

## Section 11 Immigration Category of Law specific provisions

*This is a draft of the proposed category specific provisions to have effect from October 2007 in the relation to work in the Immigration Categories of Law.*

### Overview of Contract Work in the Immigration Category of Law

The structure of Contract Work in the Immigration Category of Law has a number of significant variations from other Categories of Law to accommodate the particular requirements of this sort of work. It is important that providers familiarise themselves with the Immigration scheme and the detailed provisions set out in this Section 8, as well as the general provisions set out in Section 1 – 9 of the Specification.

#### *Levels of service*

Immigration work can be carried out at 3 different levels of service:

- Legal Help } both a form of Controlled Work which
- Controlled Legal Representation } fall within our Controlled Work budget
- Licensed Work Legal Representation

The table below indicates which sort of work may be carried out at each level, which is fully set out in the Funding Code:

		Exclusions
<b>Legal Help</b>	<p>Help and advice on matters within the Immigration Category of law excluding:</p> <p>Issuing and conducting proceedings in court/tribunal, including advocacy</p> <p>Provision of general information about the law and legal services</p>	All work subject to Exclusive Contracting.
<b>Controlled Legal Representation ('CLR')</b>	<p>Representation before the Asylum and Immigration Tribunal.</p> <p>Representation before the High Court, in relation to applications under s 103A of the Nationality, Immigration and Asylum Act 2002.</p>	"

<b>Licensed Work Legal Representation</b>	All Legal representation not covered by Controlled Legal Representation including applications to the Court of Appeal, judicial review applications.	“
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*Work covered by Exclusive Contracting*

It is important to note that certain sorts of Immigration work cannot be carried out by providers unless they have a specific contract from us entitling them to do it, even if it is otherwise within the terms of the Funding Code and this Contract

Work that is subject to Exclusive Contracting is currently as follows:

- 1 Advice and representation for those held in detention (this includes but is not limited to, those detained in Immigration Removal Centres and Police Stations)
- 2 All cases covered by the New Asylum Model Early Advice Pilot in Solihull
- 3 Information, advice and representation at the Asylum Screening Unit (“ASU”)
- 4 Advice and representation for unaccompanied asylum seeking Children (UASC)

**Part 1 Fee Levels and Payment Provisions**

**Controlled Work**

- 11.1 Immigration Controlled Work is remunerated under the General Civil Contract via Graduated Fees under the Graduated Fee Scheme (see Paragraphs 11.5 to 11.34 below):or via Hourly Rates
- 11.2. The following Controlled Work is paid at Hourly Rates:
  - (a) Work in relation to any asylum application made to the Home Office before 1 October 2007 (for avoidance of doubt this includes Home Office legacy cases; also any subsequent fresh applications where the original application was lodged prior to 1 October 2007)
  - (b) Work in relation to any non asylum matter opened by you before 1 October 2007.
  - (c) Advice in relation to the merits of lodging a review application under s.103A NIA 2002 where client has not received advice as part of the Graduated Fee Scheme i.e. the client was unrepresented
  - (d) Controlled Legal Representation in relation to applications under section 103A of the Nationality Immigration and Asylum Act 2002 (NIA 2002) for review by the High Court or reconsideration by the Asylum and Immigration Tribunal (AIT)
  - (e) Bail applications (where permitted)
  - (f) Advice in relation to form filling as permitted by Paragraph 11.103
  - (g) Applying for a certificate for Licensed Work
  - (h) Initial advice in relation to an asylum application prior to attendance at the Asylum Screening Unit (ASU) where you then cease to be instructed
  - (i) Exceptional Cases under the Graduated Fee Scheme
- 11.3 All other Immigration Controlled Work Matter Starts, not subject to exclusive contracting, are paid under the Graduated Fee Scheme.

11.4 Work subject to Exclusive Contracting under Paragraph 11.97 is remunerated under the separate arrangements.

The Table below sets out which remuneration arrangements applying to the different types of work:

	When payable	Limitations	Excluded
<b>Graduated Fees</b>	All Legal Help and Controlled Legal Representation not covered by Hourly Rates		Exclusive Contracting
<b>Hourly Rates</b>	<p><i>Controlled Work</i> Transitional cases <u>(including Home Office legacy cases)</u></p> <p>“Exceptional Cases” – cases covered by the Graduated Fee Scheme but which are exceptionally complex and costly</p> <p>CLR applications for review to the High Court under s.103A of the NIA 2002</p> <p>CLR work undertaken in connection with AIT reconsideration hearings under s.103A of the NIA 2002</p> <p>Bail applications and travel and waiting time in relation to work which is covered by Exclusive Contracting, but falls into the exceptions and may be undertaken by you.</p> <p>CLR work undertaken under s103 NIA Act 2002</p>	<p><i>Legal Help</i></p> <p>Legal Help Costs Limit (inc Counsel’s fees)</p> <p>Legal Help Disbursement Limit (exc Counsel’s fees)</p> <p>Prohibition on instructing Counsel <u>in relation to advocacy services</u></p> <p><i>Controlled Legal Representation</i></p> <p>Upper Cost Limit (inc Counsel’s fees)</p> <p>Application fee to High Court only reclaimable in specified circumstances</p> <p>Only payable if Costs Order granted by High Court at end of case</p>	Exclusive Contracting
	<i>Legal Representation</i> All Licensed Work Full Legal Representation		

<b>Advocacy services</b>	Oral representation at CMR hearing and substantive hearing. Representation at the Home Office interview (when in scope)		
<b>Immigration Panel 5% uplift</b>	Payable on all work undertaken by Advanced Caseworkers		

