

12 Immigration Specification

Category specific rules

12.1 Introduction

The Rules in this Specification apply to all work conducted within the SQM immigration category after 1 April 2004 irrespective of when the matter commenced in addition to the General Rules.

Where the matter commenced prior to 1 April 2004 you should also refer to the transitional arrangements at Rule 12.7 of this Specification.

As from 4 April 2005, s 26 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 will come into force. This substitutes the provisions of s 81 of the Nationality Immigration and Asylum Act 2002 (NIA 2002) and replaces the IAA and IAT with a single tier appeal system, the Asylum and Immigration Tribunal (AIT). This new appellate structure will apply to immigration and asylum appeals and will also introduce through the insertion of s 103 of the NIA 2002 a new funding regime for onward appeals. These appeals are included within the SQM immigration category and will form part of Controlled Work.

The SQM immigration category is defined at Appendix C of the General Civil Contract (Solicitors).

12.2 Conduct of cases within the SQM Immigration Category - general requirements

These requirements and conditions apply to both Legal Help and Controlled Legal Representation.

12.2.1 Unique Client Number

1. In the immigration category each client will be identified wherever available by means of a Unique Client Number.
2. This will 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 and you should not use any separate reference number allocated, for example, by the Immigration Service at ports or the Immigration Appellate Authorities.
3. We may change the Unique Client Number or its format by written notice in order to take into account any practice changes.

4. If a single client requires advice on more than one issue or application as part of the same 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.

5. Once notified, a client's Unique Client Number should be used when making any claim to the Commission for costs in a case or when making an application for an extension to a Cost Limit, Maximum Disbursement Limit or when applying for Controlled Legal Representation. In this way we will monitor the costs of each case and ensure that the relevant Cost Limits have not been exceeded.
6. Where a client has been allocated a Home Office reference number this must be used as the Unique Client Number. 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 reference A0000000.

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.

A family member of a principal applicant who submits a separate application should use the Home Office reference allocated (even if this is the same Home Office reference allocated to the principal).

7. Any failure to comply with the terms of this rule may lead to the claim for the relevant work being disallowed on assessment. Persistent failure may lead to the service of a contract notice.
8. It is therefore essential that you ensure that a record of the clients Unique Client Number is made, on the file, at the first available opportunity.

12.2.2 Previous Legal Advice

1. The Cost Limit and Maximum Disbursement Limit for Legal Help and Controlled Legal Representation are set out in this Specification. The limits represent the total work that can be undertaken in relation to a particular matter regardless of the number of times the client changes suppliers, without our prior authority.
2. If you provide Controlled Work to a client who has received Legal Help or Controlled Legal Representation for the same matter from another contracted supplier then any legal aid costs incurred by the previous supplier form part of and count towards the relevant Cost Limit. Therefore, subject to any extension agreed for that level of service, you will only be able to assist a client under Legal Help or CLR using any remaining balance of the relevant Cost Limit transferred from the previous supplier.

3. It is therefore essential that you establish from the client whether previous legal advice has been given. You should make reasonable enquiries and refer to any documentation made available by the client.

For example: Where a client is unable to confirm whether he has received previous legal advice a reasonable enquiry will include consideration of the time he has been in the United Kingdom and the stage of his case. Where a client has been in the United Kingdom for a few months or his case is listed for an appeal, it is more likely that he will have received previous legal advice. The documentation made available from the Home Office or the Immigration Appellate Authorities should be carefully considered for a reference to a previous supplier.

4. Rule 2.6 states that where a client withholds or misrepresents information with the intention of appearing to qualify for Controlled Work, you should report the matter forthwith to the Regional Director and if appropriate the client must repay to us any costs we pay out to you.
5. Where previous Legal Help or CLR has been given, you must contact the previous supplier as soon as practicable in writing to:
 - (a) Request the level of any costs incurred to date; and
 - (b) Request a transfer or copy of the file, if necessary.
6. If you are a previous supplier you must provide the information requested by a new supplier in 12.2.2 (5) above as soon as practicable and in any event, no later than 7 days from the date of the request.
7. If you apply for an extension to the relevant Cost Limit under Rule 12.2.12 below you must provide the name and address of the previous supplier. You should have regard to any Controlled Work carried out on the matter by the previous supplier and ensure that the work you carry out does not involve unnecessary duplication. This will be closely monitored on audit and may lead to the claim for relevant work being disallowed on assessment.
8. Any failure to make reasonable enquiries or refer to the available documentation under 12.2.2 (3) may lead to the claim for relevant work being disallowed on assessment. Persistent failure may lead to the service of a contract notice.
9. Any failure to contact a previous supplier under 12.2.2 (5) or any failure to provide the information requested under 12.2.2 (5) and 12.2.2 (6) may lead to the claim for relevant work being disallowed on assessment. Persistent failure may lead to the service of a contract notice.
10. If, after making reasonable enquiries, it appears that the client has not received any previous Controlled Work then you may where justified incur costs up to the relevant Cost Limit without prior authority.

Exceptions:

11. Where after 7 days from the date of your request you have not yet received the information under Rule 12.2.2 (5), then you should where justified apply to us for a new Cost Limit.
12. However, where urgent work is required and you have not yet received the information under Rule 12.2.2 (5), then you may where justified incur costs up to the relevant Cost Limit without prior authority. The work must be genuinely urgent, for example, to protect the client's position or to comply with a time limit.
13. You may claim up to 30 minutes (and associated interpreter costs) in addition to the Legal Help Cost Limit and Disbursement Limit for an initial interview where:
 - (a) The client has been dispersed from one region to another; and
 - (b) The client has received previous Legal Help or CLR from another supplier; and
 - (c) The relevant Cost Limit has been exhausted by the previous supplier.

12.2.3 Accreditation

1. We may, on giving not less than 6 months notice to your Representative Body, restrict Contract Work in the SQM Immigration Category to individuals who are registered under a system of accreditation approved by the Commission.
2. We may set accreditation at different levels, and we may direct that only some aspects of Contract Work can be performed by those at lower levels. In the meantime, the following provisions will continue to apply:
 - (a) Only experienced advisers should have conduct of their own case files. 'Experienced' in this context means that the fee earner must comply with the relevant criteria laid down in D3.2 and Annex A of the Specialist Quality Mark i.e. the fulltime adviser must undertake 350 case involvement hours per year and must demonstrate the relevant knowledge as set out below.

The experienced adviser must be able to show:

- i) Familiarity with the relevant statute and case law;
 - ii) A working knowledge of the immigration rules and procedures, the way in which they are applied and the time limits;
 - iii) Experience in the preparation of the necessary documentation.
- (b) In addition in relation to asylum matters the experienced adviser must also be able to show:

- i) Knowledge of the 1951 Convention, any associated domestic jurisprudence and of the Handbook produced by the United Nations High Commission for Refugees;
 - ii) Familiarity with the Humanitarian Protection and Discretionary Leave provisions;
 - iii) Familiarity with the application of the European Convention of Human Rights and the associated jurisprudence to domestic law and procedures.
- (c) Advisers who are not able to demonstrate the knowledge and experience set out above ('less experienced advisers') should not have conduct of the file and their involvement should be limited to specific tasks, for example, taking statements from the applicant and drafting the application for approval by the person with conduct of the file. In such cases, the adviser with conduct of the file should ensure that the less experienced adviser is briefed in advance of the particular context of the case and in relation to any issues that may arise. If seeing a client by prior arrangement to take a statement, the less experienced adviser should be aware of the issues which will need to be addressed in the particular case and be capable of explaining the legal framework of the application to the client.
- (d) Any documentation prepared by the less experienced adviser must be checked and amended where appropriate by the experienced adviser with conduct of the file.
- (e) The supervisor will remain responsible for supervision under the terms of the SQM and for ensuring that any non qualified advisers who are given conduct of case files are experienced, and that any other representatives are properly supervised and briefed.
- (f) Any failure to comply with the terms of this Rule may lead to the claim for the relevant work being disallowed on assessment.
- (g) Persistent failure may lead to the service of a contract notice.

