

*Community  
Legal Service*



# **The Specialist Quality Mark Standard**

## **Consultation Pack**

December 2004 Amendment

*Criminal  
Defence Service*



legal services  
COMMISSION

## **Introduction**

Following the introduction of the Immigration & Asylum Accreditation Scheme please find following the proposed changes we intend to make to the Specialist Quality Mark Standard from April 2005.

We also wish to clarify the requirements relating to the provision of cost information in criminal cases heard in the Crown Court where there is potential for a Recovery of Defence Costs Order (RDCO) to apply.

To avoid confusion we have produced a single consultation pack. The consultation period will close on the 3<sup>rd</sup> of February 2004, which enables the Legal Services Commission to give the appropriate notice for introduction from the 1<sup>st</sup> of April 2005.

In accordance with our obligations under the Freedom of Information Act 2000, your name and response to this consultation paper may be published. If you would like your name or response to be kept confidential, please indicate why when you submit a response, so that we can justify partial disclosure if challenged under the Freedom of Information Act. In any event, confidential responses could still be disclosed in a summarised or anonymised format.

All responses should be sent to:

**Maxine Blackett**  
**Supplier Development Group**  
**Legal Services Commission**  
**85 Gray's Inn Road**  
**London**  
**WC1X 8TX**

**DX: 450 London**

[maxine.blackett@legalservices.gov.uk](mailto:maxine.blackett@legalservices.gov.uk)



Supplier Development Group  
85 Gray's Inn Road  
LONDON  
WC1X 8TX  
Tel: 020 7759 0000  
[www.legalservices.gov.uk](http://www.legalservices.gov.uk)

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## D3: Supervisors

### Requirements

#### D3.2 Supervisors' legal competence

**D3.2** Each supervisor meets the *relevant* legal competence standard, as follows:

- a) The category-specific supervisor standard set out in Annex A.

*Or, but only after agreement with the Legal Services Commission (LSC), either:*

- b) The LSC generic standard for Specialist supervisors.

*Or*

- c) Limited caseload in a specified range, plus a plan to meet the standard at D3.2(b) within three years.

## Definitions:

*The definitions below qualify the requirement and are mandatory where the word “must” appears.*

*Where the sentence or paragraph begins with the word “Note”, it contains information to help you (see also the separate Guidance document) and is not mandatory.*

### D3.2 Supervisors’ legal competence standard

#### (a) Category-specific standards in Annex A

- Where category-specific standards are given in Annex A, these **must** be met in full (subject to the note below); the criteria in D3.2 (b) and D3.2 (c) are not alternative unless you are advised by the auditor (with authority from the LSC) that this is specifically so in your case.
- Note that exemptions from meeting the standard can be made in extremely rare cases, and are entirely at the discretion of the LSC (see Guidance for details).

#### For Panel Members/Immigration & Asylum Accredited Caseworkers

- Documentation showing current panel membership / Immigration & Asylum accreditation at Level 2 or Level 3 **must** be supplied with the Quality Mark application. Panel / Immigration & Asylum Accreditation Scheme suspensions and terminations **must** be notified to the LSC within five working days (including temporary suspensions on moving organisation).
- In addition, the supervisor **must** be able to confirm that case involvement (as defined in Annex A for each category of law) has been consistently maintained at the minimum level specified (usually 350 hours per year). You **must** provide documentation detailing compliance on application and thereafter **must** notify the auditor if at any point the supervisor no longer meets this requirement. Note that the auditor can ask for documentation to be provided (i.e. by completion of the supervisor standard self-declaration form (usually used for applications) or by maintenance of a portfolio of cases) wherever they have concerns about compliance with this requirement.

#### Where Annex A requires a portfolio

- A portfolio **must** be supplied for each supervisor, and cases to which you have referred (as evidence of meeting the requirements) **must** be available at the time of the audit (unless they are retained by another organisation, when summary notes about each case will be required). In addition to the portfolio, case involvement (in the relevant category of law) by the supervisor **must** consistently be maintained at the minimum level specified in Annex A (usually 350 hours per year), and, on application, the supervisor **must** be able to demonstrate past case involvement at the same level for the last three years, if full-time, or the same total hours (usually 1050 hours) over five years, if part-time.