## Fee levels

### The Graduated Fee Scheme

#### General

- 11.5 The Graduated Fee Scheme(GFS) referred to at Paragraph 11.1 is defined at Paragraphs 11.6 to 11.34 together with the Payment Annex of the Specification.
- 11.6 A single graduated fee (GF) is payable at each Controlled Work stage (Legal Help and Controlled Legal Representation).
- 11.7 Additional payments may also be claimable in addition to the graduated fee (as set out at Paragraphs 11.18 to 11.29

### Graduated Fees - Immigration Asylum

#### *Stage 1: Legal Help – Initial Advice*

- 11.8 This stage is Legal Help and the fee covers, but is not limited to, the following services:
- 1 Initial advice, drafting of statement and representations.
  - 2 Consideration of Home Office decision, advice to client thereon and carrying out any necessary work.
  - 3 Applying the merit test for appeal.
  - 4 Grant of CLR or appeal to the Independent Funding Adjudicator (IFA) against refusal.
- 11.9 Stage 1 will end at the point that CLR is granted or refused (including any appeal to the IFA) or where the Matter otherwise ends earlier.

#### *Stage 2: CLR*

- 11.10 This stage is CLR and is split into two sub-stages. The fee for **either** Stage 2a **or** Stage 2b will be claimed depending on where the case concludes. You may not claim payments for both Stage 2a and Stage 2b in relation to the same matter.

### *Stage 2a Asylum*

11.11 This is for cases in which representation is not provided at substantive hearing, normally because they conclude following the Case Management Review Hearing (CMRH). The fee covers, but is not limited to, the following services:

- 1 Drafting and lodging appeal.
- 2 Preparation of appeal.
- 3 Re-application of merit test.
- 4 Where CLR is withdrawn, explaining the decision and assisting with IFA review process and carrying out any necessary work.
- 5 Any post appeal advice and assistance.

### *Stage 2b Asylum*

11.12 This is for cases that the provider takes on to the substantive hearing. The fee covers, but is not limited to, the following services:

- 1 Drafting and lodging appeal.
- 2 Preparation of appeal.
- 3 Consideration of determination – and advice to client thereon.
- 4 Applying the merit test for application for reconsideration.
- 5 Where the appeal is dismissed and an application for a review under s.103A NIA 2002 is not being pursued, explaining the consequences of the decision and carrying out any necessary work.
- 6 Where the appeal is allowed, explaining the consequences of the decision.
- 7 Any post appeal advice and assistance
- 8 Representations to the Home Office after an appeal has been dismissed by the Asylum and Immigration Tribunal

11.13 Stage 2 will end at the point that CLR is granted or refused in relation to the lodging an application for a Review of the AIT decision under s.103A of the NIA 2002 or where the Matter otherwise ends earlier.

## **Graduated Fees – Immigration Non Asylum**

### *Stage 1: Legal Help: Initial Advice*

11.14 This stage is Legal Help and the fee covers but is not limited to the following services:

- 1 Initial advice and completion of the application form for leave to enter/ remain where appropriate
- 2 Consideration of Home Office decision and advice to client thereon and carrying out any necessary work.
- 3 Applying the merit test for appeal.
- 4 Grant of CLR or appeal to the IFA against refusal.

Stage 1 will end at the point that CLR is granted or refused (including any appeal to the IFA) or where the Matter otherwise ends earlier..

### *Stage 2: CLR*

11.15 This stage is CLR and is split into two sub-stages. The fee for **either** Stage 2a **or** Stage 2b should be claimed depending on where the case concludes. You may not claim

payments for both Stage 2a and Stage 2b in relation to the same matter.

*Stage 2a: Immigration Non Asylum*

11.16 This is for cases in which CLR is granted but the case concludes prior to the substantive hearing. The fee covers but is not limited to the following services:

- 1 Lodging and drafting of appeal.
- 2 Preparation of appeal.
- 3 Re-application of merit test.
- 4 Where CLR is withdrawn, explaining the decision and assisting with FRC review process and carrying out any necessary work.

*Stage 2b: CLR: Immigration Non Asylum*

11.17 The fee covers but is not limited to the following services:

- 1 Lodging and drafting of appeal.
- 2 Preparation of appeal.
- 3 Consideration of determination and advice to client thereon and carrying out any necessary work.
- 4 Applying the merit test for application for reconsideration.
- 5 Where the appeal is dismissed and an application for a review under s.103A NIA 2002 is not being pursued, explaining the consequences of the decision and carrying out any necessary work.
- 6 Where the appeal is allowed, explaining the consequences of the decision.
- 7 Representations to the Home Office after an appeal has been dismissed by the Asylum and Immigration Tribunal.

Stage 2 will end at the point that CLR is granted or refused in relation to the lodging an application for a Review of the AIT decision under s.103A of the NIA 2002 or where the Matter otherwise ends earlier.

## **Provisions applying to Graduated Fees**

### **Additional Payments**

#### **Advocacy Services**

11.18 The Advocacy fee is payable in addition to the appropriate graduated fee for each relevant attendance.

11.19 The Advocacy fee is payable for representation at the Home Office interview, where attendance at the interview is permitted under this Specification.

11.20 The Advocacy fee is payable whether the relevant advocacy services are carried out by you or counsel. Where counsel is instructed you are responsible for the negotiating counsel's fee and making payment from the total payment to you under the Scheme.

11.21 The Advocacy fee is inclusive of time for travel and waiting.

#### **Disbursements**

11.22 Disbursements legitimately and reasonably incurred are payable in addition to the graduated fee subject to the limits for any individual disbursement and the total

disbursement cost for different stages of the case as set of at Paragraph 11.23

### **Disbursement Limits**

- 11.23 (a) The Individual Disbursement Limit is the maximum sum we will pay for any individual disbursement; and  
(b) The Total Disbursement Limit is the maximum sum we will pay for the total of all the disbursements for different stages of the case.
- 11.24 The Individual Disbursements Limits are as follows:
- (i) £250 for any individual disbursement at Legal Help or
  - (ii) £600 at CLR.
- 11.25 The total disbursement limit for Legal Help is £400.
- 11.26 The total disbursement limit for a case is £900 (Legal Help and CLR).
- 11.27 All of these limits are exclusive of VAT.
- 11.28 These limits may be extended on application to the Commission (see Paragraphs 11.70 to 11.73). However, disbursements are only payable within the limits that applied at the point they were incurred.

