2018 Standard Civil Contract

Specification

Category Specific Rules:

Immigration and Asylum


**Category Specific Rules**

**Section 8  Immigration and Asylum Specification**

**PART A – PRELIMINARY**

**Definitions**

8.1 In this Specification, the following expressions have the following meanings:

"Asylum Screening Unit" means a UKVI location where an asylum claim can be made. Principally this will be Lunar House, 40 Wellesley Road, Croydon CR9 2BY or at a UK border if a claim for asylum is made on immediate arrival in the UK;

"Attendance Day" means the day your Senior Caseworker(s) will be required to attend the IRC to assist a DFT, DAC or NSA Client at the Substantive Interview. An Attendance Day is normally required the day after you have been advised by the UKVI that such a client needs legal representation;

"Bail" means an application or referral to the appropriate person/court for an individual’s release on immigration bail when detained (or liable to be detained) under: (a) the authority of an immigration officer, (b) paragraph 16(1), (1A) or (2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal), (c)paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation), (d) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal), or (e) section 36(1) of the UK Borders Act 2007 (detention pending deportation);

"Cost Limits" means the cost limits set out at Paragraphs 8.79 to 8.88 below;

"Detained Asylum Casework Scheme” or “DAC Scheme” means the UKVI scheme used for the processing and determination of asylum claims for individuals who are detained;

"Detained Fast Track” or “DFT Scheme” means the UKVI scheme used for the accelerated processing of specified asylum applications;

"Detained Duty Advice Scheme/Detained Duty Advice Surgery” means the special arrangements, which are subject to Schedule authorisation, to deliver an advice surgery at the designated IRC(s);

"Fast Track Client” means an individual detained under a UKVI Detained Fast Track Scheme;

"Fast Track” or “Fast Track Scheme” means the special contract arrangements subject to Schedule authorisation to deliver services to Clients detained in relation to the UKVI Detained Fast Track Scheme;

"Fast Track Procedure Rules” means The Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2017;

"First-tier Tribunal” means the First-tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007;
“Independent Funding Adjudicator” means an adjudicator appointed by the Lord Chancellor under section 2 of the Act;

“Immigration and Asylum Accreditation Scheme” or “IAAS” means the Law Society’s accreditation scheme under which all Caseworkers conducting casework in the Immigration and Asylum Category of Law must be accredited;

“Immigration and Asylum Category of Law” is as set out in the Category Definitions 2018;

“Immigration Interview” means an interview described in paragraph 30(3) of Part 1 of Schedule 1 to the Act;

“Immigration Interview Regulations” means The Civil Legal Aid (Immigration Interviews) (Exceptions) Regulations 2012;

“Immigration Procurement Area” or “Immigration and Asylum Procurement Area” or “Immigration – Asylum Procurement Area” has the meaning set out in your Schedule. It will be either:

- London and the Southeast;
- Midlands and East of England;
- North East, Yorkshire and the Humber;
- North West;
- South West; or
- Wales;

“IRC Procurement Area” means either:

- Brook House IRC;
- Campsfield IRC;
- Colnbrook IRC;
- Harmondsworth IRC;
- Tinsley House IRC;
- Yarl's Wood IRC; or
- Morton Hall IRC; or

“Immigration Removal Centre” or “IRC” means a centre where individuals are detained, other than a prison, for the processing of their application to remain in the UK or prior to their removal from the UK;

“NSA” or “Non-Suspensive Appeal” means a certification under section 94 of the Nationality, Immigration and Asylum Act 2002 (certificate preventing or restricting appeal of immigration decision whilst in the UK);

“NSA Scheme” means the UKVI scheme used for the processing of specified asylum applications;
"Reserved Matter" means matters which we specify either in this Specification or in our Work Restrictions document may only be undertaken by individuals who are accredited as Senior Caseworkers and above under the IAAS;

"Rota" means a rota for the delivery of IRC services which is prepared by the LAA;

"Screening Interview" has the meaning given in regulation 2 of The Civil Legal Aid (Immigration Interviews) (Exceptions) Regulations 2012;

"Social Services" means the social services provision by the local authority responsible for the Client;

"Stages of Accreditation" means the following IAAS stages of accreditation:
  - Trainee Casework Assistant
  - Casework Assistant
  - Senior Caseworker
  - Supervising Senior Caseworker
  - Advanced Caseworker

"Standard Fee Scheme" means the fee scheme set out at Paragraphs 8.55 to 8.65 below;

"Standby Day" means any day on which you are required to be on call to receive referrals of Clients subject to the Detained Fast Track Scheme;

"Substantive Interview" means the Immigration Interview conducted on behalf of the Secretary of State with a view to reaching a decision on a claim in respect of rights mentioned in paragraph 30(1) of Part 1 of Schedule 1 to the Act that is not a Screening Interview;

"Terrorism Prevention and Investigation Measures Orders" means an order imposed on an individual as set out in Terrorism Prevention and Investigation Measures (TPIM) Act 2011;

"Tribunal Hearing" means either a hearing before the First Tier Tribunal or the Upper Tribunal;

"Work Restrictions" means our Work Restrictions document published by us on our website which sets out permissible and prohibited work and those matters that are reserved under various levels of the Law Society Immigration and Asylum Accreditation Scheme;

"UASC" means an asylum-seeking child is under 18 or claims on reasonable grounds to be under 18 applying for asylum in their own right and who is separated from both parents and not being cared for by an adult who, by law or custom, has responsibility to do so;

"UKVI" means UK Visas and Immigration, formerly known as the United Kingdom Border Agency, Immigration Nationality Directorate, Border and Immigration Agency and Home Office. Where UKVI is referenced it also includes Ports, Entry Clearance Offices, Consulates and Embassies
Scope of this Specification

8.2 Most Immigration work is not within the scope of Legal Aid and is, therefore, not covered by this Specification. All work in relation to Judicial Review is subject to the exclusions in paragraph 19 of Part 1 of Schedule 1 to the Act. Paragraphs 8.7 and 8.8 contain details of what remains within scope in the Immigration and Asylum Category. These are not exhaustive and should be read subject to the full provisions in Part 1 of Schedule 1 to the Act.