#### (b) LSC generic standard (for niche areas)

- Note that from April 2002 the LSC will have a standard setting out generic requirements for Specialist-level supervisors. This will be available strictly at the discretion of the LSC, applicable only to particular niche areas within existing specialist categories (before a new category-specific standard (for the niche area) is developed), and in other exceptional circumstances (i.e. it will not act as an alternative to category-specific standards in Annex A).

#### (c) Limited caseload in a specified range (for emerging areas)

- Note that this standard is available strictly at the discretion of the LSC, and specifically to cater for the emergence of new areas of law (see Guidance for further information on caseload and range).
- Where a new category-specific standard (for the emerging area) is developed (for inclusion in Annex A), this **must** be met within one year of implementation. In its absence, a plan **must** be available, explaining what steps are being taken to meet the requirements in D3.2(b) within three years.

## D3: Supervisors

### Requirements:

#### D3.3 Supervisory skills

**D3.3** Each supervisor (including sole practitioners) meets *one* of the following supervisory skills standards: (unless there are category specific requirements which must be met instead).

- a) Assessed as working at Level 3 or higher (within the NVQ framework) in relevant elements of the national standards (see Guidance).

*Or*

- b) Training covering key supervisory skills (see Guidance) completed in the 12 months immediately preceding the Quality Mark application.

*Or*

- c) Able to demonstrate experience as an effective supervisor (covering supervision of *all* of the work being done in the department) of at least one full-time member of staff (or equivalent) for at least one year in the last five years.

Category Specific

- d) Immigration & Asylum supervisors working under an LSC General Civil Contract must supply evidence that they have passed the Supervisor Level Assessment of IAAS. IAAS is the Immigration & Asylum Accreditation Scheme developed by the LSC in conjunction with the Law Society.

**Definitions:**

*The definitions below qualify the requirement and are mandatory where the word “must” appears.*

*Where the sentence or paragraph begins with the word “Note”, it contains information to help you (see also the separate Guidance document) and is not mandatory.*

**D3.3**

**Supervisory skills**

- *Note* that supervisors may select which of the three routes D3.3 (a) (b) or (c) is most suitable for them except
- Where there is a category specific requirement then D3.3 (d) is the only route that supervisors operating in this category may select.
- *Note* for Immigration & Asylum Supervisors who have already had their supervision skills assessed as part of a recognised qualification, they may apply to the LSC for an exemption from the Immigration & Asylum supervisor assessment.
- *Note* for Immigration & Asylum Caseworkers who do not supervise others because they are the only person at their firm/organisation performing publicly funded Immigration work they will be exempt from the assessment of their supervisor skills. Should they be required to supervise others at a later stage they must register for the supervisor skills assessment.

## **D5: Individual Competence**

### **Requirements:**

#### **D5.2 Legal qualification or minimum hours**

**D5.2** All caseworkers have a professional legal qualification or conduct a minimum of 12 hours' casework per week (or equivalent).

From April 2005 caseworkers practicing in immigration/asylum under an LSC General Civil Contract must be accredited to practice under the Immigration and Asylum Accreditation Scheme (IAAS).

IAAS is the Immigration & Asylum Accreditation Scheme developed by the LSC in conjunction with the Law Society.

## Definitions:

*The definitions below qualify the requirement and are mandatory where the word “must” appears*

Where the sentence or paragraph begins with the word “Note”, it contains information to help you (see also the separate Guidance document) and is not mandatory.

