

**2013 Standard Civil Contract**  
**Specification**  
**Category Specific Rules**

## 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:

*"Bail"* means an application to the appropriate court for an individual's release from detention when detained under Schedule 3 of the Immigration Act 1971, section 62 of the Nationality, Immigration and Asylum Act 2002 or section 36 of the UK Borders Act 2007;

*"Detained Fast Track"* or *"DFT Scheme"* means the UKBA scheme used for the accelerated processing of specified asylum applications;

*"Fast Track Client"* means an individual detained under a UKBA Detained Fast Track Scheme;

*"Fast Track"* or *"Fast Track Scheme"* means the special contract arrangements subject to an Exclusive Schedule Arrangement to deliver service to Clients detained in relation to the Detained Fast Track Scheme;

*"First-tier Tribunal"* means the First-tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007;

*"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 2013;

*"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;

*"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;

"*Levels of Accreditation*" means the following IAAS Levels of Accreditation:

Level 1 Probationer;

Level 1 Accredited caseworker;

Level 2 Senior caseworker;

Level 3 Advanced caseworker;

"*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 UKBA scheme used for the processing of specified asylum applications;

"*Onsite Surgery*" means the special arrangements, which are subject to Exclusive Schedule Arrangement, to deliver subject to a rota advice surgery at the designated IRC(s);

"*Screening Interview*" has the meaning given in regulation 2 of the Immigration Interview Regulations;

"*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;

"*Temporary Admission*" means an application for temporary admission to the UK under paragraph 21 of Schedule 2 to the Immigration Act 1971 and/or section 62 of the Nationality, Immigration and Asylum Act 2002; and section 36 of the Borders Act 2007;

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

"*Work Restrictions*" means our Work Restrictions published by us on our website;

"*UASC*" means an unaccompanied asylum-seeking child (who 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;

"*UKBA*" means the United Kingdom Border Agency, formerly known as the Immigration Nationality Directorate, Border and Immigration Agency and Home Office. Where UKBA is referenced it also includes Ports, Entry Clearance Offices, Consulates and Embassies; and

"*Voluntary Appointment Scheme*" (VAS) means our online scheme through which Clients can access a Provider.

## Scope of this Specification

- 8.2 Most Immigration work is no longer 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 Immigration and Asylum advice 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:

<b>Forms of Civil Legal Services</b>	<b>Funded as</b>
Legal Help	Controlled Work
Controlled Legal Representation (CLR)	Controlled Work
Legal Representation	Licensed Work

## Work subject to Exclusive Schedule Arrangements

- 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 Exclusive Schedule Arrangements in the Immigration and Asylum Category of Law. Your Contract for Signature or Schedule will denote whether you are a holder of an exclusive Schedule, and therefore entitled to carry out Contract Work under the Immigration Removal Centres (IRC) exclusive Schedule, which includes Contract Work under:
- (a) Onsite Surgeries in IRC; and
  - (b) the Fast Track Scheme.
- 8.6 Unless you are a holder of an Exclusive Schedule Arrangement 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 authorised to do the work under an exclusive Schedule or to continue to represent the Client yourself; or

- (c) there are no exclusive Schedule Arrangements where the Client is detained.

### **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: temporary admission");
- (c) paragraph 27 of Part 1 of Schedule 1 to the Act ("Immigration: residence etc restrictions);
- (d) paragraph 28 of Part 1 of Schedule 1 to the Act ("Immigration: victims of domestic violence and indefinite leave to remain");
- (e) paragraph 29 of Part 1 of Schedule 1 to the Act ("Immigration: victims of domestic violence and residence cards");
- (f) 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;
- (g) paragraph 24 of Part 1 of Schedule 1 to the Act ("Special Immigration Appeals Commission") where it relates to an immigration issue;
- (h) paragraph 45 of Part 1 of Schedule 1 to the Act ("Terrorism prevention and investigation measures etc").

### **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.

### **Voluntary Appointment Scheme (VAS)**

- 8.11 The Voluntary Appointment Scheme is an online appointment-making scheme run by us (or third parties on our behalf) to facilitate the setting up of appointments between individuals and our Providers.
- 8.12 If a VAS is operating in your Immigration and Asylum Procurement Area then you may at any time contact your Contract Manager to be listed on and participate in the VAS.

