# NEW IMMIGRATION SPECIFICATION – FREQUENTLY ASKED QUESTIONS

**Update: 1 April 2004**

*These were incorporated into the existing list of FAQs by subject matter available on the LSC website. At the request of suppliers, further updates will be issued separately.*

## PREVIOUS LEGAL ADVICE

**If I take over the conduct of a case from another contracted supplier then do I also take over the previous supplier's cost limit on the case even where this exceeds the Legal Help Cost Limit? This may occur where an extension has been granted to the Legal Help Cost Limit or the previous supplier has devolved powers.**

Where a supplier has been granted an extension from the LSC, this will continue to apply to the client's case despite a change of supplier. The new supplier will therefore inherit the extension and can continue work up to the extended cost limit. This will also apply to extensions granted by the LSC before 1 April even where the costs will exceed the previous Upper Financial Limit of £2,000. In these cases, you may continue work up to the level of the existing extension before seeking any further extension from the LSC.

Where a supplier has higher cost limits due to their devolved powers, this will NOT apply to a client's case when there is a change of supplier. You should apply to the LSC for an extension for any further work beyond your Legal Help Cost Limit.

If it is not clear whether the previous supplier's cost limit is due to an extension or devolved powers, then you should apply to the LSC for an extension to cover any further work you think is reasonable and necessary.

**If a new client is detained, will the outward travel still be claimable if on taking full instructions from the client I then discover that previous Legal Help has been provided and the relevant cost limit exhausted?**

Before travelling to see a new client, you should make reasonable attempts to establish whether any previous legal advice has been provided and contact the previous supplier in accordance with the provisions in Rule 12.2.2. However, if the work is urgent (ie to protect the client against removal or to comply with a time limit), then you may carry out the urgent work under the exception (See Rule (12.2.2 (12)).

## NASS

**May I carry out NASS work under a different category, for example, Welfare Benefits or Public Law?**

- NASS Rule 12.2.7

If your firm has a contract in the immigration category, then any NASS work beyond initial advice and assistance (30 minutes) should be opened as a separate non-asylum immigration matter even if you have contracts in other categories of law. However, there will be an exception to the accreditation requirements to allow non-immigration specialists to carry out NASS work if they have the relevant expertise.

## LEGAL HELP

**What work do you expect to be completed within the initial asylum limit under Legal Help?**

- Time Standards Rule 12.8 (1)

Five hours should often be sufficient to provide initial advice and assistance to a client regarding an asylum matter who is not detained. This should cover the preliminary interview, perusal of documents, assessment of status and advice to the client on the relevant procedures and availability of funding. This limit should also be sufficient to assist the client in completing a SEF or preparing a written statement in support of an application.

At this stage you should be in a position to assess whether the case has merit and whether further work can be justified in accordance with the criteria set out in Rule 12.2.12. Legal Help should cease where the case has a poor prospect of success and you should advise your client of the position, including the outcome of a Home Office decision, as part of the initial advice and assistance.

**Will additional time be allowed under Legal Help to advise on issues of bail/ temporary admission?**

- Legal Help Cost Limit Rule 12.3.1

Additional costs/ time is allowed under Legal Help where the client is in detention and this could include time for advising on the availability of bail and temporary admission. Advice regarding the bail hearing itself should be conducted under CLR.

**What costs limits apply to a case once the client has left detention or the fast track process?**

- Legal Help Cost Limit Rule 12.3.1

You may continue work under Legal Help for a client who is no longer in detention or subject to the fast track process up to the higher limits in Rule 12.3.1.

## ATTENDANCE AT INTERVIEWS

**In the case of a minor where age or mental incapacity is disputed by the Home Office, will the LSC pay for a representative to attend an interview?**

- Attendance at interviews Rule 12.3.2 (2)

You may apply for an extension to the Legal Help Cost Limit to cover the costs for time spent in accompanying a client who is a minor or who claims on reasonable grounds to be a minor, or where the client suffers or appears to suffer from a mental incapacity. This will cover situations where there is a dispute and it will be for the supplier to assess whether the client's claims are based on reasonable grounds.

We will not require expert reports to confirm minor status or mental incapacity on applications for extensions to cover an interview and we will grant applications on the basis of the information provided by the supplier.

Where a supplier obtains extensions under this Rule on a frequent or disproportionate basis, we may investigate the matter and costs can be reduced or disallowed on audit in the normal way.

## DISBURSEMENTS

**Will the LSC pay for the costs of translating the SEF?**

- Maximum Disbursement Limit under Legal Help Rule 12.3.3

The new Immigration Specification – Guidance at paragraph 3(g) gives further examples of when it may be appropriate to request an extension to cover the costs of translating a document. In general it will not be reasonable to incur the costs of translating a SEF. Costs will be allowed to enable the representative and the client to complete the SEF with the assistance of an interpreter.

**May I incur the cost of an expert report where the proposed expert refuses to provide a breakdown of how they have calculated their costs?**

Incurring the disbursement must be reasonable and the amount of the disbursement must be reasonable (Rule 2.13). The requirement for a breakdown of the expert's fees will depend on the level of costs. For example, if the fees are over £500.00 it will normally be reasonable to expect an expert to justify more fully this level of costs for publicly-funded work.

For further information on expert evidence, see the Immigration Specification – Guidance at paragraph 4.