8.3 This Contract covers Contract Work within the Immigration and Asylum Category of Law in England and Wales which is within the scope of Part 1 of Schedule 1 to the Act.

Forms of Civil Legal Services

8.4 Contract Work in the Immigration and Asylum Category of Law can be carried out as 3 different Forms of Civil Legal Services:

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<thead>
<tr>
<th>Forms of Civil Legal Services</th>
<th>Funded as</th>
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<tr>
<td>Legal Help</td>
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<td>Controlled Legal Representation (CLR)</td>
<td>Controlled Work</td>
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<td>Legal Representation</td>
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Work subject to Exclusive Schedule Authorisations

8.5 In addition to the Schedule for mainstream Immigration and Asylum Contract Work as described in Section 1 of this Civil Specification, there are two separate arrangements in the Immigration and Asylum Category of Law which are subject to specific Schedule authorisation. Your Contract for Signature or Schedule will denote whether you have Schedule authorisation to carry out Contract Work under:

(a) Detained Duty Advice Scheme in an IRC; and

(b) the Detained Fast Track Scheme/Detained Asylum Casework Scheme.

8.6 Unless you have Schedule authorisation you may not provide Contract Work under the special contract arrangements specified in 8.5 unless:

(a) the Client is a close family member of an existing Client and knowledge of the family’s circumstances is material to the new Client’s case (a close family member for the purpose of this rule is a member of the family who is the Client’s spouse, partner, child, sibling, parent, grandparent or grandchild); or

(b) in the case of a Client detained in an IRC only, the Client is an existing Client on whom you have attended in the UK and carried out at least five hours work (excluding travel and waiting) prior to the Client’s detention. In this case you should continue to act for the Client until you reach the completion of the next stage of the Matter. At this point...
you should decide whether it is in the best interests of the Client to refer the matter to a Provider with Schedule authorisation or to continue to represent the Client yourself;

(c) there are no providers with Schedule authorisation in the IRC Procurement Area where the Client is detained; or

(d) your Client has an appeal listed at a designated Fast Track location.

**Contract Work covered by this Specification**

8.7 For the purposes of Controlled Work, a Matter should proceed and be reported under this Specification as an “Asylum Matter” where:

(a) it relates to civil legal services in respect of the rights set out in paragraph 30 of Part 1 of Schedule 1 of the Act (“Immigration: rights to enter and remain”);

(b) it relates to an asylum issue and is proceeding under paragraph 24 of Part 1 of Schedule 1 to the Act (“Special Immigration Appeals Commission”).

8.8 For the purposes of Controlled Work, a Matter should proceed and be reported as an “Immigration Matter” where it relates to civil legal services in respect of the rights mentioned in:

(a) paragraph 25 of Part 1 of Schedule 1 to the Act (“Immigration: detention”);

(b) paragraph 26 of Part 1 of Schedule 1 to the Act (“Immigration: conditions of immigration bail: persons liable to examination or removal”);

(c) paragraph 27 of Part 1 of Schedule 1 to the Act (“Immigration: conditions of immigration bail (deportation)”);

(d) paragraph 27A of Part 1 of Schedule 1 to the Act (“Immigration: conditions imposed under other provisions”)

(e) paragraph 28 of Part 1 of Schedule 1 to the Act (“Immigration: victims of domestic violence and indefinite leave to remain”);

(f) paragraph 29 of Part 1 of Schedule 1 to the Act (“Immigration: victims of domestic violence and residence cards”);

(g) paragraph 32 of Part 1 of Schedule 1 to the Act (Victims of trafficking in human beings”) insofar as civil legal services relate to an application by the individual for leave to enter, or to remain in, the United Kingdom;

(h) paragraph 24 of Part 1 of Schedule 1 to the Act (“Special Immigration Appeals Commission”) where it relates to an immigration issue;

(i) paragraph 45 of Part 1 of Schedule 1 to the Act (“Terrorism prevention and investigation measures etc”);

(j) paragraph 32A of Part 1 of Schedule 1 to the Act (“Victims of slavery, servitude or forced or compulsory labour”) in so far as civil legal services relate to an application by the individual for leave to enter, or to remain in, the United Kingdom.
Referral requirement for Unaccompanied Asylum Seeking Children (UASC)

8.9 Where a Client, who is an UASC, experiences problems relating to the exercise of the local authority’s duty under the Children Act 1989 you must ensure that the Client receives advice in relation to Public Law Children Act proceedings or where required appropriate legal advice from a Family, Community Care, Public Law or Housing Provider.

8.10 You may either continue to act for the Client (if you are permitted by this Contract to provide legal advice in the Family, Community Care, Public Law or Housing Category of Law) or make a referral at the earliest possible opportunity to an alternative Provider who is permitted to provide such legal advice. In any event you should continue to act in relation to the Immigration or Asylum Matter if it is still ongoing.

Delegated Functions in respect of Controlled Work

8.11 The Director may restrict the extent of your Delegated Functions relating to Controlled Work by varying an Authorisation.

Exceptional Case

8.12 Any application for an Exceptional Case in the Immigration and Asylum Category can only be made by Providers with a Schedule authorisation in this Category unless the case satisfies the effective administration of justice test as set out in the Procedure Regulations. Payment for any Exceptional Case will also be made in accordance with the provisions of this Specification and the Remuneration Regulations. There are no Delegated Functions to make a determination in respect of an Exceptional Case, save for the means test aspect of a Legal Help case.
PART B - IMMIGRATION AND ASYLUM SERVICE STANDARDS

Caseworkers

8.13 In addition to the requirements in Section 2 of this Specification, all Caseworkers who carry out Immigration and Asylum Contract Work must:

(a) comply with the terms of the IAAS and Stages of Accreditation;
(b) comply with our Work Restrictions; and
(c) if intending to act for a Client who is a Child or a UASC have had an enhanced Disclosure and Barring Service check in the 24 months prior to instruction.

8.14 You must maintain an accurate and up to date record of all your IAAS accredited Caseworkers that undertake Contract Work. You must at our request arrange for the record to be sent to us within such period as we may reasonably specify.