12.2.4 The application form – Legal Help and Controlled Legal Representation

1. Rule 2.2 prohibits an application form being signed on behalf of a person outside England and Wales - thus a sponsor cannot sign a form on behalf of someone not yet arrived in this country. In the immigration category, however, a sponsor or family member may sign the application for Legal Help or Controlled Legal Representation where they have sufficient interest in the application to act as the client.
2. Where the sponsor or family member signs the application form, that person's means must be assessed.

3. Where the applicant outside England and Wales signs the application form, the applicant's means and any resources provided to the applicant by the sponsor or family member must be assessed.
4. Under no circumstances should a form be signed by both the sponsor and applicant to take forward the same application. However a sponsor can, for example, sign the Legal Help form for initial advice and the applicant can sign the Controlled Legal Representation form for the appeal for the same matter.
5. Rule 2.2 allows an application to be signed by an authorised person where a client is present in England and Wales and cannot for good reason attend on you in order to apply for Controlled Work. The authorised person must provide you with the information and satisfactory evidence in support necessary to address the client's financial eligibility.
6. Good reason under Rule 2.9 includes where a client is in custody or detention.

12.2.5 Postal applications

1. You may accept an application for Legal Help or Controlled Legal Representation by post where there is good reason to do so.
2. Good reason for the purposes of this Rule will be:
 - (a) The circumstances set out in paragraph 2 of the Guidance to Rule 2.9 of the General Civil Contract; or
 - (b) Where the client is outside of England and Wales (unless their absence is purely temporary and they can without serious disadvantage delay their application until they have returned to England and Wales).

12.2.6 Separate Matters

Asylum

1. 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. Initial advice regarding issues such as NASS support will form part of that same matter start and will be subject to the Cost Limit or Maximum Disbursement Limit for Legal Help or Controlled Legal Representation for that matter.
2. 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 and would be subject to the same Cost Limits for Legal Help and Controlled Legal Representation.

Exceptions

3. In family reunion cases following grant of refugee status the application could form a separate matter start under the non-asylum category and would be subject to the non-asylum Cost Limit.
4. Where a client has made a fresh application for asylum then this new application would constitute a new matter start and therefore would attract a new Cost Limit. However it should be noted that fresh applications for asylum will only be appropriate in limited circumstances, and in light of the Court of Appeal's decision in *R v Secretary of State ex parte Onibiyo* their use will therefore be monitored on audit. If it appears that suppliers are using fresh applications merely as a way to increase any claim for costs then we may disallow any such costs.

Non-asylum

5. A non-asylum application, such as an application for settlement in the UK from abroad and any subsequent appeal, would also constitute one matter start only and therefore one Cost Limit and Maximum Disbursement Limit under Legal Help and one limit under Controlled Legal Representation.
6. In the case of an application for settlement of a family member, the matter start and Cost Limit would also cover any advice regarding a human rights application under Article 8 of the Human Rights Act.

Concurrent applications

7. 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 Cost Limit and Maximum Disbursement Limit under Legal Help and one limit under Controlled Legal Representation.

For example: If a client applies for asylum and later applies to remain in the UK on the basis of marriage while the asylum claim remains pending, this will constitute one matter start.

Examples of cases where two or more matter starts may be appropriate

8. Where a family member and dependent children are applying to join a relative in the UK then under Legal Help this will generally constitute one matter start. The Unique Client Number will be that of the principal applicant. However if one family member is refused on different grounds under the Immigration Rules to the other family members then their appeal may constitute a separate matter start under CLR. They will have a separate Cost Limit and will use their own Unique Client Number when making a claim for costs.
9. Where an overseas student applies for settlement in the UK and then after having been granted indefinite leave to remain his family apply to join him, then the application by his family to be granted entry clearance would constitute a separate matter.

12.2.7 Advice and representation regarding NASS

1. Initial advice and assistance regarding a NASS application or appeal can be undertaken within the Cost Limit for Legal Help.
2. Where the preparatory work which needs to be undertaken exceeds 30 minutes then a new matter start will be justified and this should be opened as a separate non-asylum immigration matter if you have a contract in the immigration category. This will be subject to the non-asylum Cost Limit (see 12.3.1 below).
3. However representation at the appeal itself is not within scope and could not be conducted under either Legal Help or Controlled Legal Representation.

12.2.8 Form filling

1. We will not pay for assistance with simple form filling in immigration or asylum matters, which does not require legal advice. This will include (but is not limited to) the filling in of travel document forms for persons accepted as refugees under the 1951 UN Convention, passport applications and citizenship applications. It may be reasonable for you to provide advice regarding the completion of these forms in limited circumstances where an issue of law arises. In these circumstances you must keep a specific attendance note on the file explaining what legal issues were raised and why Legal Help was required.

For example: It may be reasonable to provide legal advice where an application is to be decided by the Home Office on a discretionary basis.

2. Work carried out in such cases will be closely monitored on audit and costs may be disallowed where there is no evidence that legal advice was required in the matter.
3. This does not include filling in appeal forms or completion of self-evidence forms in asylum cases, which will require legal advice.

12.2.9 Disbursements

1. Disbursements including interpreters' fees and costs of medical and experts' reports under Legal Help are subject to a maximum limit. The Maximum Disbursement Limit for Legal Help is set out in Rule 12.3.3 below.
2. Counsel's costs do not form part of the Maximum Disbursement Limit. They form part of the relevant Cost Limit for Legal Help or CLR although it will only be in exceptional cases that counsel is required to advise under Legal Help.
3. There is no set Maximum Disbursement Limit for CLR however all disbursements including interpreters' fees and costs of medical and experts' reports under CLR are subject to the Upper Cost Limit set out in Rule 12.4.1 below

4. Interpreters' and experts' fees incurred in connection with proceedings under s 103A of the NIA 2002 including those proceedings subject to an order under s 103D will not fall within the CLR Upper Cost Limit. However the reasonable costs of any such disbursements will be paid in accordance with sections 12.4.8 and 12.4.9 of this specification.

12.2.10 Interpreters and Experts

1. It is recognised that the services of qualified interpreters may form an essential role in the giving of advice and the presentation of a client's case. Accordingly costs for an interpreter may be claimed where necessary within the relevant Maximum Disbursement Limit or Cost Limit.
2. There have been cases where unscrupulous interpreters and experts have manipulated clients for financial gain, particularly in the field of immigration law. Therefore the Commission reserves the power to prevent particular interpreters and experts being instructed in relation to Contract Work and we may at any time issue you a direction in writing that prohibits the instruction of a particular interpreter or expert in relation to Contract Work.
3. The Commission may from time to time specify the maximum rates that it will pay for the services of interpreters and experts, and any accreditation, membership of a particular organisation or qualification required of interpreters and experts to be instructed by you.

12.2.11 Country of origin bundles

1. You are required to maintain and utilise a generic pack of current material in relation to the country of origin of any client or clients on behalf of whom you are providing Controlled Work relating to their asylum applications.
2. Time spent compiling this pack cannot be claimed. However any time reasonably spent considering its relevance to a particular case and/or updating it for the purposes of the case can be claimed within the relevant Cost Limit.
3. Many offices deal with asylum applications on behalf of a number of applicants from the same country of origin. Being aware of the background in the country in question will be an important part of advising the client, presenting their case to the Home Office and advising on the prospects of success of any appeal. However much of this work will be generic for the group and will not need to be duplicated in relation to any individual applicant.

4. You should therefore prepare and maintain for the benefit of your clients, relevant packs of country of origin information, which may be examined on audit. The packs should contain information on matters such as the current political situation, government practices and any relevant Immigration Appeal Tribunal determinations in relation to the country of origin of the client. The information contained within each pack should be updated regularly and the amount of information contained in each pack is likely to be dependent on the number of clients you act for who come from that country.