### **Delegated Functions in respect of Controlled Work**

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

### **Exceptional Case**

- 8.14 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**

- 8.15 All caseworkers who carry out Immigration and Asylum Contract Work must:
- (a) comply with the terms of the Law Society's Immigration and Asylum Accreditation Scheme and Levels of Accreditation (IAAS);
  - (b) comply with our Work Restrictions; and
  - (c) if intending to act for a Client who is an UASC have had an enhanced Criminal Records Bureau check in the 24 months prior to instruction.
- 8.16 You must maintain an accurate and up to date record of all your 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.
- 8.17 You must maintain at each Office a ratio of at least one full time equivalent Level 2 caseworker for every two Level 1 caseworkers.

### **Immigration and Asylum Supervisor Legal Competence Standard**

- 8.18 In addition to the requirements in Section 2 of this Specification, an Immigration and Asylum Supervisor must:
- (a) be accredited as an IAAS level 2 senior caseworker or level 3 advanced caseworker; and
  - (b) have achieved the IAAS Supervisor level of accreditation.
- 8.19 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**

- 8.20 In order to carry out certain Contract Work in the Immigration and Asylum Category of Law, caseworkers must have passed the following level of IAAS accreditation:

<b>Type of Contract Work</b>	<b>Level of Accreditation</b>
Conduct of Legal Help matters	Level 1 Accredited caseworker and above
Use of Delegated Functions to make a determination that an individual qualifies for CLR; and conduct of CLR cases	Level 2 Senior caseworker and above
All Contract Work carried out for an UASC	Level 2 Senior caseworker and above

- 8.21 For the purpose of the rule in Paragraph 8.20 'conduct' means having responsibility for and control of the progression of the case.

- 8.22 You cannot Claim for Contract Work which is carried out by a caseworker who has not complied with the requirements at paragraph 8.15.

**Delivering Contract Work**

- 8.23 You must deliver Contract Work in accordance with this Specification and any written arrangements set out in your Schedule(s).
- 8.24 You must deliver 90% of your Asylum Matter Start to Clients who are physically located (at the time the Matter Start is opened) in the Immigration and Asylum Procurement Area designated in your Schedule.
- 8.25 For the purpose of the rule in Paragraph 8.24, 'Clients' does not include Clients who are physically located at an IRC at the time the Matter Start is opened.



## **PART C - CARRYING OUT IMMIGRATION AND ASYLUM CONTROLLED WORK**

### **UKBA unique Client numbers**

- 8.26 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 UKBA to the Client when the Immigration or Asylum application is made.
- 8.27 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 UKBA reference number allocated.
- 8.28 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 UKBA reference number you must use the default unique Client number A0000000.

### **Matter Start rules**

- 8.29 An Asylum application and any Asylum appeal will constitute one Matter. The appropriate UKBA unique Client number will be that of the original Asylum application.
- 8.30 An Immigration application and any Immigration appeal will constitute one Matter. The appropriate UKBA unique Client number will be that of the original application given by the UKBA.
- 8.31 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.
- 8.32 Where a Client has made or wishes to make a fresh application for Asylum then this new application would constitute a new Matter Start.
- 8.33 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.

### *Multiple applications*

- 8.34 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.
- 8.35 If the first application is at appeal and
- (a) it is decided to continue with the appeal; and
  - (b) at the same time submit another application to the UKBA on different legal grounds,
- a separate Matter Start should be opened to cover Contract Work in relation to the second application.

## **Bail and Temporary Admission**

- 8.36 When attending a Client in detention you must always advise them in relation to Temporary Admission and Bail and record the outcome of this advice on the file.
- 8.37 You must ensure that the Client receives advice on the appropriateness of making a Temporary Admission and Bail application at any particular time (including when appeal rights have been exhausted). There will normally be sufficient benefit to the Client in receiving that advice.
- 8.38 Where an application for Temporary Admission is refused you should consider making an application for Chief Immigration Officer Bail or making a Bail application to the appropriate court.
- 8.39 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.
- 8.40 Where there is an appeal listed before the Tribunal, you must always consider making a Bail application at the appeal hearing. If you decide not to make a Bail application at this stage you should record your reasons on the file. This will be monitored on audit.

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

- 8.41 Where you have made a determination that a Client does not qualify for CLR you must complete and retain a copy of the CW4 form on the file which clearly states the date and reason for your determination.
- 8.42 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 form to us on the Client's behalf.
- 8.43 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.
- 8.44 Where you have made a determination to grant, refuse or withdraw CLR (either in relation to a substantive Matter or Bail) you must report your decision to us. This should be submitted each month at the same time you report your Matter Start information. You must also report any grants of CLR by the Independent Funding Adjudicator where the Client has returned to you.
- 8.45 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**

- 8.46 You may only provide advice and representation to Clients in an IRC if you have been granted an exclusive Schedule arrangement to do so. However, you may provide advice to Clients in other places of detention e.g. prisons or other

designated places of UKBA detention. You should continue to consider the need to advise the detained Client in relation to Bail applications.

