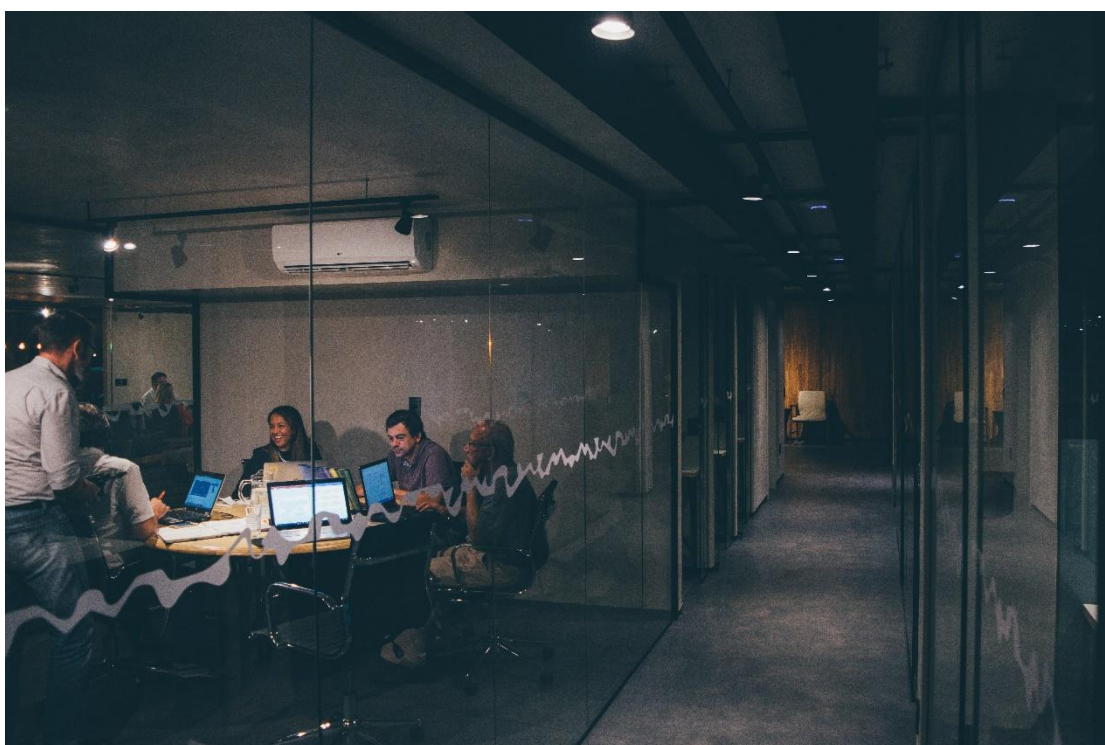




Legal Aid
Agency



IMPROVING YOUR QUALITY IN IMMIGRATION & ASYLUM

A guide to common issues identified through Peer
Review

Foreword to the guide

Improving Your Quality in Immigration Law

A guide to common issues identified through peer review

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

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

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

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

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

These suggestions for making improvements do not suggest 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

Contents

A. UNDERSTANDING AND COMMUNICATING WITH THE CLIENT.....4

1. Does the file show the Provider has acted in the client's best interests, are there other ethical concerns?

- a. Managing potential conflicts of interest.
- b. Minors and other vulnerable clients

2. Does the file show the Provider has understood the client's case?

- a) Did the Provider obtain sufficient information from the client?

3. Was the client able to easily communicate with the Provider?

4. Does the file show that the client was effectively advised?

- a. Does the file demonstrate the Provider's awareness, knowledge, and understanding of the issues on which advice was required?
- b. Was the advice given clear, concise, and meaningful?
- c. Was the client kept informed?
- d. Why is communication with the client and obtaining sufficiently detailed instructions important?

B. CASE PREPARATION13

1. Does the client demonstrate that the Provider understood the material issues in the client's case?

2. Does the file demonstrate case planning and thinking ahead?

3. Information and evidence gathering

- a. Witness Statements

4. Did the Provider work effectively with third parties?

C. REPRESENTING THE CLIENT16

1. Was the client's case effectively presented?

- a. To the Home Office?
- b. To the Tribunal or higher court?

- c. Was the client effectively represented throughout the file of the case?

2. Does the file demonstrate good file management?

- a. Why does good file management matter?
- b. How can files indicate of good file management?

3. Does the file demonstrate compliant and effective use of legal aid funding?

- a. Controlled work
- b. Does the file demonstrate that the client received all required advice on bail matters?
- c. Does the file demonstrate that the client was advised on Legal Representation for judicial review proceedings?
- d. Why is the Provider's approach to funding important to the client?

D. ISSUES COMMONLY IDENTIFIED ON PEER REVIEWS 23

- 1) Balancing standard materials with tailored advice
- 2) Case progression and active case management
- 3) Supporting clients in case building
- 4) Engaging critically with the client's case and documents
- 5) Preparing fresh claims with insight
- 6) Representing minors effectively
- 7) Recognising trafficking indicators
- 8) Working with detained clients

E. USEFUL RESOURCES.....25



A. Understanding and communicating with the client

Overview: A good file will reflect a genuine understanding of the client — showing that the Provider gathered full and accurate instructions, engaged with what was said, and maintained clear, timely, and meaningful communication throughout. It should also demonstrate that, where professional or ethical issues arose, these were recognised and handled with care and integrity

1) Does the file show that the Provider has acted in the client's best interests, are there other ethical concerns?