### D5.2

#### Legal qualification or minimum hours

- *Note* that caseworkers falling into one of the individual categories from 1-16, listed in Annex B, qualify as having a ‘professional legal qualification’.
- *Note* where there are panels or accreditation schemes in a category of law e.g. Law society panel or Immigration and Asylum Accreditation scheme, caseworkers are encouraged to become members of these schemes, as they provide clear evidence of the competence of the individual.
- *Note* that there is no need to document anything further as long as it is clear from existing records that each caseworker either falls within one of the individual categories from 1-16, in Annex B, or for non-immigration/asylum caseworkers that they conduct at least 12 hours’ (or equivalent) casework per week (e.g. from your staff summary at A1.1, an employment contract or an individual’s training record).
- Qualified solicitors or barristers working as caseworkers, but no longer holding themselves out as solicitors or barristers, can be treated as having a professional legal qualification for a maximum of five years after they last practised. Following this they **must** demonstrate individual competence by conducting a minimum of 12 hours’ casework per week (or equivalent) instead.
- *Note* that for the purpose of meeting the minimum number of hours, ‘casework’ can include any case involvement as defined in the relevant supervisor standard and Self-Declaration Form (at Annex A), as well as time being trained or supervised, but not time spent in ordinary (non-legal) team meetings.
- All qualifying casework **must** be subject to supervision that meets the requirements at D4.
- Where professional legal qualification is only by virtue of panel membership or other periodically assessed accreditation (including for duty solicitors) the individual **must** be able to demonstrate that they continue to meet the relevant requirement in the intervening period if asked to do so.
- Immigration & Asylum Accredited Caseworkers (at all levels)
- Immigration & Asylum caseworkers **must** provide a current accreditation certificate issued by the LSC, to be able to carry out work under an LSC General Civil Contract. Certificates will expire 3 years after the issue date. Certificates must be supplied to confirm that the caseworker is able to undertake work in this area of law.
- Immigration & Asylum Probationers
- Immigration & Asylum Probationers (i.e. a caseworker who has registered with the LSC for the Immigration and Asylum Accreditation Scheme but who has not completed the accreditation process, excluding suspended or barred representatives) **must** register with the Law Society’s assessment organisation and have attained accredited status within 12 months of this date or they will not be allowed to perform any publicly funded work in immigration under an LSC General Civil Contract until they have achieved accreditation. Probationers must provide evidence that they have registered with the LSC **and** within 3 months from this date have passed the Multiple Choice Test. Probationers who have not passed this test within 3 months **must** not undertake **any** publicly funded work until they have passed the test. (Please refer to the accreditation scheme Competence Standards and Work Restrictions document).

## F1: Individual Cases – At the Outset

### Requirements:

#### **F1.2 Recording and agreeing further information and confirmation in writing**

**F1.2** Work practices show that wherever a file is opened, unless exceptional circumstances apply, the caseworker confirms the above records (F1.1(a)–(d)) in writing to the client at the earliest opportunity, together with the following:

- a) The name of the individual with whom, and how, the client should raise any problem concerning the service provided.
- b) Key dates in the matter.
- c) Advance costs information, including, as applicable: likely overall costs, the organisation's charges/fees, cost-benefit and risk, and any potential liability (if legally aided, in contentious (and potentially contentious) matters and for any third party costs in non-contentious matters).
- d) Further costs information (applicable where F1.2 (c) applies), including the arrangements for updating costs information (as required in F2), and any reasonably foreseeable payments that the client may have to make to the organisation or a third party.

## Definitions:

*The definitions below qualify the requirement and are mandatory where the word “must” appears.*

Where the sentence or paragraph begins with the word “Note”, it contains information to help you (see also the separate Guidance document) and is not mandatory.