8.15 You must maintain at each Office a ratio of at least one full time equivalent Senior Caseworker for every two Casework Assistants/Trainee Casework Assistants

Immigration and Asylum Supervisor Legal Competence Standard

8.16 In addition to the requirements in Section 2 of this Specification, an Immigration and Asylum Supervisor must:

(a) be accredited as an IAAS Senior Caseworker or Advanced Caseworker; and
(b) have achieved the IAAS Supervising Senior Caseworker level of accreditation.

8.17 The Supervisor must take account of any changes in legislation and case law and maintain access for the duration of the Contract to at least 1 nationally published specialist journal (containing updates on Immigration and Asylum case law and statutes). This may include electronic publications such as subscription case law websites.

Level of Accreditation for Contract Work

8.18 In order to carry out certain Contract Work in the Immigration and Asylum Category of Law, caseworkers must have passed the following Stages of Accreditation:

<table>
<thead>
<tr>
<th>Type of Contract Work</th>
<th>Level of Accreditation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conduct of Legal Help Matters and Legal Representation</td>
<td>Senior Casework.</td>
</tr>
<tr>
<td></td>
<td>Trainee Casework Assistants (who have passed the relevant examination required by the IAAS at that level) and Casework Assistants can conduct tasks delegated by the Senior Caseworker, except Reserved Matters</td>
</tr>
</tbody>
</table>
Reserved Matter 1 - Use of Delegated Functions to make a determination that an individual qualifies for CLR; and conduct of CLR cases

Reserved Matter 2 – All Contract Work for clients who lack capacity within the meaning of section 2 of the Mental Capacity Act 2005

Reserved Matter 3 - All Contract Work carried out for a Child or a UASC

Reserved Matter 4 – All Contract Work for Clients detained in IRC’s

Conduct of any other Contract Work not covered above

Senior Caseworker and above

Senior Caseworker and above

Senior Caseworker and above

Senior Caseworker and above

8.19 For the purpose of the rule in Paragraph 8.18 ‘conduct’ means having responsibility for and control of the progression of the case.

8.20 You cannot Claim for Contract Work which is carried out by a caseworker who has not complied with the requirements at Paragraph 8.13.

**Delivering Contract Work**

8.21 You must deliver Contract Work in accordance with this Specification and any written arrangements set out in your Schedule(s).
PART C - CARRYING OUT IMMIGRATION AND ASYLUM CONTROLLED WORK

UKVI unique Client numbers

8.22 You must identify each Client on all documentation by means of a unique Client number. This should be the same number as the reference number which is allocated by the UKVI to the Client when the Immigration or Asylum application is made.

8.23 If a single Client requires advice on more than one issue or application (as part of the same, or a different, Matter) then the same unique Client number should be used. In such circumstances, you should use the first UKVI reference number allocated.

8.24 The Client’s unique Client number must be noted on the Client’s file and used in all claims and correspondence with us relating to that Client. Claims that do not use the Client’s unique Client number will be rejected until the correct number is supplied. Where exceptionally, a Client has not been allocated a UKVI reference number you must use the default unique Client number A0000000.

Matter Start rules

8.25 An Asylum application and any Asylum appeal will constitute one Matter. The appropriate UKVI unique Client number will be that of the original Asylum application.

8.26 An Immigration application and any Immigration appeal will constitute one Matter. The appropriate UKVI unique Client number will be that of the original application given by the UKVI.

8.27 Any associated or additional application to an application within scope of Part 1 of Schedule 1 to the Act on human rights grounds will also form part of the same Asylum Matter.

8.28 Where a Client has made or wishes to make a fresh application for Asylum then this new application would constitute a new Matter Start.

8.29 Where you have an ongoing Matter, work undertaken in relation to a determination that the Client qualifies for civil legal services provided as Licensed Work including complying with any pre-action protocol may be undertaken as part of the same Matter.

Transfer of Cases and Clients Between Offices

8.30 Where you have made a determination that a Client qualifies for Controlled Work and subsequently (at any stage of the case) the Client moves location either voluntarily or is dispersed by the UKVI and you determine that another Office within your organisation from which you are authorised to conduct Contract Work under the Immigration and Asylum Category is able to continue to represent that Client in accordance with the Contract, you may conduct the case from that Office.

8.31 Where a case or a Client is transferred to another Office under Paragraph 8.30 above, the case must proceed under the same Matter Start.
Multiple Applications

8.32 Where a Client applies to enter or remain in the UK on more than one basis, or if the Client applies to switch status while the first application remains pending, this will constitute one Matter Start where the applications are within scope of Part 1 of Schedule 1 to the Act.

8.33 Where a Client’s first application is at appeal stage and in all the circumstances it is reasonably decided:

(a) to continue with the appeal; and
(b) at the same time to submit a second application to the UKVI on different legal grounds,

a separate Matter Start should be opened to cover Contract Work in relation to the second application.

Bail

8.34 When attending a Client in detention you must always advise them in relation to Bail and record the outcome of this advice on the file.

8.35 You must ensure that the Client receives advice on the appropriateness of making a Bail application at any particular time (including when appeal rights have been exhausted).

8.36 Where appropriate, you should consider making a Bail application to the Secretary of State or the appropriate court.

8.37 Even where a Client’s substantive Immigration or Asylum appeal lacks merits 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. CLR can be granted for the sole purpose of making a Bail application.

8.38 Where an appeal is listed for a Tribunal Hearing, you must always consider making a Bail application. If you decide not to make a Bail application during the Tribunal Hearing of the appeal you must record your reasons on the file.

Making a determination that a Client qualifies or does not qualify for Controlled Legal Representation (CLR)

8.39 Where you have made a determination that a Client does not qualify for CLR (other than on grounds of financial eligibility) you must complete and retain a copy of the CW4 form on the file which clearly states the date and reason for your determination.

8.40 Where CLR is refused or withdrawn you must, as soon as possible and in any event within 5 days of the decision, provide the Client with a copy of the CW4 form (or such other form as specified by us) and provide details of the Client’s right to a review of your (or our) decision (including details of the appropriate procedure). You should provide your Client with our address to which the Client should submit their review. Alternatively, you can, if instructed, submit the review to us on the Client’s behalf.
8.41 Where the hearing date is already set then the review application should be submitted immediately and the urgency of the application should be clearly stated on the form.