- Taking time at the outset to identify the client helps to avoid confusion later and ensures that all advice and actions are guided by the correct set of interests, especially where there may be more than one person involved or where others have an interest in the outcome.
- Where ethical questions arise and a client's interests overlap or conflict with those of another person, or where third parties — such as family members, sponsors, or community organisations — are involved, the file should reflect understanding and thought was given to how best to manage the issue, and the provision of full, and clear advice to the client.
- A file should record how such issues were identified and addressed, awareness of professional obligations and commitment to act in the client's best interests. Some of the more complex examples of ethical challenges are set out below:

a. Does the file show that the Provider's managing Potential Conflicts of Interest:



- If acting for more than one client, it is important that the file shows the Provider recognised the potential for conflicts of interest. Be alert to situations where there may be separate or overlapping claims — for example, when one person is designated as a dependant or when multiple family members are seeking asylum at the same time.
- In potential conflicts, early and open communication advising Clients about the Provider's professional duties and what these mean might take place in a meeting; followed by written confirmation, avoiding misunderstanding and reducing risk of later conflict.

- Examples of the duties of disclosure and confidentiality apply in cases involving more than one client. Family members should understand that information material to the case may need to be shared between them, and that absolute confidentiality between co-clients cannot always be maintained. Where the Provider has previously acted for one family member, it should be recorded that the duty of confidentiality continues even after that earlier case has concluded

b. Representing minors and other vulnerable people:

- When representing children and other vulnerable clients, support workers, social workers and family members can play a useful role in the process (including helping clients to attend appointments, communicate their instructions and understand the advice given). However, files should demonstrate that the Providers exercised caution not to mistake the views and instructions of a third party with those of the client, particularly where there is a potential for conflict.
- In the case of children, the file should show the special attention required in handling the relationship between the child and the Local Authority. It is not uncommon for children in care to take legal action against the Local Authority (for example, when the Local Authority disputes their age, or otherwise fails to meet their care needs). In such cases, the social worker may well become a witness for the opponent in any legal proceedings. This creates a complex and often difficult relationship, where the social worker is the person responsible for the child's care, yet also a potential witness for the Local Authority in litigation concerning the duty and extent of that care. Because children may not understand this complex relationship, caution must be exercised when, for example, inviting social workers to attend appointments or when sharing information with them to avoid that information being used to undermine a client's case against the Local Authority. A Provider inadvertently disclosing such information would be in breach of their professional obligations in relation to confidentiality and their duty to act in their client's best interests. Complying with the duty of confidentiality does not preclude cooperation with social workers (who can often be the source of helpful information and support) or making use of information provided by them.
- Providers must also be aware of the requirement under the Immigration Specification to make a referral to a suitably qualified representative when such issues with the Local Authority do arise, always with the client's consent.

2) Does the file show that the Provider has understood the client's case?

Information taken from the client directly at the earliest stage possible (taking instructions) is, in most cases, key to understanding the case, the legal and evidential issues it may raise, and how those issues may be addressed.

a-Does the file show that the Provider obtained sufficient information from the client?

Gathering detailed information directly from the client, as early as possible, is often the key to truly understanding the case — its legal and evidential issues, and to identifying the most effective way to address them, as well as understanding what the Client wishes.

- For most asylum and immigration matters, taking a clear and detailed statement from the client early on can make all the difference. This process not only helps the client present their account in a structured and coherent way but also allows the Provider to identify early any potential weaknesses or areas requiring further evidence.
- In asylum cases, preparing a witness statement in a supportive environment — before the stress of a substantive interview — can be particularly valuable. Clients often give a fuller and more accurate account when guided gently through their experiences outside the pressures of an interview setting. Whether or not a formal statement is ultimately submitted to the Home Office, the file should show that the Provider obtained enough detail to represent the client effectively.
- Deciding whether to submit a client statement is a matter of judgment. What matters is that the Provider has a detailed grasp of the client's reasons for seeking asylum, and that the client has had a fair opportunity to explain their story before the full asylum interview. This early engagement helps the client understand what aspects of their claim may be most closely examined.
- For children or vulnerable clients, this process requires particular care. A supportive and paced approach can help them feel safe enough to share information. Where a statement is prepared but not submitted, the reasons for that decision — along with the advice given and instructions received — should be recorded on the file.
- Using tools effectively - Checklists and templates can be helpful for ensuring no key details are missed, but they should serve as a guide rather than a boundary. The most effective casework shows evidence of follow-up questioning, thoughtful probing where needed, and a willingness to help the client clarify or expand on their account. Chronologies can also be a useful way to help clients structure complex timelines and recall key events.
- When taking instructions from children or vulnerable adults, files should show that the Provider considered any developmental or psychological factors that might affect how the client communicates. Where these factors make it difficult for the client to provide a consistent or detailed account, additional sources of evidence — such as medical or expert

reports, or child-specific country information — should be explored to support the claim.

- **Recognising indicators of exploitation or trafficking-** Providers should remain alert to signs of exploitation, trafficking, or modern slavery that might emerge in a client's account or journey to the UK. When such indicators are identified, it is important to record the client's instructions and discuss with them how and when these matters should be raised with the Home Office. The file should reflect that these discussions took place and that the client's informed agreement was obtained before any notification was made.
- **Advising clients on interview records -** In asylum cases, clients should be supported to understand and, where appropriate, comment on the written record of any interview. Reviewing transcripts together with the Client can be an important opportunity to clarify misunderstandings or correct omissions. This is not only to fix minor errors, but to help the client engage meaningfully with the evidence in their case.
- **Many clients, especially those interviewed soon after arrival, may not have been able to give a complete or accurate account during the screening interview.** A good practice is to review that interview record early, discuss any necessary clarifications with the client, and notify the Home Office where appropriate.
- **Contextual understanding -** Throughout, it is important to place the client's account in context. Considering Home Office policy, relevant country guidance, and background materials helps identify any discrepancies or areas where the client may need further support in presenting their case. Evidencing the open discussion of these with the client builds understanding and strengthens the evidence base of the claim.
- **Taking instructions in bail cases -** In bail matters, effective preparation depends on a solid understanding of the client's immigration history and the reasons for detention. Files should show that the Provider gathered information about any ongoing applications or appeals, criminal matters, family circumstances, and personal vulnerabilities that might make detention inappropriate. Exploring potential bail supporters, accommodation options, and risk or compliance issues early on, can help the Provider present a realistic, well-evidenced bail application tailored to the client's individual situation.

