to-date by subscribing to Free Movement. It is understood that most articles are available without a subscription for a limited period, and for longer with a subscription.

4

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033053/Peer_Review_Process_Document.pdf

5 [file:///C:/Users/PaulKeeley\(SWLLC\)/Downloads/Immigration-and-asylum-accreditation-candidates-guide-Nov2022.pdf](file:///C:/Users/PaulKeeley(SWLLC)/Downloads/Immigration-and-asylum-accreditation-candidates-guide-Nov2022.pdf)

6 <https://www.sra.org.uk/solicitors/guidance/immigration-work-guidance/>

7 <https://www.gov.uk/government/publications/oisc-code-of-standards-commissioners-rules-2012>

8 <https://www.lawsociety.org.uk/topics/immigration>

9 <https://www.ein.org.uk/bpg/contents>

10 <https://freemovement.org.uk/>

- Immigration Law Practitioners' Association¹¹: A subscription-only association, providing a wide range of updates and other support to immigration practitioners. Training events are sometimes available free-of-charge and can be paid for by non-members at a higher rate.

¹¹ <https://ilpa.org.uk/>