8.42 Where you have made a determination to grant, refuse or withdraw CLR (either in relation to a substantive Matter or Bail) you must record the reasons on the file. You must also keep a record of any grants of CLR by the Independent Funding Adjudicator where the Client has returned to you.

8.43 Where a determination is made that a Client qualifies for CLR you must consider the merits of the case as set out in the Merits Regulations at each stage of the proceedings.

**Detained cases**

8.44 You may only provide advice and representation to Clients in an IRC if you have been granted Schedule authorisation to do so. However, you may provide advice and representation to Clients in other places of detention e.g. prisons or other designated places of UKVI detention. In accordance with Paragraph 8.34 you must advise the detained Client in relation to the appropriateness of any Bail applications.

8.45 Where you are providing advice and representation under paragraph 8.44 you should continue to act for the Client until:

(a) the Client formally ceases to give instructions;
(b) the Client is released from detention;
(c) the Client is dispersed from the area;
(d) the Client is removed from the country; or
(e) you are no longer able to act for the Client because of a conflict of interest or other good reason relating to professional conduct.

8.46 Subject to Paragraph 8.47, where you act for a Client under Paragraph 8.6 or Paragraph 8.44 you may:

(a) in addition to the costs claimable (either under the Standard Fee or Hourly Rates), claim your reasonable additional costs for travel (including travel disbursements) to the place of detention and your actual waiting time at the place of detention; and

(b) claim the reasonable costs of any Bail application(s) you make (subject to the CLR Costs Limit set out at Paragraph 8.85 below). This Paragraph 8.46 also extends to prisons or any other designated place of UKVI detention.

8.47 In accordance with Paragraph 8.134, where you are attending a Detained Duty Advice Surgery under a Schedule authorisation you may not make any claim for travel or waiting time. Disbursements such as travel and interpreting costs are claimable.

**Client travel**

8.48 Subject to Paragraph 8.49, the cost of the Client’s travel to attend on you to give instructions are claimable as a disbursement, where at the point the Matter
is started, no other more local Provider can assist the Client and the Client is either:

(a) in receipt of support from National Asylum Support Service;
(b) an UASC and is in receipt of other support from Social Services;
(c) an adult or Child in receipt of support by a local authority under the Care Act 2014, the Children Act 1989 or the Immigration Act 2016; or
(d) in the reasonable opinion of the Provider the Client is suffering from destitution.

8.49 You may only claim the cost of the Client’s travel where the only purpose of the Client’s journey is to attend on you to give instructions and you have informed the Client before the journey that the disbursement will be paid.

8.50 The disbursement will be the cost of the return fare on the cheapest available mode of public transport.

Attendance at interviews

8.51 You are authorised to accompany a Client to a Screening Interview or Substantive Interview in accordance with the Immigration Interview Regulations.

8.52 Where the matter is of the type funded by the Standard Fee you may claim the additional payment for representation at UKVI interviews as specified in the Remuneration Regulations.

8.53 The cost of your travel to attend interviews in accordance with Paragraph 8.51 above is claimable as a disbursement at the rates set out in the Remuneration Regulations.

Boundary with Licensed Work

8.54 Legal Representation of a Client in any application (including for permission):

(a) to the Upper Tribunal; or
(b) for Judicial Review or appeal either to the Court of Appeal or Supreme Court,

is paid for as Licensed Work and cannot be carried out under Controlled Work.

PART D - REMUNERATION FOR IMMIGRATION AND ASYLUM CONTROLLED WORK

Standard Fee Scheme

8.55 All Immigration and Asylum Controlled Work is remunerated according to either Standard Fees or Hourly Rates, which are set out in the Remuneration Regulations.

8.56 A Standard Fee can be claimed at both Controlled Work stages (Legal Help and CLR) as set out below.

<table>
<thead>
<tr>
<th>Standard Fee</th>
<th>Asylum</th>
<th>Immigration</th>
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</thead>
<tbody>
<tr>
<td>Stage 1</td>
<td>Legal Help</td>
<td>Legal Help</td>
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</tbody>
</table>

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<table>
<thead>
<tr>
<th>Stage 2(a)</th>
<th>CLR – no substantive hearing</th>
<th>CLR – no substantive hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stage 2(b)</td>
<td>CLR – substantive hearing</td>
<td>CLR – substantive hearing</td>
</tr>
</tbody>
</table>

8.57 CLR is split into two sub-stages. The Standard Fee for either Stage 2(a) or Stage 2(b) as set out in 8.56 will be claimed depending on where the Matter concludes. You may not claim payments for both Stage 2(a) and Stage 2(b) in relation to the same Matter.

8.58 A Stage 2(b) Standard Fee can only be claimed where you or an advocate has actually attended at a substantive hearing. The fee for attendance at the hearing is claimable as an additional payment as set out at Paragraph 8.66 below.

8.59 You must submit a Controlled Work Claim (including additional payments if incurred) within 6 months of the end of each of the following stages of the case citing the correct UKVI unique Client number:

(a) Legal Help - at the end of Stage 1 (as described at Paragraph 8.61 below) or where the Matter otherwise ends earlier; or

(b) CLR - at the end of Stage 2 (as described at Paragraph 8.66 below).

8.60 Where incurred you should also Claim any relevant additional payments including disbursements.

Stage 1: Legal Help

8.61 The Standard Fee covers, but is not limited to, the following Contract Work:

(a) initial advice, drafting of statements and representations;
(b) consideration of UKVI decision, advice to the Client about that decision and carrying out any necessary work;
(c) applying the merits criteria as set out in the Merits Regulations for appeal; and
(d) completion of a determination that a Client qualifies for CLR or completion of an application for a review of a determination that the Client does not qualify for CLR.

8.62 Stage 1 will end at the point that a determination is made that a Client qualifies or does not qualify for CLR (including the completion of any CLR review application) or when the Matter does not proceed to CLR and all other necessary work has been completed. Where you decide that it is inappropriate to apply for CLR, then you should record the reasons on the file.