3) Does the file show the client was able to easily communicate with the Provider?

Good communication between client and Provider should be visible on the file. In immigration and asylum matters, communication may be hampered by a variety of issues, the most obvious being language. Files should demonstrate that the Provider ensured that they maintained clear lines of communication throughout the lifetime of the matter and promptly addressed barriers.

- Files should demonstrate that consideration was given to the client's ability to understand advice, provide information and give instructions, and to communicate generally. Where barriers to communication are

identified, files should demonstrate that consideration was given to necessary, reasonable adjustments, and these should be readily apparent to all members of the Provider's staff.

- Potential barriers to communication can include language, literacy, mobility, physical and mental health, a history of trauma or torture, mental capacity (including due to age), developmental considerations (particularly in relation to child clients) and problems with communication where the client is detained.
- Independent, professional interpreters and translators should always be used where needed. The client's language of communication must be recorded on the file. Even where the client speaks relatively good English, this does not mean that they would not be more comfortable communicating in their first language, particularly for lengthy or complex attendances. Where the caseworker with conduct speaks the client's language, this should be noted on file.
- 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 persons of a particular sex or age, professionals, and Government agents or, in the case of children, adults generally.

4) Does the file show that the client was effectively advised?

For a client to be provided with meaningful advice, Providers need to remain up-to-date on current law, policy and procedure, and be able to provide advice that is relevant, properly tailored to the client's own case, and which is communicated in a way that can be readily understood by the client.



For example, in a case where the Home Office does not believe that an asylum-seeking client has been detained and tortured at all, that client is likely to be assisted by a short explanation as to why they were not believed (e.g. their account was inconsistent or vague) and what they can do to respond to that (e.g. provide a more detailed and coherent account on particular issues and medical evidence). For example, a lengthy explanation of the definition of torture is not likely to be of assistance to the client.

a-Does the file demonstrate the Provider's awareness, knowledge and understanding of the issues on which advice was required?

- Caseworkers in the Immigration and Asylum Category of Law must be accredited at the appropriate level of the Immigration and Asylum Accreditation Scheme or Immigration Advice Authority Scheme. 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 as applicable to the case. Files that show 'template' advice, without this being applied to the facts of the individual client's case are not likely to satisfy this requirement.

b-Was the advice given clear, concise and meaningful?

- Advice provided should be clear, concise, and meaningful to the individual client.
- Clients should be given a clear and reasoned assessment of the prospects of resolving the legal issues in their case (the merits), identifying the strengths and weaknesses of their case. Where alternative options exist, files should demonstrate that advice was provided on the advantages and disadvantages of each option.
- Standard or generic advice in templates should be kept up to date. Files should demonstrate that the advice provided was tailored to the individual client and their case. It may assist to use headings in template letters to prompt caseworkers to record advice on merits, strengths and weaknesses, steps to be taken, and timeframes. This also makes it easier for the client to understand and absorb the advice and manages expectations throughout the process.
- Files should include records of the agreement with the client on what steps will be taken by the client, by the Provider, and/or third parties and within what time frame.
- Advice given to the client should be updated to reflect material developments such as following a decision or determination, material information or evidence coming to light, or following changes in case law, policy, and country conditions.
- Advice should be confirmed in writing unless this is impracticable, so that the client can refer to the advice and consider it carefully, and so that any steps to be taken are clear. Legal jargon should be avoided wherever possible. Any reasons for not providing written confirmation of advice should be retained on the file. Advice provided to a child client should be written in terms that are appropriately straightforward and easy to understand.
- Files should demonstrate that clients were advised of all application fees, Immigration Health Surcharge, appeal fees and other court and tribunal fees, or of the possibility of obtaining fee waivers.
- A detained client must always be advised on the availability and appropriateness of making a bail application (including when appeal rights have been exhausted) and the outcome of this advice and the client's instructions on key issues such as timing of the application or whether to apply for Secretary of State bail, must be recorded. Where

an application to the SSHD and/or Tribunal for bail is refused, files should demonstrate that the Provider considered making a further application following a change of circumstances (for example any medical/mental health matters that need to be raised to make detention undesirable and other barriers of removal). Providers should be aware of characteristics that suggest someone is not suitable for detention (such as being a victim of torture or trafficking), the Rule 35 process to seek a medical assessment in detention centres, and relevant Home Office policies in relation to such detainees, and Providers should raise such matters when seeking release from detention.