Example: Total disbursements incurred at the Legal Help stage were £350. The matter proceeds to CLR and an experts report is required and will cost £600. This will bring the total disbursements for the case to £950. As this will be above the total disbursement limit of £900 prior authority will be required from the Commission to incur this disbursement.

- 11.29 The individual and total Disbursement Limit set by us may vary from time to time by written notice. We may also vary the individual and total Disbursement Limit for individual suppliers.

### **Exceptional Cases**

- 11.30 Cases will be treated as exceptional where the value of the work covered by the stage 1 / stage 2 Graduated Fee(s) , when calculated as it were paid at the appropriate hourly rates, exceeds three times the value of the graduated fee payable under the scheme.
- 11.31 Additional payments under the scheme will be excluded from the exceptional case calculation.
- 11.32 The exceptional case calculation applies only at the conclusion of the case. This will usually be at the conclusion of stage 2 unless the case concludes earlier.
- 11.33 The total payment due in respect of the Exceptional Case is the total value, calculated on the appropriate hourly rates, of the parts of the case covered by the graduated fee structure together with any additional payments due, for example disbursements.  
Any previous claims allowed in respect of the case will be reconciled against this total payment.

For example:

In the following asylum case, the fees for Stage 1 and Stage 2b have been claimed under GFS along with additional payments for representation at the Home Office Interview, representation at an oral CMRH and representation at the substantive AIT hearing. The case then progressed to the review and reconsideration stage.

The total profit costs for the work covered by GFS, work up to the application of the merits test in relation to review and reconsideration is, based on hourly rates, is **£4,025**.

Under the “graduated fee scheme” a fee of **£450** has been claimed for Stage 1 and a further fee of **£600** for Stage 2b, totalling **£1,050**.

An additional payments of **£290** has been claimed for representation at the Home Office Interview plus **£175** for the CMRH & **£320** for the substantive AIT hearing, totalling **£785**

Method of calculating exceptional case:

T (total Profit costs) – AS (additional Payments claimed) > 3\* GFS (Graduated fees claimed)

$$£4025 - £785 = £3240 > £3150 (£1050 \times 3)$$

Therefore, an exceptional payment is due. This is calculated as follows:

Total Profit costs incurred: (excluding disbursements)	£4,025
Profit costs used in calculation	£3,240 (£4025 – £785)
Exceptional threshold:	£3,150 (£1,050 x 3)
Graduated payments made:	£1,050
Additional payments made:	£785
Total payments claimed:	£1,835
Exceptional payment due:	£2,190 (£4,025 -£1835)
Total payments made:	£4,025

11.34 Exceptional payments will be subject to cost assessment.

## Hourly Rates

*Scope*

### Paragraphs 11.35 to 11.74 apply to work paid at Hourly Rates

11.35 The rates for Legal Help and Controlled Legal Representation are set out at tables 7 (a), 8 (a) and 8 (b) the Payment Annex to this Specification

11.36. Paragraphs 5.21 to 5.23 relating to the Upper Financial Limit for Legal Help does not apply in the Immigration category.

11.37 In Paragraphs 11.38 to 11.74 below, counsel’s fees are not classed as disbursements.

Where counsel is instructed under CLR you should claim for the time they have incurred at the appropriate CLR rates.

### **Legal Help Cost Limit**

- 11.38 The Legal Help Cost Limit is the maximum amount of costs that we will pay for the Legal Help stage of any Matter as specified by and subject to Paragraphs 11.39 to 11.44.
- 11.39. The Legal Help Cost Limit set by us may vary from time to time. We may also vary the Legal Help Cost Limit for individual suppliers.
- 11.40. Unless otherwise varied by us in writing, the Legal Help Cost Limit, excluding VAT is as follows:
- (a) £800 in asylum matters, (where the matter progresses beyond initial advice see (c));
  - (b) £500 in immigration non asylum matters.
  - (c) £100 inclusive of disbursements where:
    - (i) You provide initial advice in relation to an asylum application prior to attendance at the ASU, and following your client's attendance you cease to be instructed; or
    - (ii) you provide advice in relation to an application for a review under s.103A NIA 2002. This will only apply where a client has not previously received advice publicly funded advice on the matter i.e. they were previously unrepresented.
9. 11.41 Other than as specified in Paragraph 11.40(c), disbursements are not subject to the Legal Help Cost Limit but may be paid in addition to this limit subject to Paragraphs 11.45 to 11.48.
- 11.42 Counsel's fees, where payable, are subject to the Legal Help Cost Limit.
- 11.43. The cost limits set out in 11.40 (a) or (b) may be extended on application to the Commission (see Paragraphs 11.70 to 11.73). However, costs are only payable within the limit that applied at the point they were incurred.
- 11.44. The limit set out in 11.40 (c) is not extendable.

### **Legal Help Maximum Disbursement Limits**

- 11.45 (a) The Individual Disbursement Limit is the maximum sum we will pay for any individual disbursement; and
- (b) The Total Disbursement Limit is the maximum sum we will pay for the total of all the disbursements for the Legal Help stage of any Matter, as specified by Paragraphs 11.46 to 11.48.
- 11.46. The Individual and Total Disbursement Limits set by us may vary from time to time by written notice. We may also vary the Individual and Total Disbursement Limits for individual suppliers.
- 11.47. Unless otherwise notified by us in writing:
- (i) The Individual Disbursement Limit is £250;
  - (ii). The Total Disbursement Limit is £400.
- These figures are exclusive of VAT.