### F1.2 Recording and agreeing further information and confirmation in writing

- *Note* that, for this purpose, a file is “opened” where advice is given (or expected to be given) or work is undertaken (or is planned to be undertaken) on the client’s behalf beyond one-off advice. This requirement therefore excludes all instances of one-off only advice following an initial interview where instructions were taken, or following an attendance at a police station or in court (including police station advice by telephone). The definition has nothing to do with whether a file (or a file record) is physically created or not.
- Where it is not possible to provide the client with confirmation of all the information at the outset (i.e. immediately following initial instructions), you **must** provide what information is available and justify (to the client and to the satisfaction of the auditor) the interval for providing the remainder.
- *Note* that “exceptional circumstances” (in which some or all of the information need not be confirmed to the client in writing) are those where the client expressly asks not to be informed in writing, where it would not be in their interest (e.g. there is evidence that it would be prejudicial to the client’s case or would endanger their well-being) or where it would be inappropriate (e.g. in every case for a regular client for whom repetitive work is done and where the relevant information (which remains current) has already been given). All exceptions **must** be considered on a case-by-case basis (i.e. you cannot apply the exception to all cases of a certain type).
- The reason for considering that exceptional circumstances apply **must** be justified on the file, and a record of the required information **must** still be made, or be available (though it need not be confirmed in writing).
- *Note* that F1.2(a) and G1.1 (complaints) require the same information; if you meet the requirement here you need not provide further evidence of compliance at G1.1.
- At F1.2 (c) - You **must** provide a likely overall costs estimate at the outset, other than:
  - o Where the client has already been advised that you will not be making a charge in this case.
  - o In criminal cases (although for cases that progress to the Crown Court, see F2.3(d) regarding Recovery of Defence Costs Orders – clients must be informed of the effect and potential liability of the RDCO at the outset).
  - o In civil cases where there can be no potential liability for costs (i.e. certain legal aid funded, cases including legal help (other than where the statutory charge applies), non-means/non-merits tested cases (public law/childcare), Child Abduction and Custody Act 1985 cases, and registration of certain foreign orders and judgement proceedings).
- *Note* that the definition above means that it will not be usual for non-solicitor NfP organisations to have to meet either this requirement (F1.2 (c)) or that at F2.3.

*Continued over*

- At F1.2 (c) – Where the requirement applies (see exceptions above), likely overall costs **must** include any disbursements envisaged and VAT; they **must** be appropriate to the individual case (including agreeing a fixed fee, giving a maximum cost or a forecast within a range of costs, but not giving a blanket estimate for the type of case). Where you cannot provide an accurate assessment of overall costs at the outset, you **must** explain this to the client, and give them an idea of your best estimate of overall costs, as well as giving them an accurate assessment of costs to the next stage. Note that costs discussed here relate only to those likely to be incurred as a result of services provided by or through your organisation (i.e. you are not expected to cover the likely costs of another organisation, e.g. if the case were to be referred).
- Charges (at F1.2 (c) – **From October 2002**, other than in legal aid cases or cases where the overall costs are fixed, you **must** explain how the client’s costs will be calculated. If hourly rates apply this **must** be confirmed, together with the rate.
- At F1.2 (c) – In civil legal aid cases, where the requirements apply (see exceptions above), you **must** explain to the legally aided client their potential liability for their own costs and those of any other party, including:
  - o The effect of the statutory charge (if it might apply), why it might apply and the likely amount.
  - o The client’s obligation to pay any contribution assessed and the consequences of not doing so.
  - o The effect of revocation of a legal aid certificate.
  - o The fact that the client may still be ordered by the court to contribute to the opponent’s costs if the case is lost (even though their own costs are covered by legal aid).
  - o The fact that, even if the client wins, the opponent may not be ordered to pay or be capable of paying the full amount of the client’s costs.
- At F1.2 (c) – In civil cases for privately paying clients, where the requirements apply (see exceptions above), you **must** explain to the client their potential liability for their own costs and for those of any other party, including:
  - o The fact that the client will be responsible for paying the bill in full, regardless of any order for costs made against the opponent.
  - o The probability that the client will have to pay the opponent’s costs as well as their own if the case is lost.
  - o The fact that, even if the client wins, the opponent may not be ordered to pay or be capable of paying the full amount of the client’s costs.
  - o The fact that, if the opponent is legally aided, the client may not recover costs, even if they win.
- At F1.2 (c) – In civil cases where there are potential liabilities for third party costs in non-contentious matters you **must** explain to the client any liability they may have for the payment of the costs of a third party, and, where appropriate, you should obtain a firm figure or agree a cap to a third party’s costs.
- *Note* that it is not a requirement (at F1.2 (c) to provide advance costs information to legally aided criminal clients, save for when it appears likely that an RDCO (Recovery of Defence Costs Order) will be invoked. (see F2.3(d)).