- Particularly, the files of detained clients must demonstrate that the client was provided with realistic timeframes for action to be taken/steps taken to progress their matter. If there are limits on the work which the Provider is able or willing to do (for example they are able to assist with the bail matter but not the related deportation matter) then the client must be clearly advised of this at the outset of their matter, so they understand the limits of the Provider's assistance.
- Child clients who are granted limited leave to remain in the UK following the refusal of asylum, due to inadequate reception arrangements in their country of origin, must be clearly advised of the nature of their grant of leave 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 Controlled Legal Representation merits test. The temporary nature of the grant of UASC limited leave to remain must be explained, and the prospect of obtaining further leave to remain on expiry of that must be explored in the context of the client's claim. It is important that child clients in this situation (and those caring for them, if appropriate) understand that they have not been recognised as refugees and are given advice on the impact that turning 18 may have on the merits of a future appeal if further leave to remain is refused.
- Victims of trafficking and modern slavery, should be advised on the advantages of being recognised as such, including in relation to enhanced financial and other support, the ways in which such recognition can form the basis of claims for leave to remain (including refugee status, humanitarian protection and VTS leave) and/or support other claims for leave to remain, to obtain release from detention and resist third country removal, and other benefits also, not directly related to immigration such as, where applicable, giving a defence to some criminal offences (or to the CPS deciding not to prosecute) and to put pressure on the authorities to prosecute traffickers. While it is recognised that trafficking claims may cause a delay to an asylum claim, and clients may wish to withdraw their trafficking claim because of this, files must show that advice was provided of the pros and cons of taking this step.
- File closing advice in all cases should inform the client what status they have been granted, what rights it comes with (e.g. the right to work or claim public funds), if/when the leave to remain expires, when and what sort of application needs to be made in the future, an outline of the ways in which the status could be revoked or otherwise lost, and what issues are likely to arise in any future application. Where the client's application has been unsuccessful and/or an appeal dismissed, files should

demonstrate that clear advice about the reasons for the refusal and whether there is merit in any onward appeal or fresh application, have been provided.

c-Does the file show that the client was kept informed?

- Contact with the client should be maintained at a level of frequency that is appropriate to the progression of the case bearing in mind Home Office and Tribunal backlogs, and the client should be advised of likely time frames and how to make contact if any issues arise. Clients' expectations should be managed with clear communication. The required checks for inactivity on a file should be carried out at appropriate intervals and records of this retained on the file, potentially to support requests for expedition should this become necessary based on the client's individual circumstances.
- Confidentiality should be ensured at all times, for example through the use of encrypted digital communications or the implementation of Rule 39 measures when communicating with a detained client, and Providers should have an awareness that detention telecommunications and digital communications may be monitored.
- Files should demonstrate that providers acted swiftly to try and resolve any breakdown of communication with the client (for example, where the client has not replied to letters or emails for an extended duration).

e-Why is communication with the client and obtaining sufficiently detailed instructions important?

- The client's legal issues need to be understood as early as possible so that the Provider can determine whether the issues are capable of being resolved and, if so, what steps might be required, by the Provider, the client, or by third parties.
- If the articulation of a claim does not include a sufficient level of detail, the client is less likely to be found credible and/or important elements of the applicable legal test or criteria may not be accepted as met. Lay clients cannot be expected to appreciate the level of detail required or the material issues that they need to address.
- In any asylum case, the plausibility of a claim will be considered against available and reliable country and 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).
- Files should demonstrate that an adequate level of contact was maintained with the client, this being essential to ensure 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. Recording on the file advice provided to the

client on expected time frames contributes to managing organisational risk and as a reference point to manage client expectations.

- Particularly, the files of detained clients must demonstrate that the client was provided with realistic timeframes for action to be taken/steps taken to progress their matter. Any limits on the work which the Provider is able or willing to do must be clearly advised to the client at the outset of their matter.
- Detained cases can move quickly necessitating a more frequent level of contact with the client.

B. Case Preparation: Does the file show appropriate case preparation

1) Does the file demonstrate that the provider understood the material issues in the client's case?

- The file should show that the Provider understands the key issues in the client's case — both legal and evidential, in order to identify whether those issues can be resolved, and how best to prepare.
- The file should show that the Provider has engaged with the relevant Immigration Rules, statutory provisions, and case law, and understands how these apply in practice to use all effectively for the client's benefit.
- Cases involving further submissions for a fresh asylum or human rights claim should show an understanding of the client's previous case history. This could include obtaining the earlier representative's file, making a Subject Access Request for the Home Office records, and reviewing any previous appeal determination. It is vital to understand why any earlier claim was rejected and how such issues can be addressed.
- Where a client is appealing after an earlier dismissal, the same principle applies. Reviewing the previous determination and understanding the judge's reasoning allows the Provider to focus on what needs to be challenged or distinguished this time around.
- In bail cases, effective preparation often depends on understanding the wider context — the status of any ongoing asylum or deportation matters, the availability of accommodation and support, and how related proceedings (such as criminal prosecutions or NRM decisions) might affect the merits of the application.
- The file should show what evidence will therefore be needed — from the client, witnesses, experts, or documentary sources — shaping the case strategy. There should be evidence on the file of discussing these evidential needs with the client to build trust and ensure that important material can be gathered in good time.

2) Does the file demonstrate case planning and thinking ahead?

Does the file show some strategy noting down what evidence needs to be obtained and then working through that list in an organized and timely manner?

- Key dates such as the expiry of leave and other time limits should be clearly noted, as should any other factors requiring urgent action to protect the client's best interests, and procedures should be seen to be in place to ensure that no deadlines are missed.
- The file should show continuing communication with the client reporting on developments of issue identification and tailored advice about further possible evidence to be gathered.

3) Does the file show appropriate information and evidence gathering:

Does the file show continuing work in assisting the client and ensuring that the evidence is obtained and is fit for purposes:

a – Witness statements:

Does the file show that a statement or witness statement has been considered to assist the Client at any interview or hearing?