Stage 2(a): CLR

8.63 Where a determination is made that an individual qualifies for CLR but the Matter concludes prior to the substantive hearing the Standard Fee covers, but is not limited to, the following Contract Work:

(a) drafting and lodging an appeal;
(b) preparation of an appeal;
(c) re-application of the merits criteria in accordance with the Merits Regulations;
(d) where a determination in relation to CLR is withdrawn, if necessary the completion of an application for a review of the withdrawal of a determination in relation to Controlled Legal Representation; and

(e) any post appeal advice and assistance that does not constitute a separate Matter Start.

Stage 2(b): CLR

8.64 Where the Matter reaches a substantive hearing the Standard Fee covers, but is not limited to, the following Contract Work:

(a) drafting and lodging an appeal;

(b) preparation of an appeal;

(c) consideration of determination and advice to the Client about the determination and carrying out any necessary work;

(d) re-applying the merits criteria as set out in the Merits Regulations for an appeal to the Upper Tribunal;

(e) where the appeal to the First Tier Tribunal is dismissed and an appeal to the Upper Tribunal is not being pursued, explaining the consequences of the decision and carrying out any necessary work;

(f) where the appeal is allowed, explaining the consequences of the decision including rights and entitlements; and

(g) any post appeal advice and assistance that does not constitute a separate Matter Start.

8.65 Stage 2 will end at the point that a determination is made that a Client qualifies or does not qualify for Licensed Work in relation to the submission of an application for permission to appeal to the Upper Tribunal or where the Matter otherwise ends earlier.

Additional payments to the Standard Fee for advocacy and disbursements

Advocacy services

8.66 Where applicable, Graduated Fees for advocacy services set out in the Remuneration Regulations are payable at the end of Stage 2 (as described in Paragraph 8.64), in addition to the appropriate Standard Fee, for each relevant attendance. When claiming for advocacy work the following rules apply:

(a) advocacy fees are payable whether the relevant advocacy services are carried out by you or Counsel;

(b) only one advocacy fee for a substantive hearing in the First Tier Tribunal may be claimed per Matter; if such a hearing goes into a second day, either part heard or re-listed, an additional day’s substantive hearing fee may be claimed for the second and each subsequent day; and

(c) advocacy fees are inclusive of time for travel and waiting.
Disbursements

8.67 Disbursements reasonably incurred are payable in addition to the Standard Fee subject to the disbursement limits set out below:

(a) £400 for Legal Help (Stage 1); and
(b) £600 for CLR (Stage 2).

8.68 Unless we notify you otherwise in writing, the disbursement limits in Paragraph 8.67 above are the total sum (exclusive of VAT) you may claim for all the disbursements at each stage of any Matter.

8.69 The Legal Help or CLR disbursement limits may be extended by submitting the relevant Contract Report Form. However, disbursements are only payable within the Legal Help or CLR disbursement limit that applied at the point they were incurred. Disbursement limits cannot be amended retrospectively.

8.70 Paragraphs 4.28, 4.31 and 6.61 of the Specification apply in relation any disbursements which you claim pursuant to this Section 8 of the Specification.

Escape Fee Cases

8.71 A Matter may escape the Standard Fee Scheme and become payable solely by Hourly Rates.

8.72 A Matter will be treated as an Escape Fee Case where, following the conclusion of Stage 2 of the Matter (or earlier if the Matter concludes before this), the value of the Controlled Work, when calculated as if it were paid at the appropriate Hourly Rate, exceeds three times the value under Standard Fee Scheme.

8.73 In order to calculate whether a Matter becomes an Escape Fee Case, the following steps must be applied:

(a) identify the total hours spent on the Matter up to the end of Stage 2 or when the Matter concludes (whichever is earlier), including any advocacy services but excluding services which are outside the Standard Fee and are always payable at Hourly Rates (as specified under paragraph 8.76);

(b) calculate the total costs for the hours spent on such services using the Hourly Rates set out in the Remuneration Regulations to determine the ‘gross total’ (Total A);

(c) from Total A deduct all the claims for additional payments (as set out in Remuneration Regulations) paid or payable, to determine the ‘reduced total’ (Total B);

(d) identify the Standard Fees claimable for the Matter (note only one Standard Fee is payable at each Stage). Add these Standard Fees together and multiply that total by 3 to determine the ‘Escape Threshold’ (Total C); and

(e) if Total B exceeds Total C then the Matter has escaped the Standard Fee Scheme and is therefore an Escape Fee Case payable at Hourly Rates.

8.74 Any previous Claims paid in respect of the Matter will be reconciled against Total B (in Paragraph 8.73(c)) to determine the final payment to be made for the Escape Fee Case.
8.75 Escape Fee Cases must be subject to an individual Cost Assessment.

**Matters paid by Hourly Rates**

8.76 Immigration and Asylum Controlled Work contained in the following list is remunerated through Hourly Rates:

(a) Asylum Matters opened under this Contract which relate to an Asylum application (including ‘NAM’ or ‘Legacy’), made to the UKBA prior to the 1 October 2007;

(b) a fresh claim/further application for Asylum opened under this Contract where the original Asylum application was lodged, whether concluded or not, prior to 1 October 2007;

(c) advice in relation to the merits of lodging an application for permission to appeal to the Upper Tribunal (where advice has not been received under Stage 2 of the Standard Fee);

(d) Bail applications;

(e) advice and applying for a determination that a Client qualifies for civil legal services provided as Licensed Work, including complying with any pre-action protocol;

(f) initial advice in relation to an Asylum application prior to claiming Asylum at the Asylum Screening Unit where you then cease to be instructed. This will also apply where the Client returns after attendance at the Asylum Screening Unit but where it is confirmed that the Client will be dispersed and will not continue to instruct you;

(g) Escape Fee Cases under the Standard Fee;

(h) advice in relation to a Client who is an UASC;

(i) cases remitted, reviewed or referred from the Court of Appeal or the Upper Tribunal to the First Tier Tribunal;

(j) where you hold a Schedule authorisation any Matters opened under the Detained Duty Advice Scheme or for a Detained Fast Track or a DAC Scheme Client;

(k) advice in relation to Terrorism Prevention and Investigation Measures Orders;

(l) applying for a determination that an individual qualifies for civil legal services provided as Licensed Work in relation to Terrorism Prevention and Investigation Measures Orders; and

(m) applying for a determination that an individual qualifies for civil legal services provided as Licensed Work in relation to the Special Immigration Appeals Commission.