12.2.12 Applying to extend the Cost Limits

[Section 12.2.12 will not apply to applications for review and reconsideration under s 103 A of the NIA 2002](#)

1. You may apply to the Commission for an extension to the relevant Cost Limit or Maximum Disbursement Limit where, having regard to the particular circumstances of the case, the further work and time proposed is both reasonable and necessary.
2. An application for authority to exceed the relevant Cost Limit or Maximum Disbursement Limit must be made to the London Regional Office on the form specified by us. Where the application is granted, you may claim for a reasonable period (normally up to 30 minutes) for time spent completing the form in addition to the relevant Cost Limit and the grant will apply from the date upon which we received the properly completed application.
3. You must apply the sufficient benefit test for Legal Help under Rule 3.3 (as summarised below) or the merits test for Controlled Legal Representation under Rule 5.1 in relation to all the work you carry out on behalf of the client including the further work proposed.

Legal Help may only be provided where there is sufficient benefit to the client, having regard to the circumstances of the matter, including the personal circumstances of the client, to justify work or further work being carried out.

- (a) The sufficient benefit test applies both when the application is made and as and when further Legal Help is provided throughout the matter. Sufficient benefit applies not only to the question of whether or not the work should be carried out but to the amount of time that it is reasonable to spend in dealing with the matter.
- (b) It is accepted that in some cases, it will be necessary to provide some initial work in order to determine whether there is likely to be any benefit to the client (i.e. whether the case has any prospect of success), however once it is apparent that the test is no longer satisfied then the Legal Help must cease and the client must be so advised. This will include cases, which are not likely to succeed in the application being considered.

- (c) The test is intended to prevent you starting or continuing to carry out work where there is no real legal issue in relation to which the client will benefit from the provision of Legal Help. You should adopt the private client approach, that is, would a reasonable privately paying client of moderate means pay for this as legal advice? This means for example you should not be providing Legal Help where the client's claim is clearly hopeless, vexatious or would be an abuse of process or where the client is seeking advice on non-legal matters. In such cases, you should generally refuse to provide Legal Help at all, or if necessary cease to provide Legal Help once the position becomes clear, which would often be at first interview.
- (d) In practice the test should weed out cases, which do not merit public funding.
- (e) The test is not intended to prevent you from providing any Legal Help merely because the client's case has poor prospects of success. However, the poor prospects of success should lead you to restrict the amount of help you provide. Where it is apparent at an early stage that the prospects of success are poor, you should not be carrying out work beyond taking initial instructions and advising the client of his or her options (and usually therefore not beyond two hours).
- (f) Where a case has a poor prospect of success, the fact that making or pursuing an application or representations will in itself prolong a client's right to remain in the UK will not be treated as a sufficient benefit to continue with public funding.
- (g) Where a case has a poor prospect of success, the fact that it is subject to a Home Office fast track process (see Rule 12.2.13 below) will be treated as having sufficient benefit to continue with public funding beyond two hours due to the speed of the application process. However this does not mean it will necessarily have sufficient benefit beyond the Legal Help Cost Limit set out in Rule 12.3.1.

CLR may only be granted where criteria 13.4 and 13.5 of the Funding Code are satisfied. See Rule 12.5.4 below.

4. Therefore extensions will not be granted where the client's application is hopeless, vexatious or an abuse of process or where the client's case has a poor prospect of success.
5. In all cases, extensions will only be granted where the further work and the time proposed appear both reasonable and necessary in order for the case to succeed. It will not be considered reasonable to apply for an extension of public funding to delay a case where the delay itself will make it more likely to succeed.
6. Authority for an extension will not indicate that any previous or future work is in fact reasonable or necessary and a claim for costs will be subject to assessment in the normal way.

7. Examples of where the prospects of success will be poor are where:
- (a) In light of all the evidence the reasons for applying to remain in the United Kingdom are, in the case of an asylum application, outside the criteria laid down in the 1951 Convention relating to the Status of Refugees or, in the case of a human rights application, outside the criteria in the ECHR.
 - (b) In a second or subsequent application, where the same facts have already been determined before an Adjudicator on a previous application and dismissed and there has been no relevant change of circumstance.
 - (c) The client's circumstances and/or the circumstances within his/her country of origin have changed since the initial application was made such that any claim on the basis of asylum or human rights would be likely to fail.
 - (d) The client's credibility is significantly in doubt and the client is unable to provide a satisfactory explanation for any discrepancies or provide relevant corroborative evidence of his/her statement.
 - (e) In light of recent case law based on similar facts the claim is likely to fail.
 - (f) The client has unreasonably failed to provide the necessary information such as to enable the supplier to properly prepare the case despite the reasonable efforts of the supplier to obtain that information.
 - (g) The client has provided false information relating to his or her identity or nationality and gives no reasonable explanation for this.
 - (h) The client has resided for over three months in a safe third country and does not dispute the safety of that country on reasonable grounds.
 - (i) The client is to be removed to a safe third country and does not dispute the safety of that country on reasonable grounds (this will not be relevant to claims under Article 8 of the ECHR)

This is not an exhaustive list and each application for an extension will be considered with regard to the particular circumstances of the case.

8. If you apply for an extension where the client has received previous Controlled Work for the same matter, you must provide the name and address of the previous supplier. You should have regard to any Controlled Work carried out on the matter by the previous supplier and ensure that the work you carry out does not involve unnecessary duplication. This will be closely monitored on audit and may lead to the claim for relevant work being disallowed on assessment.

12.2.13 Cases which require special authorisation

1. You may not provide Controlled Work to a client where the client's case is subject to a Home Office fast track process (as defined by us, which we may vary from time to time in writing) unless:
 - (a) Your contract schedule specifically allows you to do this; or
 - (b) A supplier contracted to provide Controlled Work under (a) above refers the client to you.
2. Unless otherwise notified in writing, Rule 12.2.13 (1) applies to all cases at Oakington from 1 April 2004 and all cases subject to the Home Office fast track process at Harmondsworth from 1 July 2004. This Rule does not apply to cases where an existing client was in Oakington or Harmondsworth before those dates or once a client has left or been removed from those locations.
3. Where a client has been referred to you under 12.2.13 (1) (b) you must keep a record of the referral, including the date and the name of the supplier who made the referral, on your file.

Exceptions:

4. You may provide Controlled Work under this Rule where:
 - (a) The client is a close family member of an existing client and knowledge of the family's circumstances is material to the new client's case (A close family member for the purpose of this Rule is a member of the family who is the client's spouse, child, sibling, parent, grandparent or grandchild.); or
 - (b) The client is an existing client on whom you have attended in the UK and carried out at least five hours work prior to the case being subject to a Home Office fast track process.
5. Where you are authorised to carry out work under 12.2.13 attendance on the client must be by an experienced or accredited adviser.

12.3 Conducting Work under Legal Help

12.3.1 Legal Help Cost Limit

There are limits in both asylum and non-asylum cases to the amount of work that you can claim under Legal Help in each matter. These limits will include all letters and telephone calls, and unless otherwise stated will include any claim for travel and waiting time. These limits are exclusive of disbursements (see Rule 12.3.3 below) and VAT.

1. Rule 3.6 relating to the Upper Financial Limit for Legal Help will not apply in the immigration category.
2. 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.