- In asylum, immigration or bail cases, consideration should always be given to whether submitting a statement from the client or a third party would be of assistance. This can include corroborative evidence such as evidence of relationships and contact in a Family Reunion case, or substantial evidence of continuous residence in a 20-year Private Life case.
- Files should show appropriate consideration of the suitability of witnesses and/or bail sureties including for potential conflicts, adverse character and/or credibility issues, and should show notification as early as possible of any hearing dates and relevant procedural matters. 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.
- In asylum claims, files should show consideration was given to whether submitting a statement either before or after a substantive interview would be of assistance to the client. It is a question of professional judgement about the benefit of submitting a full witness statement in an asylum claim, and the point at which one could best be submitted. Either way, there should be a record of the advice given to the client about this and the client's instructions. It is acknowledged that some clients will give vague, inconsistent or contradictory instructions and statements. In those cases, clients should be advised of the possible adverse consequences and that advice should be recorded on file.
- Regardless of whether a statement is submitted, files should show Providers assisting clients to give detailed, coherent accounts of their reasons for claiming asylum, which remain, insofar as is possible, consistent with the applicant's own account over time and with the country evidence (or for inconsistencies to be explained). Clients should be seen to be given opportunities to correct errors in asylum interview records and witness statements and be able to respond to issues raised by the Home Office at interview or in the refusal letter. Vulnerabilities should be identified and taken into account throughout the asylum claim/appeal process to ensure clients give their best evidence. Consideration should be seen to be given where appropriate to obtaining medical evidence to support an assertion of poor health, particularly where it could be relevant to the prospects of the claim or whether there is the potential for other penalties or adverse effects in relation to delayed disclosure. As Providers should be aware at appeal stage, Practice Direction 8.2 requires that "*witness statement should be capable of*

standing as the totality of the evidence-in-chief of the person giving that statement.”

- Any witness statement should be seen to be drafted in the witnesses’ own words to comply with Tribunal and professional conduct rules, and because such statements are more persuasive. The Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal at 8.5, confirms that witness statements must be drafted “*in the intended witness’s own words and must in any event be drafted in a language they understand*”. Statements should be seen to reflect the client’s experiences from their perspective based on their perceptions.
- Files showing marked 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 and should be retained on the file serving as evidence of work carried out.

4) Does the file show the Provider working effectively with third parties?

- Providers should, where possible and appropriate (and with due regard to instructions and confidentiality), work collaboratively with other professionals (such as trauma specialists, medical and other mental health professionals, support and social workers, and other lawyers acting for clients in other legal matters) and carers, in order to prepare an adequately detailed and evidenced case.
- Consideration should be given as to whether any third parties might be useful witnesses. Where it is proposed that a witness give oral evidence from overseas in an appeal matter, the Provider should be seen to consider the relevant Practice Direction on Overseas Evidence.
- Instructions to experts should be written in a clear and considered way 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, particularly given the stringent requirements on length and content of reports. 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.
- Files should show Providers working collaboratively with external and in-house advocates, including through the use of briefs of appropriate content and level of detail. Where it is proposed to call oral evidence, conferences between the client and/or witnesses with external or in-house advocates should be considered,. This would be particularly important where outcome is likely to turn on credibility or where the client is particularly vulnerable by reason of age or health. Where not possible to arrange, the caseworker should talk through proposed evidence with the client and any witnesses well in advance of the hearing and any potential issues discussed with the advocate. Where appropriate 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 or for an online pre-hearing conference if the matter is being heard by CVP.

C. Representing the client

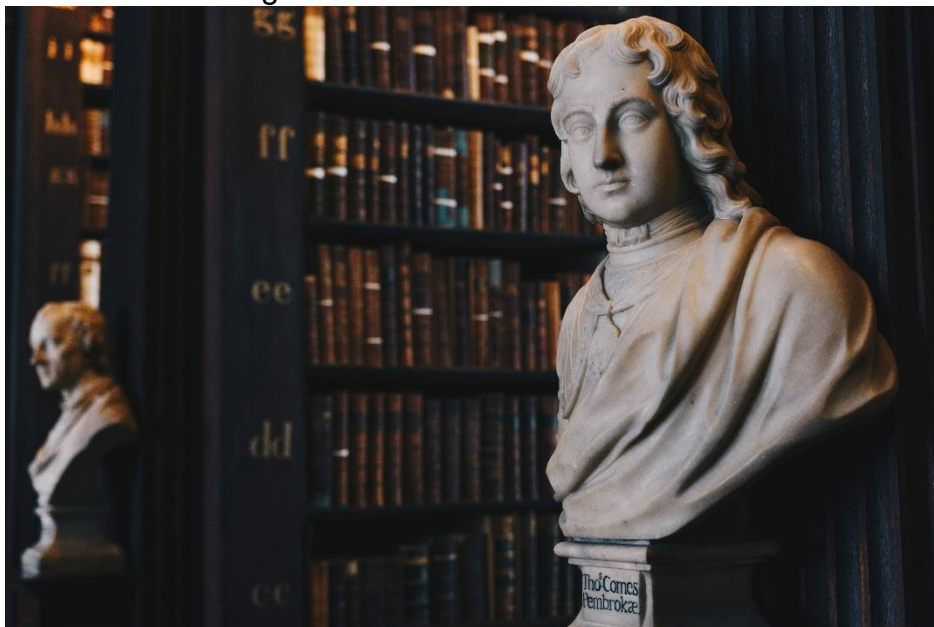
Overview: A file should demonstrate careful planning, clear documentation of decisions and an approach that consistently supports the client's interests.

1) Was the client's case effectively presented?

Does the file reflect that the Provider consistently considers how best to support the client and respond to developments.

a-Was the client's case effective presented to the Home Office?