8.77 Contract Work payable at Hourly Rates with the exception of 8.76(d), will be subject to Cost Limits as described at paragraphs 8.79 to 8.88. The relevant Hourly Rates are set out in the Remuneration Regulations.

8.78 A 5% uplift is claimable on all Controlled Work payable at Hourly Rates and personally undertaken by an Advanced Caseworker.
Cost and disbursement limits for Hourly Rates Matters

Legal Help Cost Limits

8.79 Unless we notify you otherwise in writing, the following Legal Help Cost Limits are the maximum amount of costs that we will pay for at the Legal Help stage of a Matter (excluding VAT):

(a) £100 inclusive of disbursements where:
   (i) You provide initial advice in relation to an Asylum application prior to making their application for asylum and then you cease to be instructed; or
   (ii) You provide initial advice in relation to an Asylum application and the Client decides not to make an application or does not provide you with any further instructions in relation to the Matter; or
   (iii) You provide advice in relation to the merits of an appeal to the Upper Tribunal;

(b) £500 in Immigration Matters; and

(c) £800 in Asylum Matters, (where the Matter progresses beyond initial advice).

8.80 In relation to Bail applications in asylum work undertaken under Legal Help (including an application to the Secretary of State if there is no substantive appeal linked to the Bail work, the £500 Immigration limit will apply.

8.81 The Legal Help Cost Limit set out in Paragraph 8.79(a) cannot be extended. The Cost Limits set out in Paragraph 8.79(b) and 8.79(c) may be extended by submitting the relevant Contract Report Form to us, however, costs are only payable within the Cost Limits that applied at the point they were incurred. Cost Limits cannot be extended retrospectively.

8.82 The Legal Help Cost Limits in Paragraph 8.79(b) and 8.79(c) are exclusive of the reasonable costs incurred for accompanying a Client to a Substantive Interview under Paragraph 8.51.

Legal Help Disbursement Limit

8.83 Unless we notify you otherwise in writing, the Legal Help Disbursement Limit of £400.00 (exclusive of VAT) is the maximum sum we will pay for the total of all the disbursements for the Legal Help stage of any Matter.

8.84 The Legal Help Disbursement Limit may be extended by submitting the relevant Contract Report Form to us. However, disbursements are only payable within the Legal Help Disbursement Limit that applied at the point they were incurred. Disbursement Limits cannot be amended retrospectively.

CLR Cost Limits

8.85 Unless we notify you otherwise in writing, the following CLR Cost Limits are the maximum amount of costs (including disbursements) that we will pay for at the CLR stage of a Matter (excluding VAT) other than for Contract Work undertaken in connection with an appeal to the First Tier Tribunal:

(a) £500 in relation to Bail only Matters;
(b) £1200 in Immigration Matters; and
(c) £1600 in Asylum Matters.

8.86 Where a determination is made that an individual qualifies for CLR in relation to an appeal then any subsequent Bail application will be part of the CLR Cost Limits as stated in Paragraph 8.85(b) or 8.85(c). Where a determination is made that an individual qualifies for CLR in relation to a Bail only Matter and CLR is subsequently extended to cover an appeal then the CLR Cost Limits in Paragraph 8.85(b) or 8.85(c) will apply.

8.87 The CLR Cost Limits may be extended by submitting the relevant Contract Report Form to us. Costs and disbursements are only payable within the limit that applied at the point they were incurred. Cost and disbursement limits cannot be amended retrospectively, save for the costs of waiting time where there is a significant delay on the day of a hearing, which is no fault of yours or your Client, provided you apply for an extension to the Cost Limit as soon as practicable thereafter.

8.88 Unless we notify you otherwise in writing, you may Claim additional costs (including counsel fees/disbursements) of up to £100 exclusive of VAT to consider the merits of an appeal to the Upper Tribunal. This sum is in addition to the CLR Upper Financial Limit and is not extendable.

**Uplift for advocates**

8.89 Subject to prior written agreement by us the rates set out in the Remuneration Regulations may be exceeded by an advocate before the appropriate court which either:

(a) raises an exceptionally complex or novel point of law (but not otherwise); or

(b) raises a matter of significant wider public interest as described in Regulation 6 of the Merits Regulations.

8.90 Where we allow a higher rate, we will specify both an Hourly Rate and where applicable a maximum Cost Limit. You may not exceed the specified Hourly Rate or the maximum Cost Limit without further authority from us. This authority will not be granted retrospectively and you must obtain it before the work is done. A higher rate will only apply to advocacy, attendance and preparation, where it falls within paragraph 8.89.

8.91 Where a matter falls within Paragraph 8.89 you must contact us to discuss the preparation and agreement of a case plan.

**Instructing an advocate for a Tribunal Hearing (either First–tier or Upper Tribunal)**

8.92 Where you instruct an advocate to attend a Tribunal Hearing in relation to either a Controlled Work Matter or Licensed Work you may not make any Claim for time spent accompanying the advocate at the hearing.
Claiming for Matters paid at Hourly Rates

8.93 When claiming on the basis of Hourly Rates, you must submit a Controlled Work Claim within six months of the end of each of the following stages of the case citing the correct UKVI/Home Office unique Client number:

(a) Legal Help:
   (i) the date that a determination is made that an individual qualifies or does not qualify for CLR;
   (ii) following the submission of a fresh claim/further application for asylum; or
   (iii) when you have completed the work under Legal Help, if earlier.

(You should ensure that any advice/assistance in relation to an appeal to an Independent Funding Adjudicator against a determination that the Client does not qualify for CLR is provided as part of this Claim.)

(b) CLR:
   (i) the date that you apply for the permission to appeal to the Upper Tribunal; or
   (ii) when you have completed the work under CLR, if earlier.