3. Unless otherwise varied by us in writing, the Legal Help Cost Limit is as follows:
 - (a) £286.75 (£262.75 outside London) in asylum matters;
 - (b) £700.00 in asylum matters where the client is detained or the case is subject to Rule 12.2.13;
 - (c) £172.05 (£157.65 outside London) in non-asylum matters;
 - (d) £500.00 in non-asylum matters where the client is detained.
4. The Legal Help Cost Limit includes all work that is not undertaken in connection with the preparation of an appeal. Such work includes initial welfare benefits/NASS advice. See also Rule 12.2.6 relating to Separate Matters.
5. You must not exceed these limits without prior authority. See Rule 12.2.12 of this Specification in relation to an application to extend the Cost Limit.
6. Where you have exceeded the Legal Help Cost Limit without prior authority you will only be paid costs that are within the Cost Limit. You must not claim for the excess between the Cost Limit and the actual costs, and any such claim will be disallowed.
7. [You may not undertake work under Legal Help in connection with an application for review and reconsideration under s 103A of the NIA 2002.](#)

12.3.2 Attendance at interviews

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 an extension to the Legal Help Cost Limit for this purpose.

1. You are authorised to claim reasonable costs in addition to the Legal Help Cost Limit for time spent, including travel and waiting, in accompanying a client to a substantive interview where:
 - (a) The client is subject to a Home Office fast track process (see Rule 12.2.13 above); or
 - (b) The client is to be interviewed by an Immigration Officer under PACE (usually in relation to offences connected with illegal entry); or
 - (c) Where it is alleged that the client may pose a threat to national security.
2. You may apply for an extension to the Legal Help Cost Limit to cover the costs for time spent, including travel and waiting, in accompanying the client to an interview where:
 - (a) The client is a minor or claims on reasonable grounds to be a minor; or

- (b) 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; and
 - (c) In either case, the Home Office nevertheless intends to proceed with an interview.
- 3. If time is claimed for attending with the client at a substantive interview whether asylum or non-asylum a full verbatim note must be taken for costs to be claimed.
- 4. If a representative is authorised to attend an interview conducted by the Home Office then that representative must be an experienced or accredited adviser employed by you under a contract of service (see the relevant criteria in Rule 12.2.3 above). However you may use an agent to attend a distant interview conducted by the Home Office in which case you must use an experienced adviser who is employed under a contract of service by a supplier with a General Civil Contract in the immigration category or an accredited caseworker. We will not pay for a less experienced adviser such as an outdoor clerk to attend an interview.
- 5. The SQM supervisor will remain responsible for supervision of representatives under the terms of the SQM and for ensuring that the requirements of this provision have been carried out.
- 6. Any failure to comply with the terms of this rule will lead to the claim for the work of the relevant representative being disallowed on assessment. Persistent failure may lead to the application of a contract sanction.

12.3.3 Maximum Disbursement Limit under Legal Help

You can claim disbursements up to a total limit of £250.00 (or £400.00 where the client is in detention or where the case is subject to Rule 12.2.13) inclusive of VAT, under Legal Help for each matter without the need to apply for prior authorisation.

1. The Maximum Disbursement Limit set by us may vary from time to time by written notice. We may also vary the Maximum Disbursement Limit for individual suppliers.
2. This limit will include interpreters' costs and the costs of any reports or expert evidence required at the Legal Help stage.
3. You must not exceed this limit without prior authority. See Rule 12.2.12 of this Specification in relation to an application to extend the Maximum Disbursement Limit.
4. Where you have exceeded the Maximum Disbursement Limit without prior authority you will only be paid disbursements up to the Maximum Disbursement Limit. You must not claim for the excess between the Limit and the actual cost of disbursements, and any such claim will be disallowed.

12.4 Conducting Work under Controlled Legal Representation ('CLR')

[The rules and criteria contained in section 12.4.1 will only apply to CLR work undertaken in connection with:](#)

1. [A Case Management Review Hearing \(CMRH\)](#)
2. [An initial substantive hearing before the AIT](#)
3. [The rules and criteria contained in section 12.4.1 will not apply to CLR work undertaken in connection with an application for review and reconsideration under s 103A of the NIA 2002.](#)

12.4.1 Upper Cost Limit – [AIT Adjudicator](#)

Rule 5.5 relating to the Upper Financial Limit for CLR will not apply in the immigration category.

1. Your total claim for costs for an appeal before the [AIT Adjudicator](#) under CLR (including preparation, counsel's fees and disbursements but exclusive of VAT) should not exceed £~~1600~~~~1200~~ (the Upper Cost Limit) or such other limit as we may specify in writing. This will include costs incurred in attending at the [Case Management Review Adjudicator Hearing and substantive AIT hearing](#), an application for bail, advising the client and taking further instructions regarding the [Adjudicator's Immigration Judge's](#) determination. We may vary this limit on a firm-by-firm basis.
2. Within the Upper Cost 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 firm-by-firm or case-by-case basis. This will be monitored on audit and may lead to a claim for relevant work being disallowed on assessment.
- ~~3. The costs of preparing the appeal are included in the Upper Cost Limit. We would expect that in many cases the costs of preparation including all letters and telephone calls, travel and waiting would not exceed £244.80 (£229.00 outside London), exclusive of VAT. This does not include counsel's fees, disbursements or the costs in attending the appeal hearing. Further preparation costs may be justified in a particularly complex case or a bail application, and you must record the justification on file.~~
- ~~4.3.~~ The costs of disbursements form part of the Upper Cost Limit. Costs allowed will be those reasonably incurred by a supplier in instructing an expert or interpreter subject to 12.4.1 (1) and (2).
- ~~5.4.~~ The costs of time taken for travel to, waiting and representation at the [CMRH and AIT Adjudicator](#) hearing form part of the Upper Cost Limit. Costs allowed will be those reasonably incurred by a supplier or counsel subject to Rule 12.4.1. (1) and (2). You may exceed the Upper Cost Limit without our authority where there is a significant delay on the day of the hearing, which is no fault of yours or your client. Please record the reason for the delay on file. You should apply for an extension to the Cost Limit as soon as practicable thereafter.
- ~~6.5.~~ You must not exceed the Upper Cost Limit without prior authority. See Rule 12.2.12 of this Specification in relation to an application to extend the Cost Limit.
- ~~7.6.~~ Where you have exceeded the Upper Cost Limit without prior authority you will only be paid for costs that are within the Limit. You must not claim for the excess between the Limit and the actual costs subject to the exception in ~~(4)(5)~~ above, and any such claim will be disallowed.
- ~~8.7.~~ Where counsel is instructed then you should seek to ensure that they are where practicable from local chambers near the Hearing Centre where the appeal will take place, unless they do not charge for the travel time or travel costs.

8. Following the substantive appeal hearing you may claim additional costs of up to one hour exclusive of VAT to consider the merits of an application for review and reconsideration under s 103 A of the NIA 2002. This sum is in addition to the Upper Cost Limit. If counsel's opinion is obtained then total costs should not exceed £150.00.

~~12.4.2 Applications for permission to appeal to the Immigration Appeal Tribunal~~

~~Where you have obtained or granted Controlled Legal Representation you may claim costs of £150.00 exclusive of VAT to prepare grounds for permission to appeal to the Tribunal, including any counsel fees and disbursements. This sum is in addition to the Upper Cost Limit and you do not need to apply for an extension of CLR for this purpose.~~

~~12.4.3 Costs of Appeal hearing – Immigration Appeal Tribunal~~

~~Where you have obtained or granted Controlled Legal Representation and your client or the Home Office is granted permission to appeal to the Tribunal, then you may claim further costs of up to £750.00 exclusive of VAT for preparation of, travel to, waiting and representation at Tribunal hearing, including any counsel fees and disbursements. This sum is in addition to the Upper Cost Limit and you do not need to apply for an extension of CLR for this purpose. We may vary this limit by written notice.~~

- ~~1. You may not exceed this limit with prior authority. See Rule 12.2.12 of this Specification in relation to an application to extend the limit.~~
- ~~2. Where you have exceeded this limit without prior authority you will only be paid costs up to £750.00. You must not claim for the excess between £750.00 and the actual costs subject to the exception in (3) below, and any such claim will be disallowed.~~
- ~~3. You may exceed this limit without our authority where there is a significant delay on the day of the hearing, which is no fault of yours or your client. Please record the reason for the delay on file. You should apply for an extension to the Cost Limit as soon as practicable thereafter~~

Applications for review to the High Court under s 103A of the 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).