8.47 Where you are providing advice and representation under paragraph 8.46 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.

8.48 Where you act for a Client under Paragraph 8.6 or Paragraph 8.46 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 up to a maximum of three hours for a return journey and your actual waiting time at the place of detention;
- (b) claim the reasonable costs of any Bail application(s) you make (subject to the CLR upper financial limit); and
- (c) where you are representing a Client in relation to an appeal before the Upper Tribunal, claim the reasonable costs of any Bail application(s) you make (subject to the CLR upper financial limit).

This Paragraph 8.48 also extends to prisons or any other designated place of UKBA detention.

### **Client travel**

8.49 Subject to Paragraph 8.51, the costs 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; or
- (b) an UASC and is in receipt of other support from Social Services.

8.50 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.

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

### **Attendance at interviews**

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

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

### **Boundary with Licensed Work**

- 8.54 Legal Representation of a Client in an application for Judicial Review or an appeal to the Court of Appeal or Supreme Court, including any application to the Court for permission, is paid for as Licensed Work and cannot be carried out under Controlled Work.
- 8.55 However, where an application for permission to appeal to the Court of Appeal is made to the Upper Tribunal, the grounds of appeal, whether drafted by you or Counsel, will be claimed as part of Controlled Work.

## **PART D - REMUNERATION FOR IMMIGRATION AND ASYLUM CONTROLLED WORK**

### **Standard Fees**

8.56 Unless separate remuneration rates are specified under an exclusive Schedule all Immigration and Asylum Controlled Work is remunerated according to either Standard Fees or Hourly Rates, which are set out in the Remuneration Regulations.

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

<b>Standard Fee</b>	<b>Asylum</b>	<b>Immigration</b>
Stage 1	Legal Help	Legal Help
Stage 2(a)	CLR – no substantive hearing	CLR – no substantive hearing
Stage 2(b)	CLR – substantive hearing	CLR – substantive hearing

8.58 CLR is split into two sub-stages. The fee for either Stage 2(a) or Stage 2(b) as set out in 8.57 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.

8.59 A Stage 2(b) 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.

8.60 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 UKBA unique Client number:

- (a) Legal Help - at the end of Stage 1 or where the Matter otherwise ends earlier; or
- (b) CLR - at the end of Stage 2.

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

#### *Stage 1: Legal Help*

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

- (a) initial advice, drafting of statement and representations;
- (b) consideration of UKBA 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) 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.

- 8.63 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*

- 8.64 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*

- 8.65 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.
- 8.66 Stage 2 will end at the point that a determination is made that a Client qualifies or does not qualify for CLR in relation to the lodging 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*

- 8.67 Where applicable, Graduated Fees for advocacy services set out in the Remuneration Regulations are payable at the end of Stage 2, 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 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*

- 8.68 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).
- 8.69 Unless we notify you otherwise in writing, the disbursement limits in Paragraph 8.68 above are the total sum (exclusive of VAT) you may claim for all the disbursements at each stage of any Matter.
- 8.70 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.
- 8.71 Paragraphs 4.24, 4.27 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**

- 8.72 A Matter may escape the Standard Fee Scheme and become payable solely by Hourly Rates.
- 8.73 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 Fees.
- 8.74 In order to calculate whether a Matter becomes an Escape Fee Case, the following steps should 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 8.77);
  - (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 and is therefore an Escape Fee Case payable at Hourly Rates.
- 8.75 Any previous Claims paid in respect of the Matter will be reconciled against Total B (in paragraph 8.74(c)) to determine the final payment to be made for the Escape Fee Case.
- 8.76 Escape Fee Cases must be subject to an individual Cost Assessment.