- Written representations should be seen succinctly to address the key or material issues that are likely to be in dispute, such as credibility or material country evidence.
- For asylum matters, the file should show consideration given in all cases to making representations focusing squarely on the material issues and how the evidence addresses those issues. Representations should be clear and succinct, tailored to the client and avoid over-reliance on 'generic' content. For immigration matters, a covering letter is good practice in all cases, setting out the evidence submitted and how it meets the relevant Immigration Rules.



- Child clients are entitled to be represented by a legal representative at all interviews with the Home Office and funding is available for Providers to attend interviews with child clients, and Providers should ensure this happens. Child clients should be met prior to interview to explain the

procedure at interview, and the likely issues, if possible with the person who will be attending with them.

- In bail applications, the representations should be seen to address the reasons for detention, the immigration and criminal history, vulnerabilities and relevant policies (e.g. Adults at risk in immigration detention), the Guidance on Immigration Bail for Judges of the First-tier Tribunal (Immigration and Asylum Chamber), barriers to removal, and where necessary challenge delays and refusals of Asylum Support etc. or refer to a specialist Provider.

b-Was the client's case effectively presented to the Tribunal or higher court?

- Providers must be aware of and comply with the current Practice Directions in relation to case management and the presentation of appeal matters. The file should demonstrate that all relevant deadlines are recorded and complied with and that the Provider was vigilant in terms of funding and applications for extensions to costs or disbursements.
- Files should demonstrate that if more time was needed to file a document, permission was sought in a timely manner. Where out-of-country evidence is desirable, files should demonstrate the proper procedure for seeking permission was followed.
- Bundles of evidence should be retained on the file. These should be well ordered and easy to navigate and should demonstrate that they meet the requirements of the relevant court.
- Files should contain records demonstrating good communication with counsel, where counsel is instructed. While the use of counsel may vary from Provider to Provider or from case to case, the involvement of experienced counsel can be of great benefit not only to individual clients, but to the Provider. Counsel can provide useful feedback on case preparation. Where the Provider intends to instruct counsel (whether to draft the Appeal Skeleton Argument, represent at the hearing or both) the earlier counsel can be briefed, the more likely useful feedback can be provided to the benefit of the client.
Where an appeal is unsuccessful, files should demonstrate consideration given as to whether there was sufficient legal merit in seeking permission to appeal. Where there is insufficient merit, the client should be advised as early as possible of the reasons. Such advice if provided orally should be confirmed in writing or a reason for not doing so recorded on the file.
- Where permission to appeal is sought, the Provider must ensure that the correct funding is applied for each stage of the process and that all time limits are clearly noted on the file and confirmed to the client.

c-Was the client effectively represented throughout the life of the case?

- For asylum matters, files should demonstrate an ongoing critical analysis of the client and third party witness statements, undertaking a detailed consideration of oral evidence given by the client at interview (all addressing any inconsistencies or errors in the initial or substantive interview), and that all third party documents and supporting letters were checked before being submitted to the Home Office or Tribunal.
- Requests for further information from the Home Office (in both asylum and immigration matters) should be seen to be dealt with in a timely fashion and all communication from (and replies to) the Home Office considered carefully and explained to the client.
- Files should demonstrate that Home Office or appeal decisions were carefully analyzed, the decision explained to the client, with material issues being clearly identified together with any changes to the overall assessment of the merits of the case being communicated to the client.

2) Does the file demonstrate good file management?

a-Why does good file management matter?

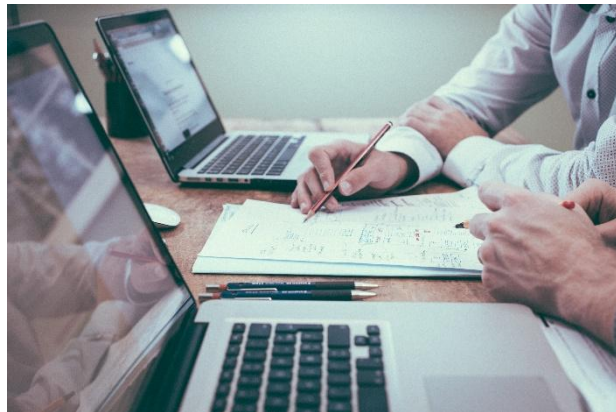
Good file management is more than an administrative task — it is central to effective representation and protecting both the client and the Provider:

- **Capturing instructions accurately:** When instructions are not properly taken or recorded, important evidence may be missed, which can affect the credibility of the case and potentially its outcome.
- **Recording advice and decisions:** Keeping a clear record of advice given and instructions received is crucial. Without this, it can be difficult to review case progress, and the Provider may be exposed to misunderstandings or complaints at a later stage.
- **Supporting organised thinking:** An orderly file encourages structured and logical case preparation, helping to reduce the risk of missed deadlines or unnecessary delays.
- **Ensuring continuity:** Cases may need to be transferred between advisers due to staffing changes or absences. A well-maintained file ensures that anyone taking over can quickly understand the stage of the case, the decisions made, and next steps.
- **Facilitating supervision and quality assurance:** Supervisors should be able to review a file at any point and gain a clear picture of instructions, advice, and actions taken, supporting consistent quality standards.
- **Preparing for complaints or challenges:** In the event of a complaint or allegation of negligence, a complete and clear file allows a thorough and transparent review of what has occurred.
- **Meeting audit and funding requirements:** Key steps, disbursements, and time recording are subject to audit, for example by the Legal Aid Agency. Files that accurately reflect the work undertaken help protect against assessment reductions or nil payments.

b-How can files indicate good file management?