## F2: Individual Cases – Progress of the Case

Requirements:

### F2.3

### Updating costs information

**F2.3** Clients are informed, in writing (unless exceptional circumstances apply), of costs as the case progresses, including:

- a) Actual cost to date and disbursements incurred (including VAT). This information should be provided at regular intervals (and not less than every six months), and, in appropriate cases, interim bills should be delivered at agreed intervals.
- b) Any changed circumstances that will, or that are likely to, affect the overall amount of the costs, the degree of risk involved, or the cost-benefit to the client of continuing the case.
- c) The overall costs estimate and any upper limit that has been agreed with the client (or confirmation that the previous estimate/limit remains appropriate), at regular intervals (and not less than every six months) or as soon as it seems likely that the estimate/limit may be exceeded.
- d) Any potential cost liability, including being alerted to or reminded of this, and of its effect. In criminal cases this includes providing overall cost estimates at the earliest opportunity, once it appears likely that an RDCO will be invoked (if the client has financial means).

**Definitions:**

*The definitions below qualify the requirement and are mandatory where the word “must” appears.*

*Where the sentence or paragraph begins with the word “Note”, it contains information to help you (see also the separate Guidance document) and is not mandatory.*

**F2.3**

**Updating costs information**

- *Note* that the definition of “exceptional circumstances” (given at F1.2 above) applies wherever you decide not to confirm the required information to the client in writing.
- *Note* that you need not update costs information for cases in which you are not required to provide a likely overall estimate of costs at the outset (see definition for F1.2 (c)).
- At F2.3(d) – In criminal cases heard in the Crown Court, you **must** explain to the client the potential for a Recovery of Defence Costs Order (RDCO) to apply, as soon as it appears likely that such an order will be invoked (see Guidance). At this point you **must** also provide an estimate of likely overall defence costs (as at F1.2 (c)) and **must** subsequently meet this requirement to update all costs information periodically.

# Annex A – Category-specific Requirements

## Part I: Summary of Category-specific Requirements

### 8.G Immigration

#### D3.2a Legal Competence Standard for Supervisors

See SUPP(IMM) self-declaration form (that follows) for details of the requirements that **must** be met by all immigration supervisors, including those relating to OISC, and the requirement that they are accredited at level 2 or 3 as part of the LSC's Accreditation Scheme (IAAS). *Members of the Law Society's Immigration panel have been passported onto the accreditation scheme (route two). This route is only available until the expiry date of their Law Society Immigration Panel membership.*

*Note:* The provision of a portfolio of cases (route three) is only available to organisations which are not carrying out work under an LSC General Civil Contract.

There is also a minimum case involvement for immigration supervisors of 350 hours (as qualified on the form) in each of the last three years (or a total of 1050 hours over the last five years if the supervisor worked part-time). The standard requires continuous case involvement to at least this level for the entire duration that the Quality Mark is awarded.

## Part II: Supervisor Standards and Self-declaration Forms



## SUPERVISOR STANDARD AND SELF DECLARATION FORM

- Use for **Immigration and Asylum**
- You should photocopy this page as required and submit a completed copy (one form for each supervisor) with your Specialist Quality Mark application

Details of organisation/supervisor applying		
Organisation's name: ..... Organisation's supplier number: ..... Supervisor's name: ..... Offices supervised: ..... ..... .....		
i)	<b>OISC Requirements</b>	
	The proposed supervisor <b>must</b> meet, or be declared exempt from, all the OISC requirements. Evidence <b>must</b> be provided	<b>Tick for compliance</b> <input type="checkbox"/>
D3.2a Legal Competence Standard for Supervisors		
ii)	Accreditation requirement (Route One)	The only route available to holders of an LSC General Civil Contract
a)	<b>Level 2 or 3 of the Immigration &amp; Asylum Accreditation Scheme (IAAS).</b>	<b>Date of accreditation</b> _____ <u>Level of accreditation (level 2 or level 3)</u> _____  <input type="checkbox"/> <b>Provide copy certificate</b>
iii)	Passported (Route Two)	The only route available to holders of an LSC General Civil Contract
	<b>Passported onto Level 2 of the Immigration &amp; Asylum Accreditation Scheme (as previously member of the Law Society's Immigration Panel or assessed by the Law Society as meeting the Immigration Panel) Route Two is only available until the expiry date of membership of the Law Society Immigration Panel.</b>	<b>Date of admittance</b> _____ Due date of accreditation (Prior to expiry of panel admittance). _____ Provide a copy certificate/confirmation of positive assessment