11.48. These limits may be extended on application to the Commission (see 11.70 to 11.73). However, disbursements are only payable within the limits that applied at the point they were incurred.

#### **Upper Financial Limit - CLR**

11.49 The CLR Upper Financial Limit is the maximum sum that we will pay for the CLR stage of any Matter, other than for work undertaken in connection with an application for review and reconsideration under section 103A of the NIA 2002(see Paragraphs 11.58 to 11.69), as specified by and subject to Paragraphs 11.50 to 11.58

11.50. The CLR Upper Financial Limit set by us may vary from time to time. We may also vary the CLR Upper Financial Limit for individual suppliers.

11.51 . Unless otherwise varied by us in writing, the CLR Upper Financial Limit is as follows:

- (a) £1600 in asylum matters;
- (b) £1200 in non-asylum matters.
- (c) £500 in relation to bail only matters.

These figures are exclusive of VAT.

11.52 For the avoidance of doubt where CLR is granted in relation to an appeal then any bail application will be part of the CLR Upper Financial limit as stated in 2(a) and (b).

11.53. Within the CLR Upper Financial Limit we may prescribe in writing specific cost limits for different stages of the appeal including preparation, disbursements and attendance at the appeal hearing on a supplier-by-supplier or case-by-case basis.

11.54. The costs of all disbursements form part of the CLR Upper Financial Limit.

11.55 The CLR Upper Financial Limit may be extended on application to the Commission (see Paragraphs 11.70 to 11.73). However, costs and disbursements are only payable within the limit that applied at the point they were incurred, save for the costs of waiting time where there is a significant delay on the day of a hearing, which is no fault of yours or your client, provided you apply for an extension to the Limit as soon as practicable thereafter.

11.56 Work involved in advising the client and taking further instructing following the substantive AIT appeal hearing is subject to the CLR Upper Financial Limit. However, you may claim additional costs (including counsel fees/ disbursements) of up to £100 exclusive of VAT to consider the merits of an application for review and reconsideration under section 103A of the NIA 2002. This sum is in addition to the Upper Financial Limit.

11.57 Disbursements are subject to the CLR Upper Financial Limit set out in Paragraph 11.49. There are no specific maximum disbursement limits for CLR.

#### *Provisions applying to proceedings under section 103 NIA*

**Application for Review under section 103A NIA 2002 (including review applications which are considered by a member of the Tribunal in accordance with paragraph 30 of Schedule 2 to the 2004 Act)**

**Work undertaken in connection with applications for review which are not subject to an order under section 103D of the NIA 2002**

11.58 In relation to applications:

- (a) for review by the Home Office;
- (b) where the appeal is being dealt with under detained Fast Track processes;
- (c) where an application for permission to appeal to the IAT was made before 4 April 2005 but has not been determined by that date or under the provisions contained in the Community Legal Service (Asylum and Immigration) Regulations 2005.

You may claim reasonable costs for work associated with the application for review and reconsideration, including any further hearings at the AIT.

**Applications for review which are subject to an order under section 103D of the NIA 2002**

11.59. You may undertake reasonable work in connection with an application for review to the High Court under section 103A that is subject to an Order under section 103D NIA, where justified under the relevant merits test as applied by the appropriate court.

11.60 However, no claim may be made in respect of any work undertaken under Paragraph 11.60 until one of the following has occurred:

- (a) an order for costs is made by the AIT under section 103D of the NIA 2002;
- (b) an order for costs is made by the appropriate Court under the circumstances set out in the Community Legal Service (Asylum and Immigration) Regulations 2005;
- (c) following a successful review against the decision to refuse costs under the Community Legal Service (Asylum and Immigration) Regulations 2005.

If no order is made under section 103D then no claim for the costs of these proceedings can be made from the Commission.

You will need to reconsider the relevant merits of the case at each stage of the proceedings.

**Work undertaken in connection with AIT reconsideration hearings under section 103A of the NIA 2002**

**Applications for reconsideration by the AIT which are not subject to an order under section 103D of NIA 2002**

11.61 Where an application in the circumstances of Paragraph 11.58 has been successful or under the filter system the AIT has ordered a reconsideration then the further reasonable costs for the preparation of, travel to, waiting and representation at the AIT hearing, including any counsel's fees and disbursements may be claimed.

**Applications for reconsideration by the AIT which are subject to an order under section 103D of the NIA 2002**

11.62 Where an application in the circumstances of Paragraph 11.59 has been successful or under the filter system the AIT has ordered a reconsideration then the further reasonable costs for the preparation of, travel to, waiting and representation at the AIT hearing, including any counsel's fees and disbursements may be claimed.

11.63 However, no claim may be made in respect of any work undertaken under Paragraph 11.62 unless the circumstances specified in Paragraph 11.60 are satisfied.

## **Uplift**

- 11.64 In cases where the appropriate court has made a section 103D order an additional uplift to the standard rate of Controlled Legal Representation is payable. The rate of uplift is set out in the Annex to Section B of the Specification.

## **Disbursements**

- 11.65 The application fee to the High Court for an application under section 103A NIA is payable as a disbursement if and only if a fee exemption is not available or remission of the fee has been refused and subject to a section 103D order being made.
- 11.66 The costs of interpreters and experts instructed in connection with the preparation of an application for review and a reconsideration hearing under section 103A of the NIA 2002 are not subject to a section 103D order being granted.

## **Costs of a review of an AIT decision not to make a section 103D order**

- 11.67 Where an application for review of a decision not to make a section 103D order under the Community Legal Service (Asylum and Immigration) Regulations 2005 is successful then you may claim your reasonable costs for the review application.

- 11.68 You may not claim uplifted rates in respect of work under Paragraph 11.67.