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

1. This will include
 - (a) an application for review made by the Home Office;
 - (b) application where the appeal is being dealt with under detained Fast Track processes
 - (c) where an application for permission to appeal to the IAT has been made before 4 April 2005 but has not been determined by that date or under the transitional provisions contained in regulation 5 of the Community Legal Service (Asylum and Immigration) Regulations 2005.

2. In cases where paragraph (1) applies you may claim reasonable costs for work associated with the application for review and reconsideration, including any further hearings at the AIT. You will need to reconsider the merits of the case at each stage of the proceedings before incurring these costs. The relevant merits test for this work is set out in Rule 12.5.4 of this specification.

3. These sums are in addition to the Upper Costs Limit and you do not need to apply for an extension of CLR for this purpose.

12.4.3 Applications for review which are subject to an order under s103D of the NIA 2002

1. You may undertake reasonable work in connection with an application for review to the High Court under s 103A.. When considering whether an application subject to a s103D order has merit you must consider the merits test contained in section 12.5.4 paragraph of this specification.

2. However any work undertaken in connection with the review cannot be claimed as costs from the Commission until one of the following has occurred:
 - (a) an order for costs is made by the AIT under s 103D of the NIA 2002;
 - (b) an order for costs is made by the High Court under the circumstances set out in regulation 6 of the Community Legal Service (Asylum and Immigration) Regulations 2005;
 - (c) following a successful review against the decision to refuse costs under regulation 8 of the Community Legal Service(Asylum and Immigration) Regulations 2005.
3. If no order is made under s 103 D then no claim for the costs of these proceedings can be made from the Commission.

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

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

1. These cases are defined in section 12.4.2. paragraph 1 above.
2. Where an application for review to the High Court has been successful or under the filter system the AIT has ordered a reconsideration then where you have obtained or granted CLR you may claim further reasonable costs for the preparation of, travel to , waiting and representation at the AIT hearing , including any counsel's fees and disbursements.
3. This sum is in addition to the Upper Costs Limit and you do not need to apply for an extension of CLR for this purpose.

12.4.5 Applications for reconsideration by the AIT which are subject to an order under s 103D of the NI 2002

1. Where an application for review to the High Court has been successful or under the filter system the AIT has ordered a reconsideration then where you have obtained or granted CLR you may undertake further reasonable work in connection with the preparation of, travel to, waiting and representation at the AIT hearing, including any counsel's fees and disbursements.
2. However any work undertaken in connection with the reconsideration hearing cannot be claimed as costs from the Commission until one of the following has occurred:
 - (a) an order for costs is made by the AIT under s 103D of the NIA 2002;
 - (b) an order for costs is made by the High Court under the circumstances set out in regulation 6 of the Community Legal Service (Asylum and Immigration) Regulations 2005;
 - (c) following a successful review against the decision to refuse costs under regulation 8 of the Community Legal Service(Asylum and Immigration) Regulations 2005
3. If no order is made then no claim for costs of these proceedings can be made from the Commission.

12.4.8 Costs of interpreters' and experts' fees under s 103 A applications for review and reconsideration hearings.

The costs of interpreters and experts instructed in connection with the preparation of an application for review and a reconsideration hearing under 103A of the NIA 2002 are not subject to a s103D order being granted. Reasonable costs can be claimed from the Commission in relation to these disbursements where CLR has been properly granted.

12.4.9 Determining reasonable costs

1. When determining the reasonable costs of an application for review and reconsideration under s 103 A you should have regard to the time standards contained in Rule 12.8 of this specification. What constitutes reasonable costs of these proceedings will be assessed on audit and costs which are not held to be reasonable will be disallowed.

2. In cases where the Tribunal has made a s 103D order then the Commission will pay an additional uplift to the standard rate of Controlled Legal Representation for preparation and advocacy rates. The rate of uplift will be set out in the Contract Schedule.

12.4.10 Instructing Counsel before the Adjudicator or IAT

1. Counsel cannot be instructed as part of the provision of Legal Help but may be instructed if Controlled Legal Representation is granted.
2. 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.
3. If you instruct counsel on your client's behalf as part of Controlled Legal Representation before the ~~Immigration Adjudicator or Immigration Appeal Tribunal~~AIT then, save as allowed in paragraph 6 below, payment of counsel's fees will not be made in excess of the rates set out in your Contract Schedule for Controlled Legal Representation.
4. You may not make any claim for time spent accompanying counsel at the hearing.
5. When instructing counsel, you should inform them of the payment rates and ensure that counsel's fee note will contain a breakdown of the time claimed at the appropriate rates. You are free to negotiate payment with counsel below the rates set but must only claim your actual payments from us.
6. In relation to s 103 D applications you should inform counsel that payment is conditional on a s103 D order being made by the appropriate court or where there has been a successful review of a decision to refuse funding.

~~6-7.~~ Subject to agreement by us the rates set out above may be exceeded in any case before the ~~Immigration Adjudicator or Immigration Appeal Tribunal~~AIT which either:

- (a) raises an exceptionally complex or novel point of law, or
- (b) raises a matter of Significant Wider Public Interest (as defined in the Funding Code).

Cases ~~designated as 'starred' appeals before the Immigration Appeal Tribunal~~before a 3-person legally qualified panel of the AIT will normally come within the exceptions set out above, but there will be other cases where they are relevant. When one of the exceptions applies, you should contact the London Regional Office to discuss and negotiate rates.

~~7-8.~~ You must claim any time spent instructing counsel as Contract Work within the Upper Cost Limit. However, if you choose to accompany counsel to any hearing, neither the time spent at the hearing nor the travelling and waiting can be claimed as Controlled Work.

12.4.511 Attendance of interpreters or experts at ~~substantive~~ hearings before the ~~Adjudicator or before the IAT~~ AIT

1. It will usually be appropriate and reasonable to use the services of an interpreter to enable you to communicate with the client and take instructions. ~~although you will not require an interpreter at the IAT unless the client is giving evidence.~~
2. Interpreters cannot however be instructed to attend on a client in your absence unless counsel is present.

12.4.126 Appeal bundles

1. When preparing a case for appeal regard should be had to any directions laid down by the ~~IAA~~ AIT as to the preparation of appeal bundles.
2. Time will be allowed (within the Upper Cost Limit) to prepare an appeal bundle in an individual case whether this is extracting relevant information for the country of origin bundle or researching new information. Costs cannot be claimed for time spent copying or paginating bundles but costs may be claimed for considering which documents to be included in the appeal bundle and marking the relevant paragraphs.
3. If practice directions set by the court as to the filing of evidence are not complied with then it may be reasonable to disallow claims for such work unless adequate reasons for the late submission are given on the file.

12.4.137 Applying for judicial ~~review~~ statutory review

1. Time should only be claimed to allow you to apply to us for a certificate for Legal Representation.
2. Where justified in the circumstances of the case, you may claim a reasonable period (normally up to 30 minutes or 60 minutes if justified) to complete an application for Legal Representation as part of the CLR Upper Cost Limit where appropriate.

