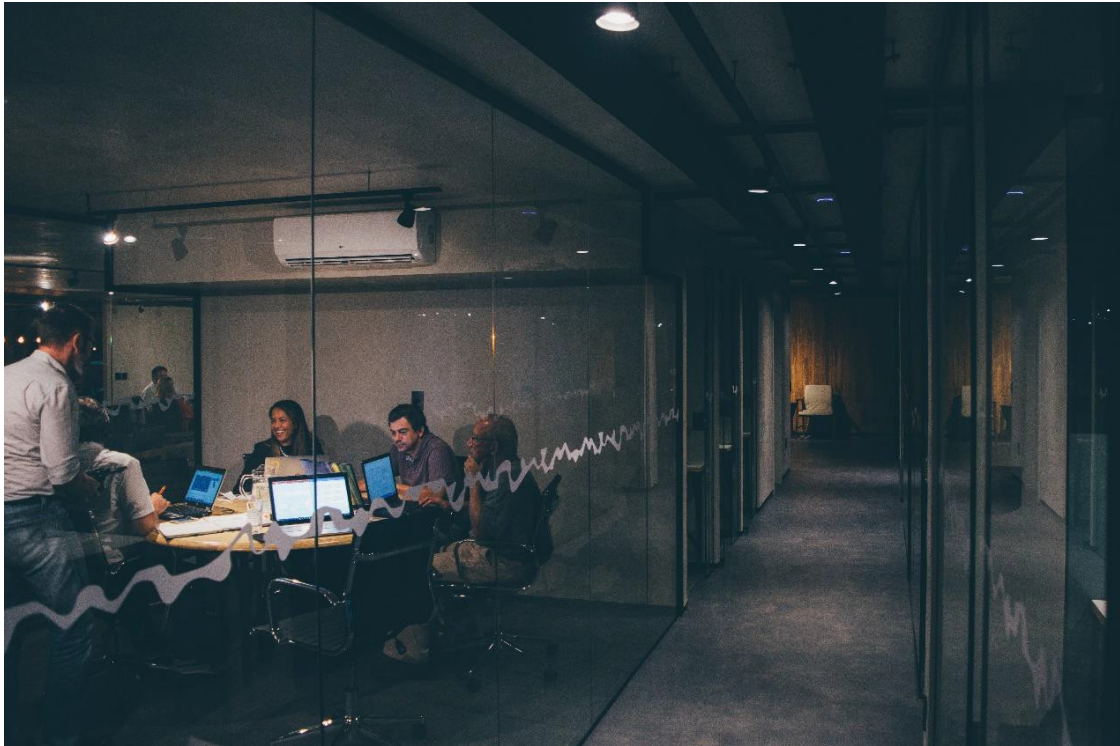




Legal Aid  
Agency



# 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

**At the time of publication, it is not yet clear exactly what effects the EU Transition will have on law and process in this area. Users of this Guide must keep aware of the possibility for such changes and adapt their knowledge and procedure to them.**

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 also be taken into account by Reviewers in assessing work seen under 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 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**

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# 1. 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 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 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. It nevertheless remains essential that a representative has a detailed understanding of their Client's 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. It is a question of professional judgment as to whether any statement should then be submitted to the Home Office in a particular case, and Providers should record their reasoning for their decision on the file as appropriate.

- 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 sources of objective and subjective evidence to support the claim, such as child-specific country information or medical/expert reports.
- The Client should be advised of the right to have an asylum interview recorded and the desirability of that in most cases; While recording is now increasingly standard across Home Office sites, Providers should ensure that clients have the benefit of this protection by ensuring that in all cases there has been a request made to the Home Office for the recording of the interview..
- Child Clients are entitled to be represented by a legal representative at all interviews with the Home Office (Screening and full asylum) and funding is available for Providers to attend interviews with the Client. 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 in order to ensure that they understand the procedure at interview, and the likely issues that will arise.
- The Client 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.





- 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. 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.
- 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.

## 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, 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 be used.
- 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, and the Client should be advised of likely time frames and how to make contact if any issues arise.
- 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 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 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 considered to be 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.