### **Matters paid by Hourly Rates**

- 8.77 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) CLR in relation to an application for permission to appeal and, appeals before the Upper Tribunal – see Paragraphs 8.93 to 8.98;
  - (e) Bail applications;
  - (f) 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;
  - (g) 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;
  - (h) Escape Fee Cases under the Standard Fee;
  - (i) advice in relation to a Client who is an UASC;
  - (j) cases remitted, reviewed or referred from the Court of Appeal to the Upper Tribunal or the Upper Tribunal to the First Tier Tribunal;
  - (k) in relation to a Provider who holds an exclusive Schedule, any Matters opened as a result of an On Site Surgery or for a Fast Track Client;



- (l) advice in relation to Terrorism Prevention and Investigation Measures Orders;
  - (m) 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
  - (n) applying for a determination that an individual qualifies for civil legal services provided as Licensed Work in relation to the Special Immigration Appeals Commission.
- 8.78 Contract Work payable by way of Hourly Rates with the exception of 8.77(d), will be subject to Cost Limits as described at paragraphs 8.80 to 8.89. The relevant Hourly Rates are set out in the Remuneration Regulations.
- 8.79 A 5% uplift is claimable on all Controlled Work payable by Hourly Rates and personally undertaken by Level 3 Advanced caseworkers.

### **Cost and disbursement limits for Hourly Rates Matters**

#### *Legal Help Cost Limits*

- 8.80 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 the Asylum Matters, (where the Matter progresses beyond initial advice).
- 8.81 In relation to Bail applications in asylum work undertaken under Legal Help (including an application for Temporary Admission or to the Chief Immigration Officer) if there is no substantive appeal linked to the Bail work, the £500 Immigration limit will apply.
- 8.82 The Legal Help Cost Limit set out in paragraph 8.80(a) cannot be extended. The Cost Limits set out in paragraph 8.80(b) and 8.80(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.
- 8.83 The Legal Help Cost Limits in paragraph 8.80(b) and 8.80(c) are exclusive of the reasonable costs incurred for accompanying a Client to a Substantive Interview under paragraph 8.51.

### *Legal Help Disbursement Limit*

- 8.84 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.
- 8.85 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*

- 8.86 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.
- 8.87 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 8.86(b) or 8.86(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 8.86(b) or 8.86(c) will apply.
- 8.88 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.
- 8.89 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**

- 8.90 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) which will usually be in cases which are designated as "country guidance"; or
  - (b) raises a matter of significant wider public interest as described in Regulation 6 of the Merits Regulations.
- 8.91 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 8.90.

- 8.92 Where a matter falls within Paragraph 8.90 then you must contact us to discuss the preparation and agreement of a case plan.

### **Applications for permission to appeal to the Upper Tribunal**

- 8.93 Subject to paragraphs 8.95 and 8.96, 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 8.96.

- 8.94 Where an application for permission has not been made in the circumstances set out at paragraph 8.95 below but an application for permission to appeal to the Upper Tribunal has been successful, you may Claim your reasonable costs for work associated with the application and appeal at the rates set out in the Remuneration Regulations. The rates are therefore only payable for those services which are 'at risk' of not being paid under Paragraph 8.96.

- 8.95 Where an application for permission to appeal to the Upper Tribunal is:

- (a) dealt with under the UKBA detained Fast Track Scheme; or
- (b) has been lodged by the UKBA,

you may Claim reasonable costs for Contract Work associated with the application, whether or not permission is granted, at the rates set out in the Remuneration Regulations.

- 8.96 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. Similarly, you may claim for advice on the merits of lodging an application for permission to appeal, which is payable by Hourly Rates as set out in the Remuneration Regulations, whether or not permission is granted.

### *Controlled Work undertaken before the Upper Tribunal.*

- 8.97 Where an application has been successful and the Matter is to be heard before the Upper Tribunal then the further reasonable costs for the preparation of, travel to, waiting and representation at the Upper Tribunal hearing, (including any advocate's fees and disbursements) may be claimed.

- 8.98 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 8.77(j).

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

- 8.99 Where you instruct an advocate to attend a hearing under Controlled Work you may not make any Claim for time spent accompanying the advocate at the hearing.

- 8.100 When instructing an advocate you should inform them of the payment rates and ensure that their fee note will contain a breakdown of the time claimed at the appropriate rates.

8.101 In relation to an application for leave to appeal to the Upper Tribunal against the decision of the First Tier tribunal, you must inform the advocate that payment is conditional on the circumstances of the application as set out in Paragraph 8.93.

### **Claiming for Matters paid at Hourly Rates**

8.102 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 UKBA/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.

8.103 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**

8.104 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 8.104 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 8.60 and 8.102 for Standard Fee and Hourly Rates Matters respectively) or have previously applied for payment under this paragraph 8.104, at least 6 months have elapsed since that entitlement arose or application was made.