12.4.14 Appealing to the Court of Appeal from the ~~AIT~~ IAT

~~An application for leave to appeal to the Court of Appeal has to be made to the IAT in the first instance on the papers. Grounds of Appeal, whether drafted by you or counsel, can be claimed as part of CLR. If leave is refused however then any further appeal for leave to the Court of Appeal should be a matter for a certificate under part C of the Funding Code and should not be undertaken as Legal Help or CLR.~~

12.4.15. Family visit visa appeals

1. Controlled Legal Representation is available for family visit visa appeals, subject to the means and merits test.

~~2. You should note that as from the 15 May 2002 fees for both paper and oral appeals have been abolished.~~

12.4.16 Blood/DNA testing

1. In principle the cost of blood tests including DNA testing is an expense that may be incurred in connection with the giving of Legal Help or CLR when required to establish a client's claim.
2. The following points must be carefully noted:
 - (a) Entry Clearance Officers employ an extended interview procedure for dealing with difficult applications, for instance where acceptable marriage or birth certificates are not available. Disbursements to cover the cost of obtaining blood tests at this stage should be unnecessary unless you are satisfied that, without blood tests, available evidence is likely to be insufficient to satisfy the Entry Clearance Officer as to an alleged blood relationship upon which the application for entry hinges. Such disbursements must be within the Maximum Disbursement Limit unless prior authority has been obtained to exceed that limit.
 - (b) Where the blood tests are required for any appeal following the refusal of an application for entry clearance, the costs of a blood test may be justified if you are satisfied that the blood tests are necessary to establish a blood relationship upon which the outcome of the appeal hinges, and that there are reasonable prospects that any other grounds for refusing entry can be overcome.
 - (c) In the case of blood samples taken abroad, the Immigration Authorities will only accept blood tests where the samples are taken in accordance with a strict procedure.
 - (d) Blood samples from a person who has gained entry to the United Kingdom, or who has been stopped at the port of entry, must be taken by a consultant haematologist, a medical practitioner in a Regional Blood Transfusion Centre, or an appointed blood tester. The Immigration Authorities have laid down a detailed procedure, which the person taking the sample must follow.
3. Please note that in certain cases, e.g. in settlement cases, the ECO may offer to arrange DNA tests in cases where they are not satisfied that children are related as claimed. In these cases the costs of DNA testing are paid for by the ECO.

12.4.17 Certificate that an application has no merit

[This section will not apply to appeals determined after 4 April 2005.](#)

This rule applies to certificates issued by the court under Section 101(3)(d) of the Nationality, Immigration and Asylum Act 2002, or issued by an Adjudicator or the Immigration Appeal Tribunal pursuant to rules made under Section 106(3)(f) of that Act.

If such a certificate is issued in relation to work you have carried out under this Contract you must send a copy of the certificate to us (whether or not you intend to make any claim under the Contract for work you have carried out in the case). You must ensure that any such certificate is made available on any assessment of costs for such work, whether the assessment is carried out by the court or by us.

1. Certificates issued under this Rule are issued under the above statutory provisions where an Adjudicator, Tribunal or court considers that the particular application before it has no merit. The fact that the certificate has been issued does not necessarily mean that you will not be paid for work done under the case. However the certificate will be taken into account on assessment of costs in determining what sum if any is reasonable to pay. In general however it will not be reasonable to pay solicitor or counsel fees for work carried out in such a case after it should have been clear to the legal representatives concerned that the case had no merit.

We may be prepared in an appropriate case, to treat the issues of solicitors' or counsels' costs separately according to who was responsible for the case proceeding despite its lack of merit.

2. If significant numbers of certificates are issued under this Rule in respect of your contract work we may take that as evidence that such work is not being carried out with reasonable skill and care, such that there may have been a breach of other obligations in the Contract – see in particular Rule 2.14 (in relation to Controlled Work) and Standard Terms Clauses 2.1 and 3.2.

12.4.18 Costs of a review under regulation 8 of the Community Legal Service (Asylum and Immigration) Regulations 2005

Where an application for review to the AIT under regulation 8 is successful then you may claim **your** reasonable costs under CLR for preparation of the review application.

12.5 Granting and Refusing Controlled Legal Representation

Controlled Legal Representation (CLR) is a level of service under which you can provide representation for clients before the ~~Immigration Adjudicator or Immigration Appeal Tribunal~~ AIT and in connection with an application for review to the High Court and a subsequent reconsideration by the AIT under s 103A of the NIA 2002.

CLR is part of Controlled Work and the general Rules apply to CLR unless otherwise stated. You should comply with these requirements before you grant funding and throughout the conduct of the case.

CLR may be granted by us or by firms with a Devolved Power to grant CLR in the immigration category.

If you have a Devolved Power to grant CLR in the immigration category you must follow the procedures for granting CLR set out in Rule 12.5.1 below.

If you do not have a Devolved Power to grant CLR in the immigration category you must follow the procedures for applying to us set out in Rule 12.5.2 below.

[All suppliers have a Devolved Power to grant CLR in connection with a review and reconsideration under s 103A of the NIA 2002 \(See amended Rule 1.9\).](#)

If you grant or apply for a grant of CLR, you must apply the means and the merits test following the relevant procedures set out in Rule 12.5.4.

All firms have the Devolved Power to refuse or withdraw CLR and you must follow the provisions set out in Rules 12.5.5 and 12.5.6 below.

12.5.1 Granting an application for CLR using Devolved Powers

You will have a Devolved Power to grant CLR in the immigration category only if we have specifically granted you this power in writing [or where the matter relates to a review and reconsideration under s103 A of the NIA 2002.](#) Where you have been given a Devolved Power to grant CLR, the following provisions of this Rule apply.

1. An experienced adviser in the category must grant the application. The client must complete and sign the form before your signature. You must also comply with the general conditions relating to applications for Controlled Work contained in general Rules. The client can send you the signed application by post/fax etc in the circumstances set out in Rule 12.2.5.
2. The grant of CLR will not operate retrospectively except in the circumstances set out in Rule 12.5.7.
3. When you grant CLR you must record details of the reasons justifying the exercise of the grant on the file or the appropriate section of the application form. This includes an assessment of the means and written answers to the merits test set out in Rule 12.5.4 below.
4. 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.
5. Where a decision to grant CLR is made beyond the terms of the power, or if any procedures are not followed, then we may disallow the costs incurred.
6. 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.
7. You should keep the original form on file for audit and assessment purposes.

12.5.2 Applying to the Commission to grant CLR

If you do not have the Devolved Power to grant CLR in the immigration category you must apply to the London Regional Office on the form specified by us. You should submit a properly completed CLR form to the London Regional Office.

1. An experienced adviser in the category must sign the CLR form (CW2 Imm). The client must complete and sign the CLR form before your signature. You must also comply with the general conditions relating to applications for Controlled Work contained in the general Rules. The client can send you the signed application by post/fax etc in the circumstances set out in Rule 12.2.5.
2. When you apply for CLR you must record details of the reasons justifying your application on the appropriate section of the CLR form. This includes an assessment of the means and written answers to merits test set out in Rule 12.5.4 below.
3. Controlled Legal Representation will be granted by our endorsement on a properly completed CLR form and will take effect from the date of such endorsement. The grant of CLR will not operate retrospectively except in the circumstances set out in Rule 12.5.7.
4. We will aim to deal with applications for CLR within 3 working days following receipt of the application.
5. Special arrangements have been made for the London Regional Office to deal with emergency applications more quickly where the client is in detention. In such cases, you should clearly mark the form "URGENT".
6. If we refuse an application to grant or amend CLR there is a right of appeal to the Funding Review Committee and the Regional Director will consider any request for a review. The appeal to the FRC will be determined on the basis of written submissions only.

12.5.3 The application form

1. In all cases, you should complete the section case details and [relevant](#) merits criteria in addition to the sections on financial eligibility. Where you do not have a Devolved Power to grant CLR, you must also complete the further case details and merits criteria on form CW2 Imm for all applications to the London Regional Office.
2. You may claim for a reasonable period (normally up to 30 minutes) for time spent completing the form in addition to the relevant Cost Limit.

12.5.4 The means and merits test

1. The criteria contained in sections 4 (Standard Criteria) and 13 (immigration) of the Funding Code apply when considering whether to grant funding for CLR in the Immigration Category.