## **CLR Upper Financial Limit**

- 11.69 The CLR Upper Financial Limit does not apply in respect of claims for work under Paragraphs 11.58 to 11.68

### *Applying to extend Financial Limits*

- 11.70. You may apply to the Commission for an extension to the Legal Help Cost Limit (other than in respect of Matters referred to at Paragraph 11.40(c)), Individual or Total Disbursement Limit or CLR Upper Financial Limit where, having regard to the particular circumstances of the case, the further work and time proposed is both reasonable and necessary.
- 11.71. An application for authority to exceed the relevant Limit must be made to the London Regional Office on the form specified by us.
- 11.72 Where the application is granted, you may claim for a reasonable period for time spent completing the form in addition to the relevant Limit (normally up to 30 minutes).
- 11.73 The increased limit will apply from the date upon which we received the properly completed application.

## **Claiming**

### **Claiming for Graduated Fees**

11.74 You **must** submit a Controlled Work claim within three months of the end of each of the following stages of the case citing the correct Unique Client Number:

(a) Legal Help – at the end of stage 1.

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

(b) CLR - at the end of Stage 2.

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

You must submit either a Stage 2a or Stage 2b claim. Only one stage claim will be claimable.

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

11.75 You **must** submit a Controlled Work claim within three months of the end of each of the following stages of the case citing the correct Unique Client Number:

(a) Legal Help:

- (j) The date CLR is granted or refused in relation to the Home Office decision;
- (k) following the submission of a fresh application for asylum to the Home Office (see 11.121);
- (l) or when you have completed work under Legal Help, if earlier.

You should ensure that any advice/ assistance in relation to an Independent Funding Adjudicator against the decision to refuse to grant CLR is provided as part of this claim.

(b) CLR:

- (i) the date you have applied the appropriate CLR merits test to making a section 103A NIA 2002 review application (and advised the client appropriately as to their options); or
- (ii) when you have completed work under CLR if earlier

11.76 In each claim you must only submit your costs in relation to the work relevant at that stage.

## **PART 2 General Rules For Providers**

### **General Rules for providers**

#### *Accreditation*

11.77 You must comply with the terms of the Law Society's Immigration and Asylum Accreditation Scheme ("IAAS") (as may be amended and replaced from time to time) when carrying out Contract Work in the Immigration Category of Law. In addition you must also ensure that you comply with/ satisfy any additional criteria, as required by your regulatory body, to be registered under the IAAS.

The IAAS provides that Contract Work in the Immigration Category of Law may only be carried out by individuals who are registered and accredited.

The IAAS provides for 5 levels of accreditation:

Level 1 Probationer  
Level 1 Accredited Caseworker  
Level 2 Probationer  
Level 2 Senior Caseworker  
Level 3 Advanced Caseworker

11.78 An Immigration category Supervisor must both:

- (a) be a IAAS Senior Caseworker or Advanced Caseworker; and
- (b) meet the Supervisor criteria of the SQM and have passed the IAAS Supervisor Level Assessment

11.79 Only advisers who are fully accredited at Level 1, Level 2 or Level 3 may have day to day responsibility for their own case files. Level 1 Probationers may not have day to day responsibility for their own case files.

11.80 Only advisers who are fully accredited at Level 2 or 3 may have conduct of CLR files.

11.81 Advisors engaged by you to perform Contract Work must only perform work appropriate to their level of accreditation as set out in the IAAS Work Restrictions. These Work Restrictions may be amended from time to time.

11.82 You may not make any Claim for Contract Work which is:

- (a) carried out by a non-accredited advisor; or
- (b) carried out by an accredited individual but which is restricted (through the IAAS Work Restrictions) to a higher level of accreditation.

### **Applications for Contract Work**

#### *Unique Client Numbers*

11.83 Each Client in the Immigration Category of Law must be identified by you on all documentation by means of a Unique Client Number. This should be the same number as the reference number which is allocated by the Home Office to each individual when they make an immigration application. The number consists of a letter followed by a series of numbers (usually 7). The Home Office reference number will be allocated on the decision letter at the latest. You should not use any separate reference number allocated, for example, by the Immigration Service at ports or the Asylum and Immigration Tribunal.

11.84 We may change the Unique Client Number or its format by written notice to you in order to take into account any practice changes.

11.85 If a single Client requires advice on more than one issue or application [as part of the same, or a different, matter] then the same Unique Client Number should be used. In

such circumstances, the client should use the first Home Office reference number allocated. For example: if a client applies for asylum and later applies to remain in the UK on the basis of marriage, the number allocated in the asylum case will be used for both applications.

- 11.86 The Client's Unique Client Number must always be noted on the Client's file and used in all Claims and correspondence with the Commission relating to that Client. We will be unable to process claims for costs that do not use the client's Unique Client Number and claims will be rejected until the correct reference number is supplied. Where a Client has not been allocated a Home Office reference number the Client's case should be reported to us using the default Unique Client Number A0000000. However, this will only be in very rare cases, and we will monitor your use of the default number. For example: A client may not have a Home Office reference number where following initial advice the client decides not to proceed with an application to the Home Office.

### **Applications**

- 11.87 A sponsor cannot sign a form on behalf of an individual not resident in or yet arrived in the European Union (Rule B3 Funding Code Procedures). However, a sponsor or family member may sign the application form for Legal Help where they have sufficient interest in the application to act as the Client.
- 11.88 Only the Appellant may sign the application form for Controlled Legal Representation.
- 11.89 Under no circumstances may Legal Help forms be signed by both a sponsor or family member and applicant/ appellant to take forward the same application.
- 11.90 It is permitted for a sponsor or family member to sign the Legal Help form for initial advice and the appellant to sign the Controlled Legal Representation form for the appeal for the same matter.