## CLR

**Can I complete and submit the Notice of Appeal under Legal Help to protect my client's position regardless of the CLR merits test?**

- CLR and Legal Help Rule 12.5.4 (11)

The criteria for CLR should be applied as soon as practicable after the right to appeal has arisen and before the appeal is filed provided sufficient information is available to undertake the merits test at that stage and it is practicable for the client to sign the form within the time limits allowed. An example of where it may not be practicable would be where a client is in detention and the supplier is unable to secure an appointment before the time limit to appeal has expired. In those circumstances urgent work could be carried out under Legal Help until the CLR form could be completed and the merits assessed. This will be monitored on audit and may lead to the relevant work being disallowed on assessment. Persistent failure to apply the criteria for CLR before the appeal is filed may lead to a contract sanction.

Please note this is a pre-existing contract requirement that has not changed. The LSC will not generally fund appeals work where there has been no consideration of the merits of the appeal.

**If I refuse or withdraw CLR, what work can I do under Legal Help to advise the client?**

- CLR and Legal Help Rule 12.5.4 (14 and15)

If the criteria for Controlled Legal Representation are not satisfied (i.e. if CLR would not be granted because the client would fail either the means or merits test) then suppliers should not continue to provide Legal Help to the client in connection with that appeal except to inform the client of their situation and advise on rights of appeal. This matches the approach taken in relation to other forms of Legal Representation (see Rule 3.9).

Carrying on the case under Legal Help defeats the purpose of the means and merits tests. If an application for review is filed at the London Regional Office against the decision to refuse CLR then only limited Legal Help may be provided in order to undertake urgent work pending a decision on the review. Legal Help may also continue to be available to enable you to make representations on the client's behalf that are not in connection with this appeal.

**Can urgent work in relation to an appeal be carried out under Legal Help?**

See answers above.

**What work do you expect to be completed within the suggested £244.80 or 4 hours to prepare the appeal?**

- Upper Cost Limit – Adjudicator Rule 12.4.1 (3)

- Time Standards Rule 12.8 (5)

This provision reflects the previous guidance on time standards in immigration and has not changed. One hour is considered reasonable to prepare and lodge a Notice of Appeal with Grounds (See Rule 12.8 (4)). A further 4 to 6 hours is normally reasonable to prepare documentation for the appeal hearing, and any work beyond 6 hours should be justified and recorded on the file. Further preparation costs may be justified, for example, in a complex case or in an asylum appeal which includes a bail application. This does not include Counsel's fees, disbursements or the costs in attending the appeal hearing.

**In light of Rule relating to the use of local Counsel can the LSC provide a list of counsel outside London that undertake immigration and asylum work?**

A list of barristers who participated in the Bar Advocacy Project was sent to all suppliers in 2003. A list of those barristers who successfully undertook the latest training will also appear in Focus and details will be sent to suppliers.

Details of barristers who specialise in asylum and immigration law can also be found in the Bar Directory on the Bar Council website at www.barcouncil.org.uk

**Does the Rule relating to the use of local Counsel prevent me from using an in-house advocate if they have to travel to a distant hearing centre?**

- Upper Cost Limit – Adjudicator Rule 12.4.1 (8)

If the in-house advocate has had conduct of the case and/or is familiar with the case, then it may be in the best interests of the client to have the in-house advocate represent at the appeal. It may also be more cost effective and prevent unnecessary duplication of work, particularly with regard to preparation of the appeal. However, if the in-house advocate has had no involvement in the case then you should where practicable instruct a more local Counsel unless the in-house advocate does not charge for the travel time or costs in representing at the appeal.

Where you do not use a local Counsel, you should justify the decision and keep a written record of the reasons on file.

**If I provide CLR to a client in relation to a bail application only, must I apply for CLR again (and complete a new CW2 Imm) if the client subsequently wishes to instruct me in respect of the asylum appeal?**

If you do not have devolved powers to grant CLR, then you should complete a new CW2 Imm to submit to the LSC in order to apply the CLR merits test for the asylum appeal. You should use the same Unique Client Number and use

any remaining balance of the Adjudicator Cost Limit (£1200.00) before seeking an extension.

## GENERAL

**If my client is refused CLR and/or an extension of Legal Help/CLR, may I accept payment directly from my client for further work?**

- Payment other than though the Contract Rule 1.9

In a case where a grant of CLR or a request for an extension of Legal Help/CLR is refused then a supplier must undertake the following steps before agreeing to accept payment for any work undertaken.

A supplier must

a) notify the client of the reasons for refusal to grant CLR or an extension; and
b) notify them of any right of appeal against this decision and any further services which may be available under the Community Legal Service whether from you or another supplier.

**Where I submit an application for an extension that the LSC grants in part, may I still claim 30 minutes for completing the application form?**

- Applying to extend the Cost Limits Rule 12.2.12 (2)

Yes. You can claim for a reasonable period (up to 30 minutes) for completing the form even if the application is only granted in part. However you cannot claim the costs twice for completing the same form or for applying for the same items of work (ie because it was not properly completed on the first occasion).

**When I do I claim the 30 minutes for completing the application form?**

On an application for an extension to a cost limit, the 30 minutes should be included as further work which will be funded if the application is successful.

On an application for CLR, the 30 minutes should be included under Legal Help (and not at CLR rates) because CLR has not yet been granted. The 30 minutes can be added to the Legal Help claim even if the application is unsuccessful. However you cannot claim the costs twice for completing the same form or for applying for the same grant of CLR (ie because it was not properly completed on the first occasion).

**How do I submit an urgent application for an extension or CLR to the London Regional Office and how will I be notified of the decision?**

If your application is genuinely urgent you should telephone the London Regional Office on 020 7759 1591 and speak to a case-worker to whom a

faxed application can be sent. The named case-worker will then contact you with the decision.

**Will the keeping of electronic bundles of information comply with Rule 12.2.11 as to the keeping of relevant country of origin information?**

Yes providing that you can show evidence of membership of EIN and HJT and that you can, if requested, demonstrate how to compile bundles using these systems.