2. This will include undertaking the means assessment for Controlled Work.
3. Guidance on criteria 13.4 and 13.5 of the Funding Code (merits and cost benefit) is set out below. These criteria should be applied by you before you grant or apply to us for a grant of CLR. The criteria will also be applied by us in assessing an application to grant CLR. You must record your answers to the questions on the file.
4. **Applications subject to an order under s 103D of the NIA 2002**

Costs of these applications will only be paid by the Commission once the AIT (or in limited cases the High Court) has made an order under s 103D or you have successfully appealed to the AIT against a decision to refuse costs.

4.5. Criterion 13.4 states that

Legal Representation will be refused if the prospects of achieving a successful outcome for the client are:

- (a) unclear or borderline, save where the case has a significant wider public interest, is of overwhelming importance to the client or raises significant human rights issues; or
- (b) poor.

5.6. Criterion 13.5 states:

Save where the case has a significant wider public interest, Legal Representation will also be refused unless the likely benefits to be gained from the proceedings justify the likely costs such that a reasonable private paying client would be prepared to take the proceedings, having regard to the prospects of success and all other circumstances.

6.7. Controlled Legal Representation will only be granted where all the criteria are met. You must cease to provide Controlled Legal Representation where the Criteria are no longer satisfied.

7.8. Controlled Legal Representation may cover a bail application on a client's behalf to the Adjudicator or Tribunal (whether or not you are providing representation in relation to the substantive application) provided that the criteria and questions set out are satisfied in relation to the merits of that bail application.

8.9. The following questions are to assist in applying the relevant merits test in immigration cases:

Question 1: What are the prospects of the appeal being successful?

These must be estimated in one of the following three categories:

- (a) **Moderate or better** – prospects are clearly over 50%. If so, Controlled Legal Representation may be provided (assuming that all the other Criteria are satisfied).
- (b) **Unclear or Borderline** – where it is not possible to predict the chances of success or where those chances appear to be 50:50. In those circumstances, you should refuse Controlled Legal Representation unless any of the following three factors apply:
 - i) The case is of overwhelming importance to the client, that is, it concerns the life, liberty or physical safety of the client or his or her family, or the roof over their heads. This will often be true of asylum cases; or
 - ii) The case raises significant issues of human rights; or
 - iii) The case has a significant wider public interest, that is, the proceedings have the potential to produce real benefits for members of the public other than the client and their family, other than any benefits that normally flow from proceedings of the type in question.

Where these factors apply and the prospects of success are unclear or borderline, Controlled Legal Representation will usually be granted provided all other criteria are satisfied. However if the prospects of success are poor then CLR should be refused or withdrawn even if (i) to (iii) above apply.

- (c) **Poor** – prospects are clearly below 50%. Controlled Legal Representation must be refused where the appropriate advice to the client would be that in the circumstances of the case their appeal is more likely to fail than to succeed.

9-10. Examples of where the prospects of success will be poor are where:

- (a) In light of all the evidence the reasons for applying to remain in the United Kingdom are, in the case of an asylum application, outside the criteria laid down in the 1951 Convention relating to the Status of Refugees or, in the case of a human rights application, outside the criteria in the ECHR.
- (b) In a second or subsequent asylum or human rights application, where the same facts have already been determined before an Adjudicator on a previous application and dismissed and there has been no relevant change of circumstance.
- (c) The client's circumstances and/or the circumstances within his/her country of origin have changed since the initial application was made such that any claim on the basis of asylum or human rights would be likely to fail.
- (d) The client's credibility is significantly in doubt and the client is unable to provide a satisfactory explanation for any discrepancies or provide relevant corroborative evidence of his/her statement.

- (e) In light of recent case law based on similar facts the appeal is likely to fail.
- (f) The client has unreasonably failed to provide the necessary information such as to enable the supplier to properly prepare the case despite the reasonable efforts of the supplier to obtain that information.
- (g) The client has provided false information relating to his or her identity or nationality and gives no reasonable explanation for this.
- (h) The client has resided for over three months in a safe third country and does not dispute the safety of that country on reasonable grounds.
- (i) The client is to be removed to a safe third country and does not dispute the safety of that country on reasonable grounds (this will not be relevant to claims under Article 8 of the ECHR).

10.11. A successful outcome for the purpose of estimating success will not, except as set out below, include a situation where the appeal may result in a recommendation by the ~~Adjudicator~~Immigration Judge. The exception will be where there is a good or borderline chance (as defined above) that the determination and/or recommendation of the ~~Adjudicator~~Immigration Judge will disclose clear exceptional circumstances which have not previously been considered and which will lead to the exercise of the Secretary of State's discretion outside the Immigration Rules.

Question 2: Do the likely benefits to be gained from the proceedings justify the likely costs?

In practice most asylum appeals will satisfy this question. However it could, for example, justify a refusal in relation to a limited application to remain in the country. If the answer to this question is no, then Controlled Legal Representation will not be granted unless the case has significant wider public interest.

Wider Public Interest as defined at section 2.4 of the Funding Code means the potential of the proceedings to produce real benefits for individuals other than the client (other than benefits to the public at large which normally flow from proceedings of the type in question). Wider Public Interest only has an impact if it is significant and this is unlikely to arise in a case before the Adjudicator. See also 3C-041 of Volume 3 of the LSC Manual.

CLR and Legal Help

41.12. 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.

42.13. Where CLR is granted in connection with an appeal before an ~~Adjudicator~~ Immigration Judge and the prospects of success are unclear as further investigation is required, then the merits test should be reapplied as soon as the information necessary to properly determine the prospects of success is available to the supplier.

If after further investigation the prospects of success are poor then CLR should be withdrawn.

43.14. The criteria should continue to be reviewed where practicable in advance of the hearing. If therefore, Controlled Legal Representation has been granted in any particular case, circumstances change or new information arises such that the means or merits test is no longer satisfied, you should cease to provide Controlled Legal Representation save to the extent of any professional duty owed (including in particular to inform your client, the Home Office and the appellate authority of your ceasing to act). Likewise, Controlled Legal Representation may be granted to a client previously refused it where further information arises or circumstances change such that the criteria are now satisfied.

44.15. 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).

45.16. 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.

17. You must reconsider the merits of the case following the CMHR and record your answers to the questions on the file. This will be monitored on assessment and costs may be disallowed if there is no documented reconsideration of the merits at this stage.

~~When considering the merits test before applying for leave to appeal to the Immigration Appeal Tribunal following the dismissal of an appeal before an Adjudicator, then the following additional guidance must be applied before granting Controlled Legal Representation~~

- ~~16. An application for leave to appeal to the Tribunal should not be automatic. An Adjudicator has already considered both issues of fact and law. CLR should only be granted where the prospects of success are good or borderline as defined above. When considering the prospects of success you should look at the prospects of the appeal succeeding before the Tribunal and not simply the prospects of getting leave. Where the issue is of a technical nature you should carefully consider whether the outcome is one, which will ultimately benefit the client and not merely prolong his/her stay in the country in a case, which on the facts is likely to fail.~~

- ~~17. CLR should not be granted at the leave stage on the grounds that the prospects of success are unclear. A supplier should be aware of all relevant issues by this stage. Exceptionally the prospects of success may be unclear where further investigation is needed, for example, where fresh evidence has come to light since the Adjudicator hearing that would be admissible before the Tribunal. In such cases CLR may be granted to enable further investigation to be carried out. However once this investigation is concluded then the merits test should be reconsidered and the prospects should no longer be said to be unclear.~~

- ~~18. As from 1 April 2003, under the Nationality, Immigration and Asylum Act 2002 applications for leave to the Tribunal can be made on a point of law only. Costs will therefore be disallowed where an application has been made on issues of fact.~~

12.5.5 Refusing or Withdrawing Controlled Legal Representation

1. An initial application to grant CLR should be refused where the client fails to satisfy the means or the merits test.
2. You should cease to provide CLR where the case no longer satisfies the merits test.
3. The date and reasons for the refusal or withdrawal should be recorded on the application for CLR and retained on file.
4. You must inform the client of their right of review of your or our decision based on the merits of the case only and provide them with the review notification form (CW4). The London Regional Director will consider any request for a review and, where he is not minded to grant CLR, will refer the request to the Funding Review Committee.