### **Means assessment**

#### **11.91 Eligibility and Contributions**

- (a) As with all Controlled Work, you are the assessing authority for determining eligibility for CLR under the CLS (Financial) Regulations. With effect from 1 October 2007, clients with disposable capital of between £3,000 and £8,000 are eligible for CLR but, for non-asylum cases only, a capital contribution is due from the client for any disposable capital above £3,000.
- (b) If you assess that such a client has disposable capital in that band, you should discuss with your client whether it is in his or her interests to be represented under this contract. In some cases the client may prefer to instruct you privately rather than pay a substantial contribution. If you choose to act for the client under this contract you must record the level of contribution on the file. You are responsible for collecting this contribution. When you claim payment from us for such a case, you must deduct the amount of the assessed contribution from your claim from us. If the amount of the assessed contribution is greater than your claim for costs, you may not make a claim and must refund the excess contribution to the client."

- 11.92 Where the sponsor or family member signs an Application form as the Client, it is that

person's means that are assessed.

- 11.93 Any resources provided to a Client by a sponsor or family member must be included in the assessment of the client's means.

### **Scope of Controlled Work**

*Work which may not be undertaken*

### **Licensed Work**

- 11.94 Representation of a client in an application for judicial review or an appeal to the Court of Appeal or House of Lords, including any application to the Court for permission, is funded as Licensed Work and cannot be carried out under Controlled Work
- 11.95 However, where an application for permission to appeal to the Court of Appeal is made to the AIT, the grounds of appeal, whether drafted by you or counsel, may be claimed as part of CLR.
- 11.96 Preparation and consideration for a certificate for licensed work can be undertaken under a Controlled Work Matter, at the Controlled Work stage at which the decision to be challenged or appealed arises.

### **Cases subject to Exclusive Contracting**

- 11.97 You may not provide Controlled Work to a client where the client's case is
- a) subject to a pilot or scheme specified by us either (i) in this Specification or (ii) by notice in writing to you; or
  - b) defined as one of the "excluded services" in Paragraph 11.98(b) unless your contract schedule specifically allows you to do this; Such cases are defined as being subject to Exclusive Contracting
- 11.98 Unless otherwise notified in writing:
- (a) Paragraph 11.97 (a) applies to the following specified pilot - all cases subject to the New Asylum Model Early Legal Advice Pilot at Solihull from 23 October 2006 (or such date that we may notify you in writing).
  - (b) The following are "excluded services":
    - (i) information, advice and representation at the Asylum Screening Unit (ASU);
    - (ii) advice and representation for those held in detention in relation to an immigration matter (including those held in Immigration Removal Centres and Police Stations; and
    - (iii) advice and representation for unaccompanied asylum seeking children.
- 11.99 Paragraph 11.97 does not apply to cases;
- (a) where you were performing Contract Work on the client's case before any date

specified for the commencement of the application (of that Paragraph) to a specified location, pilot or services relevant to the case; or

- (b) once a client has left, or been removed from any specified location, pilot or other arrangements subject to Exclusive Contracting.

11.100 We may add further sorts of Immigration work to Exclusive Contracting from time to time, and we will notify you in writing of this. You will not be entitled to undertake work added to Exclusive Contracting from the date stated.

**Exceptions:**

11.101 You may provide Controlled Work under Paragraph 11.97 where:

- (a) a supplier contracted to provide Controlled Work under (b) above refers the client to you. You must keep a record of the referral, including the date and the name of the supplier who made the referral, on your file
- (b) The client is a close family member of an existing client and knowledge of the family's circumstances is material to the new client's case (A close family member for the purpose of this rule is a member of the family who is the client's spouse, partner, child, sibling, parent, grandparent or grandchild.); or
- (c) The client is an existing client on whom you have attended in the UK and carried out at least five hours work (excluding travel and waiting) prior to the case being subject to one of the advice services outlined above.

**Advice in relation to Form filling**

11.102 We will not pay for assistance with simple form filling in immigration or asylum matters, which does not require legal advice. This prohibition will include, but is not limited to:

- (a) the filling in of travel document forms for persons accepted as refugees under the 1951 UN Convention,
- (b) passport applications and citizenship applications.

11.103 It may, however, be reasonable for you to provide advice regarding the completion of these forms in limited circumstances where an issue of law arises.

11.104 Where advice is given under Paragraph 11.103 your claim for costs is excluded from the Graduated Fee Scheme and:

- (a) If the matter is open and advice is being provided in accordance with the transitional arrangements/ excluded services then you should claim your costs as part of that Controlled Work Matter (subject to the relevant costs limit).
- (b) If it is a new matter then the Legal Help Cost Limit for Immigration matters will apply (see Paragraph 11.38)

11.105 Paragraphs 11.102 and 11.104 do not apply to filling in appeal forms or completion of self-evidence forms in asylum cases, which will require legal advice.

### **Attendance at Interviews**

11.106 We will not pay for attendance at interviews conducted by the Home Office by you or any agent of yours unless you are authorised by us or we have granted you authority to claim such costs.

11.107 You are authorised, subject to the appropriate Funding Code Criteria being satisfied, to accompany a client to a substantive interview where:

- (a) the client is subject to a Home Office detained fast track process;
- (B) the client is to be interviewed by an Immigration Officer under PACE (usually in relation to offences connected with illegal entry);
- (c) it is alleged that the client may pose a threat to national security;
- (d) the client is subject to the New Asylum Model Early Legal Advice Pilot at Solihull from 23 October 2006 (see Paragraph 11.97(a) above);
- (e) the client is to be interviewed in relation to a non-asylum immigration matter and, having regard to the particular circumstances of the case, it is both reasonable and necessary for a representative to attend the interview with the client given the nature of the interview and the representative's role within the interview;
- (f) The client is a minor or claims on reasonable grounds to be a minor; or
- (g) The client suffers or appears to suffer from a "mental incapacity". A person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of or a disturbance in the functioning of the mind or brain

11.108 If a representative is authorised to attend an interview conducted by the Home Office then that representative must be an accredited caseworker from your Approved Personnel (see the relevant criteria in Paragraphs 11.77 to 11.80 above). However, you may use an agent to attend a distant interview conducted by the Home Office in which case you must use an accredited caseworker from the Approved Personnel of a Supplier permitted under their Contract to carry out work t in the Immigration category of law.