## 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 and 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 should be clear, concise and relevant.
- The Client should be given a clear and reasoned assessment of the prospects of resolving the legal issues, 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 and steps to be taken. This also makes it easier for the Client to understand and absorb the advice.
- 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 in 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 wherever practicable, 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. 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 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.
- Child Clients who are granted limited leave to remain in the UK on 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 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 (and those caring for them, if appropriate) in this situation 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. Child Clients (and their carers, if appropriate) must also be advised of the potential impact upon the child's ability to access funding for a future appeal if this is brought on grounds other than asylum grounds, such as private and family life, after completion of a period of 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 and sufficient benefit, 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.
- 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, with the Client's consent, further documents from the Client, 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.
- Tailored lists of types of evidence that could be obtained to help to corroborate the claim should be used.
- 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 and avoid irrelevant content.
- Bundles of evidence should be well ordered and easy to navigate.

## 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, for applications for disclosure of data, such as Home Office files and medical records, and for expert evidence such as country reports, forensic psychological, psychiatric and medical reports.
- Consideration as to whether to incur 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.

## 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 carers in order to prepare an adequately detailed and evidenced case. Confidentiality must however be maintained at all times.
- 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. 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 paragraphs 8.9 and 8.10 of the Immigration Specification place an obligation upon Providers acting for children who experience problems relating to the exercise of a local authority's duty, to refer them for appropriate public law 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.

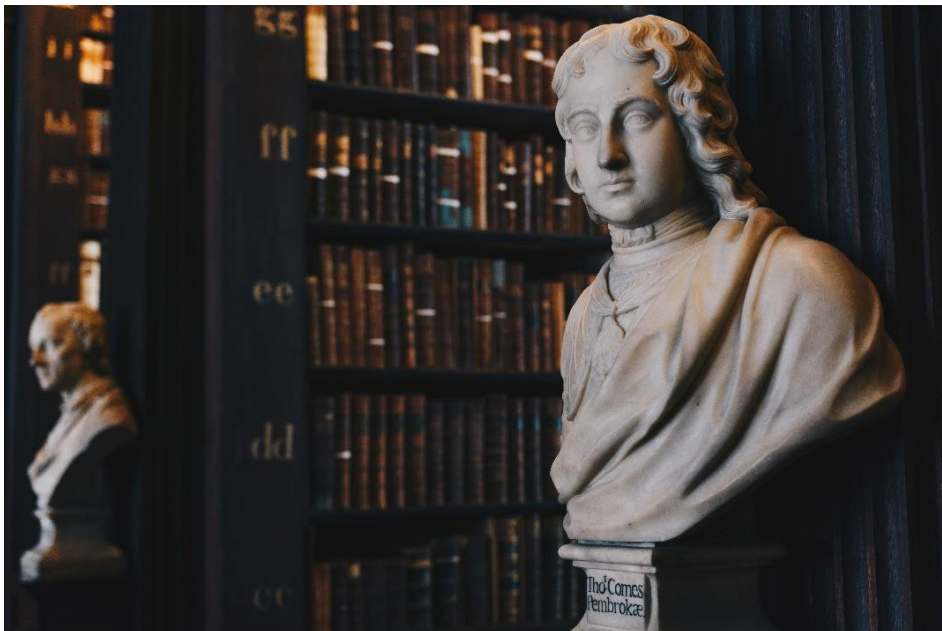
## Why is the work / assistance important?

- 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 and upholding the Rule of Law.
- 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.



- 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.

- 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 will remain relevant for many people following the end of the Brexit transition period on 31.12.20
- Examples of matters where ECF applications have been 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 following a successful legal challenge, the Government amended the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ['LASPO'], bringing all non-asylum immigration and citizenship matters for separated children back into the scope of legal aid. The amendment came into force on the 25th October 2019. 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 should be advised of that decision and of the possibility of making an application to the Legal Aid Agency in person or with the assistance of others and a referral to an organisation offering assistance with this should be considered (examples of such organisations at the time of writing include the Public Law Project and Coram Children's Legal Centre).

## 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 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 in person.

## 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).

## 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 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 and the risk of third country action being taken, e.g. a failure to apply for asylum in the first safe country reached. It is important that if there is a risk that a Client's claim for asylum may not be substantively processed in the UK that any possible grounds for resisting third country action are investigated and progressed at the earliest possible opportunity.
- 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 trafficking red flags and the procedures to be followed when a claim for asylum is referred to the Single Competent Authority.

## 6. Useful resources

- Legal Aid Agency Peer Review Ratings Definitions
- Law Society Immigration and Asylum Accreditation - guidance notes
- Immigration Law Practitioners Association publications, including best practice guidance
- Lord Chancellor's Exceptional Funding Guidance (Non- Inquests)
- Office of the Immigration Services Commissioner's Code of Standards
- Solicitors Regulation Authority Code of Conduct
- Bar Standards Board Handbook
- Code of Conduct of the Chartered Institute of Legal Executives