5. 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 should complete the section on the review notification form giving your reasons for the refusal based on the merits of the case. Your client must give reasons for the application for a review.
6. Where we have refused or withdrawn CLR, you or your client must give reasons for the application for a review on the review notification form.
7. You or your client must submit the form to the London Regional Office within 14 days of the decision to refuse or withdraw CLR. You should provide your client with the address of the London Regional Office to which he should appeal or you can, if you are instructed, submit the form to us on the client's behalf.
8. There is no right of review of a decision based on the means of the client.
9. There is no right of review of a decision to refuse or withdraw CLR in connection with an application under s 103A of the NIA 2002 which is subject to an order under s 103D of that Act.

12.5.6 Review by the Funding Review Committee (FRC)

This section does not apply to cases where the refusal or withdrawal of CLR is in relation to an application under s 103A of the NIA 2002 and which is subject to an order under s 103D of that Act .

Where an application to grant or amend CLR is refused or where CLR is withdrawn, your client may within 14 days of the date of refusal or withdrawal apply on the form specified by us to have the decision reviewed by the FRC, and may make representations in writing in support of the application.

Subject to any modifications set out below, a review by the Funding Review Committee 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 London Regional 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 London Regional Director will forward the representations to the FRC for review.
2. Where the FRC reviews a decision made under Rules 12.5.2 or 12.5.5 above, the FRC shall consider the matter on the papers only.
3. Where, in light of a determination by the FRC under this Rule, the FRC wish to confirm the decision of the London Regional Director, the FRC shall do so and ensure that the client and you are informed.

4. If it appears to the FRC that in light of their determination, the decision of the London Regional Director may not be correct or should be reconsidered, they shall refer the matter back to the London Regional Director.
5. Where information comes to light which was not before the London Regional Director at the time his decision was made and which the FRC considers may be material to that decision, the FRC shall ensure that such information is referred to the London Regional Director.
6. The FRC 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 FRC, 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.

12.5.7 Retrospective Funding

1. Retrospective Funding may be granted by us in certain cases where urgent work is necessary prior to grant where:
 - (a) the application for CLR has been refused by us, but we are unable to process the review in time and CLR is subsequently granted; or
 - (b) you have acted with all due expedition, but have been unable to get a decision from us in time and CLR is subsequently granted.
2. Urgent work must be limited to that necessary within the Upper Cost Limit and with regard to the guidance at 12.8 below. Any costs that exceed the Upper Cost Limit will be disallowed unless there has been an agreed extension.

~~For example: Up to one hour's work should be sufficient to cover the preparation and lodging of a notice of appeal with grounds.~~
3. Where an application for a grant of CLR or a review of refusal is subsequently allowed, the grant will be automatically backdated to the date upon which we received a properly completed application.

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

1. Section 19 (1) of the Access to Justice Act prevents the Commission from funding proceedings outside of England and Wales, save in limited circumstances.
2. The Funding Code also contains relevant provisions. Criteria 4.2 states that:

“An application will be refused if it relates to law other than that of England and Wales, save where this is permitted by or under section 19 of the Act”

3. We will not therefore fund immigration or asylum appeals, which have been listed to be heard before the ~~Immigration Appellate Authorities (IAA) or Immigration Appeal Tribunal (IAT) in Scotland or Northern Ireland AIT~~
4. ~~The only exception will be where the IAT hearing has been listed in Scotland but the original Adjudicator hearing was in England or Wales. In those circumstances only we will fund the costs of the IAT hearing. This is because in this instance any onward appeal would lie to the Court of Appeal of England and Wales.~~

12.6 Reporting a case – Stage Billing

1. 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) ~~When any work under Legal Help has been completed. Only one claim under Legal Help may be submitted for each matter. The claim should be for Legal Help costs only. The date you receive the initial Home Office decision or when you have completed the work under Legal Help if earlier;~~
 - (b) ~~When all further work under Legal Help has been completed. Only those costs incurred since stage (a) should be reported.~~
 - (b) ~~When any work under CLR has been completed:
 - i) ~~after you have received the initial AIT initial Adjudicator's decision; or~~
 - ii) ~~after a refusal of leave to appeal to the Tribunal; or~~
 - iii) ~~when you have completed the work if earlier.~~The claim should be for CLR costs only.~~
 - (c) ~~The further costs under CLR following a substantive Tribunal hearing. At this stage only those costs incurred since stage (b) should be reported (subject to Rule 12.6.5 below). The claim should be for CLR costs only. The date you receive the initial AIT decision on the substantive appeal or when you have completed the work under CLR if earlier;~~
 - (d) ~~When all further costs under CLR has been completed. Only those costs incurred since stage (c) should be reported.~~
2. In each claim you must only submit your costs in relation to the work relevant at that stage.
3. The Stage Billing arrangements contained in Rule 12.9 of the old Solicitors' Contract Specification no longer apply to any case, whenever commenced.

4. Any claim that exceeds the Legal Help or CLR Cost Limit or the Maximum Disbursement Limit will be disallowed unless there has been an agreed extension.

Reporting a case falling within the Transitional arrangements

5. If a case falls within the transitional arrangements then all costs to date, which have not already been claimed, must be reported to us after 1 April 2004 as soon as the case reaches one of the stages outlined in Rule 12.6.1 above.

12.7 Transitional arrangements

1. This Specification applies to all Controlled Work in the Immigration Category on or after 1 April 2004.
2. However, where the case started before 1 April 2004, the transitional arrangements set out below will apply.
3. Where you are assisting a client under Legal Help (but have not granted CLR) and the form was signed before 1 April 2004 then, subject to any extension agreed, you will only be entitled to claim:
 - (a) further profit costs up to:

£401.25 (£367.85 outside London) in asylum matters and

£286.75 (£262.75 outside London) in non-asylum matters

for any work carried out in each matter on or after 1 April 2004 (or if you are situated in the London region 1 March 2004);
 - (b) further disbursements up to:

£250.00 for any work carried out in each matter on or after 1 April 2004;
4. The rules for attendance at interviews set out in Rule 12.3.2 shall apply to any interview taking place on or after 1 April 2004.
5. Where you have granted CLR before 1 April 2004 then, subject to any extension agreed, you will only be entitled to claim costs up to a total limit of £1500 (or your firm's CLR limit if different) for any work carried out in each matter. Where justified you may claim a maximum additional one hour's Legal Help in addition to costs under CLR.
6. All cases, you must comply with the Stage Billing provisions set out in Rule 12.6 above.

12.8 Further Guidance – Time Standards

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 in most cases.
2. Three hours should normally be sufficient to take instructions from a client regarding a non-asylum matter and to advise on the merits, procedure and documentation in relation to 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 12.2.12 above. 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.

3. Up to three hours may be required to pursue a course of enquiry (for example to obtain further evidence), to report to the client and to prepare further representations to the Home Office where necessary. This should also cover, where appropriate, an assessment of the merits of an appeal, an application for CLR and advice to the client of the options or courses of action open to them.
4. Up to one hour should normally be sufficient to cover the preparation and lodging of a notice of appeal with grounds.
5. Up to four hours is normally reasonable to prepare for an appeal before an [AIT Adjudicator](#) and significant further work should not be common although a particularly complex case may justify further work.

~~6. See Rules 12.4.2 and 12.4.3 for guidance on costs relating to further appeal to the Immigration Appeal Tribunal.~~

6. We intend to introduce time standards for review and reconsideration matter under s 103A of the NIA 2002 and welcome comments from practitioners, representative groups and the judiciary on what these should be.

7. We will consider all comments received with further information on the review and reconsideration processes and will introduce further time standards based on these predictions.