iii)	<b>Portfolio (Route Three)</b>		Only available to work not under an LSC General Civil Contract		
a)	<b>Deportation</b> (administrative action/court recommendations) – 2 case files		1. 2.		
b)	<b>Refusals</b> – Appealable – 1 case file				
c)	<b>Refusals</b> – Non Appealable – 1 case file				
d)	<b>Outside rules</b> – 3 case files		1. 2. 3.		
e)	<b>Marriage (to enter or to remain)</b> – 2 case files		1. 2.		
	<b>Skills/Procedure/Knowledge – examples from the last 12 months</b>				
f)	Referral to further progress a case or representation - 2 examples		1. 2.		
g)	The ability to recognise the possibility of judicial review proceedings, (inc. the purpose and the client’s role (and, for NfP organisations, if the decision is taken to progress the case, the need for referral to a solicitor)) – 1 example				
v)	<b>Case Involvement (at 350 hours in the previous 12 months)</b>	<b>Minimum/Maximum hours allowed</b>	<b>Hours completed in the previous 12 months</b>	<b>Hours completed in the previous 12 to 24 months</b>	<b>Hours completed in the previous 24 to 36 months</b>
a)	Personal casework Direct (documented) supervision	Total minimum of 235 hours (of which personal casework cannot make up less than 115 hours).			
b)	File Review (including face-to-face)	Maximum 60 hours (i.e. approx. 50% of 115 hours)			
c)	External training delivery (CPD-accredited)	Maximum 115 hours			
d)	Documented research and the production of publications	Maximum 115 hours			
e)	Other supervision	Maximum 115 hours			
<b>Full time</b>			<b>Part time</b> (If part time, please provide evidence of hours completed in the previous 36-60 months on a separate sheet).		

	Other Requirements (as detailed in the standard)	Details
D3.4	<p><b>Legal Training</b></p> <p>Please provide information to show how you met the legal training requirement for supervisors (at D3.4) in the last 12 months.</p>	<p style="text-align: center;">Title</p> <hr style="width: 30%; margin: auto;"/>
D4.4	<p><b>Subscription to at least 1 nationally published specialist journal</b></p>	
D4.5	<p><b>Updating Legal Information</b></p> <p>Please summarise how you become aware of changes in legislation and case law (as required at D4.5). If you rely on subscription to a specialist journal you should provide the title(s).</p>	
<b>Declaration</b>		
<p><b>I declare that the information provided is accurate to the best of my knowledge.</b></p> <p><b>Signed:</b> .....</p> <p>Date: ..... Signed and dated by the supervisor named above</p>		

## **Annex B – Caseworker and Case Classifications**

1. The following classifications are provided to assist you in meeting requirement A1.1 (regarding identifying caseworkers' area of expertise and their legal/professional qualification in your business plan) and requirement D5.2 (regarding demonstrating individual competence for caseworkers by reference to their legal qualification or minimum hours worked). You may also want to make reference to casework classifications to assist with file lists (requirement E1.1) and file reviews (requirement E2.1(b)).
2. It is not, however, a requirement that you use either set of classifications, if you prefer to devise your own.

### **Individual Caseworker Classifications**

- (1) A solicitor supervisor (meeting all requirements at D3).
- (2) A non-solicitor supervisor (meeting all requirements at D3).
- (3) A solicitor panel member.
- (4) A non-solicitor panel member (or confirmed as meeting the panel standard).
- (5) A FILEX supervisor (i.e. a Fellow of the Institute of Legal Executives and an accredited representative, see E2.3).
- (6) A temporary supervisor (not meeting all requirements at D3).
- (7) An individual who meets requirements D3.2 (legal competence for a supervisor).
- (8) A duty solicitor in (i) a police station, (ii) a court or (iii) both.
- (9) An accredited police station representative.
- (10) A probationary police station representative.
- (11) A fellow of ILEX.
- (12) A member of ILEX.
- (13) Other solicitor staff.
- (14) A qualified barrister.
- (15) Other trainee solicitor staff.
- (16) Immigration & Asylum Accredited Caseworker.
- (17) Immigration & Asylum registered Probationer.
- (18) Other non-solicitor staff.
- (19) A volunteer member of staff.

3. Please note that the classifications listed above are not mutually exclusive.