### **Detained cases**

11.109 You may only provide advice and representation to individuals in detention if you have been granted a contract schedule to do so. However, you may provide advice where:

- (a) there are no Exclusive Contracting arrangements in operation where the client is detained; or
- (b) you are permitted to act under Paragraphs 11.99 or 11.101

11.110 Where you act for a client under Paragraph 11.108(b) you may claim:

- (a) in addition to the GFS payment and any appropriate additional payments, your reasonable additional costs (including travel disbursements) for travel and waiting to the detention centre up to a maximum of three hours for a return journey; and

- (b) You may also claim the reasonable costs of any bail application(s) you make (subject to the CLR Upper Financial Limit - see Paragraph 11.49).

11.111 Where you are representing a client under the GFS who is subsequently detained in a centre, where Exclusive Contracting arrangements are in operation, you should continue to act for the client until you reach the completion of the next GFS stage. At this point you should decide whether it is the best interest of the client to refer the matter to an exclusive provide or to continue to represent the client.

## **Carrying out Controlled Work**

### **Level of Service**

11.112 You must carry out work under the level of service, Legal Help or CLR, as is appropriate to the stage of the Matter:

- (a) Under Legal Help you may provide Help and advice on matters within the Immigration Category of law but excluding issuing and conducting proceedings in a court/tribunal and advocacy
- (b) Under Controlled Legal Representation (CLR) you can provide representation for clients before the AIT and in connection with an application for review to the High Court and a subsequent reconsideration by the AIT under section 103A of the NIA 2002.
- (c) Where CLR has been granted you may not continue to provide Legal Help in the same Matter.

### **Instructing Counsel before the AIT**

11.113 Counsel cannot be instructed before the AIT as part of the provision of Legal Help but may be instructed if Controlled Legal Representation is granted.

11.114 If counsel is instructed on a private basis, preparation of a brief to counsel to represent on an appeal will be outside the scope of Legal Help.

11.115 If you instruct counsel on your client's behalf as part of Controlled Legal Representation before the Immigration Judge or AIT you are free to negotiate the amount you pay counsel but we will only pay you in accordance with Paragraphs 11.1 to 11.73

11.116 You may not make any claim for time spent accompanying counsel at the hearing.

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

11.118 In relation to section 103D NIA 2002 applications you must inform counsel that payment is conditional on a section 103D cost order being made by the appropriate court or where there has been a successful review of a decision to refuse funding.

## **Separate Matters**

### **Asylum**

- 11.119 An asylum application and any asylum appeal under Controlled Legal Representation will constitute one matter only. The appropriate Unique Client Number will be that of the principal asylum applicant.
- 11.120 An associated application on human rights grounds e.g. an application on the basis of Article 3 of the Human Rights Act will also form part of the same asylum matter start
- 11.121 In family reunion cases following grant of refugee status the application could, where justified, form a separate matter start under the non-asylum category and would be subject to the non-asylum stage fee.
- 11.122 Where a client has made a fresh application for asylum then this new application would constitute a new Matter Start in very limited circumstances that such an application is appropriate, in light of the Court of Appeal's decision in ***R v Secretary of State ex parte Onibiyo [1996]***.

### **Immigration Non-asylum**

- 11.123 A non-asylum application, such as an application for settlement in the UK from abroad and any subsequent appeal, constitutes one Matter Start only.
- 11.124 In the case of an application for settlement of a family member, the Matter Start would also cover any advice regarding a human rights application under Article 8 of the Human Rights Act.

### **Concurrent applications**

- 11.125 If a client applies to enter or remain in the UK under more than one category or if the client applies to switch status while the first application remains pending, this will constitute one Matter Start and therefore will be subject to one stage fee.

### **Generally**

- 11.126 Only one Matter Start should be opened for any single case, proceeding or application.
- 11.127 A proceeding or application is a single case if treated by the Home Office as one application or where they are heard together or consecutively;
- 11.128 Proceedings treated by the court as a single set of proceeding are to be regarded as a single case.

### **Examples:**

1. An applicant making a claim for asylum under the 1951 Refugee Convention and a claim under the 1950 ECHR is to be regarded as a single application or proceeding for the purposes of the relevant fee.
2. You are instructed by the main applicant and you determine that his/her partner, family member or dependent may in fact have a genuinely separate claim for asylum and it is reasonable to believe that the Home Office and the AIT will deal with this as a separate claim. These cases will be rare and such cases where they are split by the supplier will be closely monitored on audit and assessment.

### **Granting and Refusing Controlled Legal Representation**

- 11.129 CLR is part of Controlled Work and the general rules contained in sections 2, 3, 5, 7 and 8 of this Specification apply to CLR unless otherwise stated. You should comply with these requirements before you grant funding and throughout the conduct of the case.
- 11.130 From 1 October 2007 all Suppliers authorised under their Contract to carry out Controlled Work have the Devolved Power to grant, refuse or withdraw CLR in the immigration category you must follow the provisions set out in Paragraphs 11.131 to 11.151 below.
- 11.131 The Criteria applying to Immigration CLR are at sections 4 and 13.3 to 13.5 of the Funding Code Criteria. Regard should be had to the Guidance on these Criteria at section 21.6 of the Funding Code Guidance.
- 11.132 Where you decide that it is inappropriate to apply the Criteria for CLR, for example because your client instructs you that they do not wish to appeal, then you should record these reasons on the file.