Effective file management involves creating a clear, reflective record of the work carried out and the decisions made. Some points to consider:

- **Attendance notes:** Notes should capture what was actually discussed during appointments, including instructions received, issues raised by the client, and tailored advice provided. A file should go beyond general information such as the Convention definition of a refugee or a broad overview of the asylum process. Important discussions — for example, whether to submit a statement, call a witness, submit a particular document, or seek medical evidence — should be clearly recorded.
- **Recording material advice and instructions:** When material or contentious advice is given, or significant instructions are received, these should be clearly documented in the file and, where appropriate, confirmed in writing. This protects the client by ensuring they understand the implications of their instructions and the advice provided, and it also provides protection for the Provider.
- **Preparation notes:** Notes reflecting time spent reviewing documents or considering country information should include sufficient detail — even in bullet points — to show what was learned, what steps should follow, and how the findings affect the case
- **Document management:** All documents provided by the client should be clearly logged and retained on the file. This includes copies of everything sent to or received from the Home Office or Tribunal, so that all materials are easy to locate.
- **Funding documentation:** Fully completed legal aid forms, evidence of means, invoices, and disbursements should ideally be stored in a clearly identified funding folder within the file.
- **Case closure:** The file should clearly show how and when the matter concluded, and whether any linked matters require further client instructions. Files should include a copy of the required File Closing letter, confirming all necessary quality mark matters have been addressed.



3) Does the file demonstrate compliant and effective use of legal aid funding?

Peer review does not have regard to funding in contract compliance terms. However, the ability to make full use of legal aid is essential to acting in the client's best interests, understanding what is in scope, when and how to apply for Exceptional Case Funding ("ECF"), or making use of disbursements and

escape fees to maximise the client's case being successful. Failing to make use of the full scope and extent of legal aid or to advise of its availability, may leave clients with weaker cases than they could have had put forward. This could be a failure to act in the client's best interests.

a-Controlled Work:

- Files must demonstrate that the Provider was aware of the correct application of the different merits tests applicable to each level of funding. For example, the 'reasonable individual' test at regulation 32 of the Merits Regulations 2013 is a low threshold and can be used to provide advice and investigatory work even where the client might not have a strong case. Similarly, at the appeal stage, it is important to be aware that, under regulation 60, it is possible to provide legal aid in cases where the merits are borderline, marginal or unclear, and the case is one with overwhelming importance to the individual; or the substance of the case relates to a breach of the client's rights under the ECHR, as well as in other circumstances.
- Since the case of *Gudanaviciene* [2014] EWCA Civ 1622 in 2014, ECF is granted for a wide variety of family and private life and other out-of-scope matters. Providers should consider whether legal aid for an out of scope matter 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 themselves (or to participate in the relevant process) without legal assistance, having regard to their age and mental capacity. Similar considerations apply to EU law matters which remain relevant for many people following the end of the Brexit transition period on 31 December 2020.
- Examples of matters where ECF applications are routinely successful are family and private life cases, family reunion cases, nationality deprivation cases, pre-reasonable grounds trafficking/modern slavery cases and EU law matters of relative legal and/or procedural complexity.
- Advice related to a Notice of Intent (issued to an applicant for asylum by the Home Office when inadmissibility to the UK asylum procedures is being considered) on the basis that a person has indicated they want to claim asylum or otherwise seek leave to enter and remain arising from Articles 2 and 3 ECHR and Refugee Convention, is in scope under section 30 of LASPO. Advice on detention and bail is in scope under section 25 LASPO.
- Providers should be aware that since 25 October 2019, all non-asylum immigration and citizenship matters for separated children are also within the scope of legal aid, meaning an ECF application is not necessary in such matters. Care leavers over 18 years will however still need to make an application for ECF for out-of-scope matters.
- Where the Provider decides against assisting a client to make an ECF application, the client must be advised of that decision and of the possibility of making an application to the Legal Aid Agency themselves or with the assistance of others. Signposting to or a referral to an organisation helping with making ECF applications, should be

considered and recorded on the file. A database of organisations helping with ECF applications can be found on the website of Public Law Project¹.

- 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) a record made and retained on the file. The decision should be communicated to the client and general information on the CLR level of help provided, including on its limits.
- Where the Provider decides that a client is ineligible for CLR, or has ceased to be eligible for CLR, the client must be advised of the right to a review by the LAA 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/s for the Provider's decision. A copy of the completed CW4 form must also be retained 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. Files must show that clients were offered an opportunity to provide instructions on negative decisions. It is not appropriate to withdraw legal aid on merits grounds on an issue upon which the client could give instructions, without taking instructions on those issues.
- When an appeal proceeds to the Upper Tribunal, Providers must be competent to advise on the process and criteria for applying for Legal Representation funding certificates. If the Provider does not offer this level of work, files must demonstrate that the Provider has in place referral arrangements and that these are functioning.

b-Does the file demonstrate that the client received all required advice on bail matters?

- Files must demonstrate that in accordance with paragraphs 8.42-8.46 of the Immigration Specification 2024 the Provider advised detained clients in relation to bail, and renewed the advice as appropriate, such as when their case came to an appeal or due to the passage of time.
- Even where the client's substantive appeal lacks merit and therefore would not warrant the making of a decision that the client qualified for CLR, files must demonstrate that the client received bail advice and the case may still warrant the making of a decision that the client qualifies for CLR for a bail application and CLR can be granted for the sole purpose of making a bail application.

c-Does the file demonstrate that the client was advised on Legal Representation for judicial review proceedings?