8.94 Where incurred, you may also claim relevant additional payments including disbursements. In each claim you must only submit your costs in relation to the work relevant at that stage.

Claiming interim payments for disbursements

8.95 You may submit a Claim to us in respect of unpaid Controlled Work disbursements (not including Counsel’s fees). You may only apply under Paragraph 8.95 if at least 6 months have elapsed since the start of the Matter and, if you have become entitled to make a Controlled Work Claim (as defined at Paragraphs 8.59 and 8.93 for Standard Fee and Hourly Rates Matters respectively) or have previously applied for payment under this Paragraph 8.95, at least 6 months have elapsed since that entitlement arose or the application was made.

Applications for permission to appeal to the Upper Tribunal

8.96 A Licensed Work Certificate must be in place before any applications to the Upper Tribunal for permission to appeal are made or any work in relation to an application is commenced. If you apply to the Upper Tribunal for permission to appeal and permission is refused you may not claim any costs relating to the application or appeal, either by way of Standard Fee or Hourly Rates. Your costs in the Matter must be limited to those covered by Stage 2 or those allowed under Paragraph 8.98.

8.97 Where an application for permission to appeal to the Upper Tribunal is:
   (a) dealt with under the UKVI detained Fast Track Scheme; or
   (b) has been lodged by the UKVI,
you may Claim costs for Contract Work associated with the application, whether or not permission is granted, at the rates set out in the Remuneration Regulations.

8.98 The costs of interpreters and experts instructed in connection with the preparation of an application for permission to appeal to the Upper Tribunal are claimable whether or not permission is granted.

8.99 Where an application has been successful and the Matter has been sent to the First-tier Tribunal then the Matter will be funded as set out at paragraph 8.76(i).

8.100 Without prejudice to the provisions on payment for Licensed work in Section 6 of the Specification and unless we notify you otherwise, for the purposes of payment for Licensed Work in the Upper Tribunal, we will pay as follows:

(a) for work carried out on the initial application to the First-Tier Tribunal for permission to appeal to the Upper Tribunal, we will pay the Hourly Rates specified in the Remuneration Regulations for Licensed work in the First-Tier Tribunal; and

(b) for work carried out on a direct application to the Upper Tribunal for permission to appeal and all subsequent work in that forum, we will pay the Hourly Rates specified in the Remuneration Regulations for Licensed Work in the Higher Courts.
PART E - IMMIGRATION REMOVAL CENTRES

Scope of IRC Contract Work

8.101 This Part of the Specification sets out additional rules that apply if you hold a Schedule authorisation permitting you to deliver Controlled Work at Immigration Removal Centres under either:

(a) The DFT Scheme; and / or

(b) The Detained Duty Advice Scheme

8.102 Where you obtain a Client through an IRC Rota and a Controlled Work Matter is subsequently commenced by you in relation to that Client the remaining rules in this Specification will also apply to that Contract Work.

The number of Clients wishing to access the service via places on the IRC Rota will vary. As demand for the service is outside our control and we make no guarantee or representation as to the volumes of Clients seeking services.

8.103 All Contract Work undertaken for a Client detained at an IRC is a Reserved Matter.

IRC Rota

8.104 Your Schedule will confirm whether you are on an IRC Rota to deliver advice and assistance by attending at:

- a Detained Duty Advice Scheme at a designated IRC; and/or
- a Detained Fast Track Scheme (which includes Detained Fast Track Clients and NSA Clients) at either Harmondsworth/Colnbrook and/or Yarls Wood).

8.105 If you have Schedule authorisation to deliver Contract Work under an IRC Rota you must deliver that Contract Work. If, for whatever reason, you are unable to meet your obligations under an IRC Rota, you must inform us immediately.

8.106 You must ensure you have sufficient numbers of Caseworkers available to meet your IRC Rota obligations under your Schedule.

8.107 The IRC Rota will operate from Monday through to Friday inclusive and will exclude any Bank and Public Holidays.

8.108 You must be contactable during Business Hours (including via fax, telephone, e-mail and any other method we may reasonably require).

The Detained Duty Advice Scheme

8.109 Your Schedule will set out the number (and if applicable the dates) of IRC Rota days or weeks during which you must deliver the Detained Duty Advice Scheme services at the designated IRC(s) throughout the Schedule period.

8.110 Due to the unknown demand from individuals at IRCs, we may vary the frequency of days on which you must attend the IRC.
8.111 During each IRC Rota week you will be informed by the IRC of the number of Detained Duty Advice Surgeries required during that week. The IRC will provide you with information as to the:

- Number of Detained Duty Advice Surgeries required during the week at the IRC;
- Time and date of the Detained Duty Advice Surgery;
- Location; and
- Details of Clients you are required to see at each Detained Duty Advice Surgery.

8.112 You may provide a maximum of 30 minutes advice to a Client at a Detained Duty Advice Surgery without reference to the Client’s financial eligibility.

8.113 The purpose of the advice session is to ascertain the basic facts of the Matter and to make a decision as to whether the Matter requires further investigation or whether further action can be taken.

8.114 When attending a Client the Caseworker must always advise a Client in relation to Temporary Admission and Bail and record the outcome of this advice on the file.

8.115 On the conclusion of the Client’s 30 minute advice session you must make a determination as to whether the Client qualifies for civil legal services in accordance with Legal Aid Legislation and any Authorisation made under it to ascertain whether you are able to continue to advise the Client under Controlled Work in accordance with this Contract.

8.116 You must record the time spent with each Client at a Detained Duty Advice Surgery on the Contract Report Form specified by us.

8.117 You must ensure the Client is given adequate information in a written format at the end of the Detained Duty Advice Surgery whether or not the matter requires further investigation. This information should sufficiently address the outcome of the Detained Duty Advice Surgery with details of the name of the Caseworker who has advised the client.