### **Granting an application for CLR using Devolved Powers**

- 11.133 Only a level 2 or 3 accredited adviser under the IAAS (as set out in Paragraph 11.79) may grant the application.
- 11.134 The client must complete and sign the CLR form before your signature. The client can send you the signed application by post or fax in the circumstances set out in Paragraph 2.14 of the Specification.
- 11.135 When you grant CLR you must record details of the reasons justifying the exercise of the grant on the appropriate section of the application form. This includes an assessment of the means and written answers to the merits test set out on the form.
- 11.136 In the case of an application for review and reconsideration under section 103A of the NIA 2002 you should apply the appropriate merits test as set out in the Community Legal Service (Asylum & Immigration) Regulations 2005.
- 11.137 Where a decision to grant CLR is made beyond the terms of the power, or if any procedures are not followed, then costs incurred may be disallowed.
- 11.138 We will not disallow decisions to grant CLR on legal merits grounds. However, claims for costs will be subject to assessment as to reasonableness in the usual way.

11.139 Where you have granted CLR you must report your decision on a form specified by us. You should submit the form to us on the 10<sup>th</sup> each month. All grants made by you in the previous month must be reported on the form.

11.140 You should keep the original CLR form on file for audit and assessment purposes.

We will monitor your overall exercise of the Devolved Power and will discuss our findings with you with a view to achieving any improvements necessary. Persistent failure to exercise the Devolved Power correctly may lead to Contract Sanctions including suspension or removal of the Devolved Power.

### **Refusing or Withdrawing Controlled Legal Representation**

11.141 An initial application to grant CLR should be refused where the client fails to satisfy the means or the merits test.

11.142 You should cease to provide CLR where the case no longer satisfies the merits test.

11.143 The date and reasons for the refusal or withdrawal should be recorded on the application for CLR and retained on file. A copy must also be given to the client.

11.144 You must inform the client of their right of review of your or our decision based on the merits of the case only, advise them that they must give reasons for the application for a review and provide them with the review notification form (CW4) in all cases.

11.145 Where you have refused or withdrawn CLR, you should make it clear to the client that you are refusing or withdrawing on behalf of the Commission and applying the criteria set out in the Funding Code and the rules and guidance contained in this contract. You must complete the section on the review notification form (CW4) giving your reasons for the refusal based on the merits of the case.

11.146 Where you have refused or withdrawn CLR you must report your decision on a form specified by us. You should submit the form to us on the 10<sup>th</sup> each month. All decisions made by you in the previous month must be reported on the form.

### **Review by the Independent Funding Adjudicator (IFA)**

11.147 Where an application to grant or amend CLR is refused or where CLR is withdrawn, your client may within 5 days of the date of refusal or withdrawal apply on the form specified by us to have the decision reviewed by the IFA, and may make representations in writing in support of the application.

11.148 Where an appeal date is already set then the application should be submitted immediately and the urgency of the application should be clearly stated. You should provide your client with the address of the London Regional Office to which she should appeal or you can, if you are instructed, submit the form to us on the client's behalf.

11.149 There is no right of review of a decision based on the means of the client.

11.150 There is no right of review of a decision to refuse or withdraw CLR in connection with an application under section 103A of the NIA 2002 which is subject to a cost order under

section 103D of that Act and Paragraph 11.147 does not apply in respect of such decisions.

11.151 Subject to any modifications set out below, a review by the Independent Funding Adjudicator under this rule shall operate in the same way as a review of the refusal or withdrawal of certificated work under Part C of the Funding Code Procedures:

1. The Director will consider any representations received under this rule and may affirm, amend or reverse the earlier decision. Where the matter is not resolved, the Director will forward the representations to the IFA for review.
2. Where the IFA reviews a decision made under Paragraph 11.144 above, the IFA shall consider the matter on the papers only.
3. Where, in light of a determination by the IFA under this rule, the IFA wish to confirm the decision of the Director, the IFA shall do so and ensure that the client and you are informed.
4. If it appears to the IFA that in light of his/her determination, the decision of the Director may not be correct or should be reconsidered, he/she shall refer the matter back to the Director.
5. Where information comes to light which was not before the Director at the time his decision was made and which the IFA considers may be material to that decision, the IFA shall ensure that such information is referred to the London Regional Director.
6. The IFA shall give reasons for all determinations made under this rule, which are adverse to the client and shall ensure that such reasons are made available to the client and the London Regional Director.
7. If, following a determination by the IFA, it appears to the London Regional Director that the criteria for granting or amending an application for CLR are satisfied and the client is financially eligible, the London Regional Director shall immediately grant or amend the application as required.

### **Funding of immigration asylum appeals under CLR in Scotland and Northern Ireland**

11.152 CLS Funding is not available in respect of Immigration or asylum appeals, which have been listed to be heard before the AIT in Scotland or Northern Ireland (Section 19 (1) of the Access to Justice Act 1999).

## **Key Management Information**

Suppliers must comply with all rules set out in this specification. Failure to do so may result in contract sanctions (which may include disallowing costs). In particular the following rules will be monitored through audit:

Rules 9.8.23 - 9.8.28; 9.8.45 – 9.8.48 and 9.8.65

Rules 9.8.43/44

Rule 9.8.55

Rule 9.8.82

Rule 9.8.86

Rule 9.8.102

Rule 9.8.106

Rule 9.8.122

Rule 9.8.125

Rule 9.8.132

Rules 9.8.139 and 9.8.146

Rule 9.8.137

Disbursements

Legal Help Cost Limit

Upper Financial Limit - CLR

Accreditation

Unique Client Numbers

Advice in relation to form filling

Attendance at interviews

Separate Matters

Concurrent applications

Application of the CLR Merits test

Reporting CLR

Granting CLR

We will monitor your overall exercise of the Devolved Power and will discuss our findings with

you with a view to achieving any improvements necessary. Persistent failure to exercise the Devolved Power correctly may lead to Contract Sanctions including suspension or removal of the Devolved Power.