¹ <https://publiclawproject.org.uk/current-projects-and-activities/legal-aid/exceptional-funding-project/database-of-organisations-supporting-ecf-applications/>

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

D. Issues commonly identified on peer review



Overview - Peer reviews often highlight recurring themes that can serve as useful learning points for all practitioners. Reflecting on these can support casework quality and that it remains client-focused, well-prepared, and ethically robust.

1. Balancing standard materials with tailored advice:

The stronger files are those where templates have been adapted thoughtfully to reflect the client's personal history, instructions, and circumstances. They should record the advice given, any assessment of merits, and the next agreed steps with clear timeframes. This personalisation is what shows real understanding of the client's case.

2. Case progression and active case management:

A common feature of weaker files is a lack of evidence of case planning or ongoing strategic review. Each case should appear as an evolving project requiring periodic reflection, review of progress, and adjustment of the plan as new developments arise. Recording those decisions and reviews ensures that anyone looking at the file can follow the reasoning and understand the approach being taken.

3. Supporting clients in case building:

Some clients are understandably unsure of what evidence they can or should provide. It's not enough to hand over a generic list — the process works best

when the Provider and client work together to identify what might realistically be obtained and how. This partnership approach helps build trust and ensures that clients aren't left feeling responsible for tasks they may not have the means or confidence to carry out alone.

4. Engaging critically with the client's case and documents:

Effective representation requires curiosity and critical engagement. Providers who ask follow-up questions, probe gently into inconsistencies, and consider how a claim may be viewed by a decision maker tend to produce stronger and more credible cases. Short or superficial statements, or documents that don't quite align with the client's account, can raise doubts that might have been avoided through deeper exploration. If documents are provided that seem inconsistent or questionable — for example, an arrest warrant with unusual features — it's important to take clear instructions and record them. The client may have a reasonable explanation and exploring it together helps ensure that the representation remains transparent and well-founded. Equally, where a client struggles to give a coherent account, the Provider's role includes identifying why this might be — whether due to trauma, misunderstanding, or another factor — and advising the client realistically about how this may affect their case.

5. Preparing fresh claims:

Fresh asylum or human rights submissions should build upon — not ignore — what has come before. A common issue arises when further submissions are made without engaging with the findings or credibility assessments in earlier claims. Taking time to review and understand previous determinations permits the Provider to identify what needs to be addressed or reframed. Even when acting strictly on instructions, this kind of critical analysis helps clients put forward the strongest possible case.

6. Representing minors effectively:

Working with children and young people brings additional responsibilities. Files should show awareness of the need for an Appropriate Adult during interviews, as well as steps being taken when age is disputed. Where necessary, referring the client to a specialist provider may be the most appropriate course of action.

7. Recognising trafficking indicators:

Providers should remain alert to signs of trafficking or exploitation and understand the procedures to follow when such concerns arise — including referral to the Single Competent Authority. Demonstrating awareness and appropriate action on these issues is an important part of good professional practice.

8. Working with detained clients:

Detention cases often raise complex and overlapping issues. Files should show that the Provider has considered the client's underlying immigration case alongside any bail or detention matters. This might include advising on removal directions, identifying whether a Rule 35 report or application under the *Adults at Risk* policy is appropriate, and preparing bundles where

required. Recognising indicators of torture or vulnerability, and ensuring appropriate disclosure, can make a significant difference to the outcome and to the client's welfare.

E. Useful resources

- Independent Peer Review Process Document November 2021²: The Ratings indicators provide an outline of the standards against which work is reviewed across all areas of peer reviewed work.
- Law Society Immigration and Asylum Accreditation Scheme Immigration and Asylum Accreditation – Candidates' Guidance (Assessment Guidelines)³: All legal aid immigration providers are required to be accredited under this scheme. As such, Providers are expected to demonstrate knowledge to the level expected under the scheme. See in particular the Senior Caseworker, and Supervising Caseworker exam syllabus standards (at 10.3 and 10.4).
- Immigration Advice Authority's Code of standards⁴: For those regulated by the IAA, see this guidance for the professional obligations required.
- Law Society's News and guidance for immigration practitioners⁵: This resource provides useful updates and practice notes on key issues in immigration and asylum work.
- Solicitors Regulation Authority Guidance and support⁶: Guidance to help immigration solicitors understand their professional obligations and how to comply with them.
- Immigration Law Practitioners' Association⁷: A subscription-only association, providing a wide range of updates and other support to immigration practitioners. Training events are sometimes available free-of-charge and can be paid for by non-members at a higher rate.

²

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

³ <https://www.lawsociety.org.uk/career-advice/individual-accreditations/immigration-and-asylum-law-accreditation/-/media/eef60748f5b24096a12655347dd0ec79.ashx>

⁴ <https://www.gov.uk/government/publications/oisc-code-of-standards-commissioners-rules-2012>

⁵ <https://www.lawsociety.org.uk/topics/immigration>

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

⁷ <https://ilpa.org.uk/>

- Electronic Information Network Best Practice Guide to Asylum and Human Rights Appeals⁸: As well as providing useful guidance on the preparation of appeals, this extremely useful resource (which is provided free of charge), is particularly useful in relation to the preparation of witness statements (at section 12).
- Free Movement⁹: While Providers will not be assessed with reference to the content of this resource, in an area of law as fast-changing as immigration and asylum, it is recommended that Providers stay up-to-date by subscribing to Free Movement. It is understood that most articles are available without a subscription for a limited period, and for longer with a subscription.
- ILPA Immigration Removal Centre Practical Guide¹⁰.

⁸ <https://www.ein.org.uk/bpg/contents>

⁹ <https://freemovement.org.uk/>

¹⁰ https://ilpa.org.uk/wp-content/uploads/2023/12/IRC-Practical-Guide-January-2024_.pdf