**The Detained Fast Track Scheme**

*Advanced Caseworker*

8.118 If you have Schedule authorisation to deliver a DFT Scheme you must throughout the Contract Period Employ an Advanced Caseworker who must be available on Standby Days, Attendance Days and as otherwise reasonably required to provide any support, advice and assistance required to any Senior Caseworkers advising a Client at a DFT Scheme at an IRC in accordance with your Rota obligations. Such person (or each such persons) must be either a sole principal, one of your employees or a director of or partner in or member of your organisation (where you are a company, partnership (other than an LLP) or LLP respectively) and must at all times during their working hours (except as required for the proper performance of their role (such as attending court and/or Clients)) work from one of or any combination of your Offices. If you cease to meet the requirements of this Paragraph 8.118 your Schedule authorisation to deliver any such DFT Schemes will cease. Any breach of this Paragraph 8.118 shall be a Fundamental Breach.

Temporary Advanced Caseworker Absence
8.119 If an Advanced Caseworker is for any reason temporarily unavailable you may for a period of up to 6 weeks either:

(a) nominate another experienced Senior Caseworker to provide support, advice and assistance required to any Senior Caseworkers; or
(b) nominate an external Advanced Caseworker.

8.120 If you estimate that your Advanced Caseworker may be unavailable for more than 6 weeks, or following completion of the 6-week temporary period the Advanced Caseworker is not able to resume, you must immediately inform your Contract Manager who will decide at their reasonable discretion what you must do to comply with the Contract. This may include:

(a) extending the use of your nominated experienced Senior Caseworker for a further limited period;
(b) by written notice specifying that you must put in place another employed Advanced Accredited Caseworker by such period as the notice specifies; or
(c) applying a Sanction.

Standby Days

8.120 Your Schedule will set out your allocated Rota slots on Standby Days on the Detained Fast Track Rota throughout the Schedule period.

8.121 The Standby Day is the day you may be contacted by the UKVI regarding DFT and/or NSA Clients. Each Standby Day will commence at 9am and finish at 6pm.

8.122 On Standby Days you must have sufficient capacity to be contacted by the UKVI equal to the number of slots designated on your Schedule authorisation.

8.124 When you are on Standby, the UKVI will notify you as soon as possible after the claim for asylum has been made that an individual requires legal advice. The UKVI will provide you with the following information:
   a) details of the Detained Fast Track Client and/or NSA Client(s);
   b) time, date and location of the relevant Substantive Interview.

8.125 You are then required on the Standby Day (and according to the Client’s needs) to make initial contact with the Client and the IRC to ensure that all parties are aware of the referral and you must arrange with the Client and the IRC a date/time to attend to:

(a) assess the Client’s means in accordance with Legal Aid Legislation and any Authorisations made under it to ascertain whether you are able to advise the Client under Controlled Work in accordance with this Contract; and if necessary; and

prepare the Client for the Attendance Day. This may include preparing any witness statements or completing any appropriate pro-forma asylum claim forms specified by the UKVI.

Attendance Day

8.126 The Attendance Day is the day your Senior Caseworker(s) (or Advanced
Caseworker(s)) will be required to attend the IRC to assist your DFT or NSA Client at the Substantive Interview.

8.127 On the Attendance Day according to the Client’s needs you are required to:

(a) advise the Client prior to their Substantive Interview;
(b) attend (under Legal Help) at the Substantive Interview; and

advise the Client after the decision has been served (which may be on a different day to the Attendance day).

Post Attendance Day

8.128 The IRC will notify you when a decision has been made on your DFT or NSA Client’s application for asylum. Once you have received notification of the decision, you must then attend your DFT or NSA Client at the IRC, so that you can provide further advice.

8.129 In providing advice on the decision, you must advise on its effect and, if it is adverse, must advise on whether there are grounds for appeal. You must make a determination in accordance with your obligations under this Contract that the Client qualifies for civil legal services in relation to any such appeal before granting funding for any appeal or conducting any Contract Work in relation to it. CLR must not be granted if the sole reason is to preserve your DFT or NSA Client’s right of appeal.

8.130 Where you have refused CLR for the appeal but the Client still requires further advice (e.g. in relation to their continued detention) you may continue to provide advice provided that you have made a determination that the Client qualifies for civil legal services.

8.131 Where you have refused CLR in relation to the appeal, you must provide the Client with a CW4 and confirm in writing on the file whether or not they wish to appeal to the Independent Funding Adjudicator. If they wish to appeal to the Independent Funding Adjudicator you must assist them in the completion of the CW4 unless they decline that assistance and the CW4 must be submitted to the LAA on their behalf by close of business on the next business day.

Client is Released From the IRC or Moved to Another Facility

8.132 Where you have been delivering Contract Work to a Client under this Part and your Client is either released from the IRC or moved to another detention facility (including a prison), then you may) continue to provide advice.

8.133 Where a Client has been released from detention or moves from the IRC, before you commence further Contract Work you should decide whether it is in the best interests of the Client to refer them to a more local Provider or to continue to represent them.

Rates of Payment

Detained Duty Advice Scheme Remuneration

8.134 You may not make any Claim for travelling time or waiting time. Disbursements such as costs of travel and interpreting costs are claimable.
8.135 The Standard Fees for attending and advising at a Detained Duty Advice Surgery are set out in the Remuneration Regulations.

8.136 The Standard Fee you may Claim is dependent on the number of Clients you advise at the Detained Duty Advice Surgery.

8.137 For the avoidance of doubt if you do not attend the IRC (e.g. because the IRC confirm, prior to your attendance, that there is no requirement for a Detained Duty Advice Surgery) you will be unable to make a Claim for payment.

8.138 Where you grant Controlled Work to a Client after giving advice at the Detained Duty Advice Surgery you may Claim the Hourly Rates as set out at Paragraph 8.76 and the normal payment and assessment rules for Controlled Work under the Contract apply.

Detained Fast Track Standby Remuneration

8.139 Where you have been on Standby for a day to receive calls from the UKVI with details of a DFT or NSA Client but you are not allocated a Client, you may Claim the Standard Fee Standby rate set out in the Remuneration Regulations.

8.140 Where you grant Controlled Work for a DFT or NSA Client the Matter can be Claimed at Hourly Rates as set out at Paragraph 8.76 and the normal payment and assessment rules for Controlled Work under this Contract apply.