



Legal Aid Reform: Final Immigration and Asylum Fee Schemes

Immigration and Asylum Final Fee Scheme

1. Foreword

This paper sets out our final Immigration and Asylum Fee Schemes which will come into effect from 1 October 2007. These schemes are part of the legal aid reform programme set out last November in *Legal Aid Reform: the Way Ahead*.

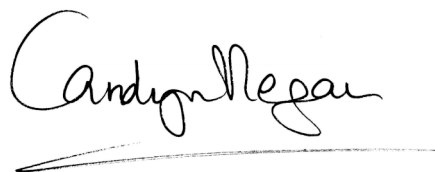
We are grateful to all of you who took part in our original consultation *Legal Aid: A Sustainable Future* and in subsequent meetings. Your input has been really valuable in shaping the final schemes.

Many of you expressed concern about:

- the threshold at which a case becomes exceptional and is excluded from the new graduated fee. As a result, we have reduced the 'escape' threshold from four times to three times the graduated fee in both immigration and asylum cases.
- interpreter and translation costs being included in the proposed fees. Therefore, we have decided that all disbursements should be paid in addition to the fee, subject to a reasonable limit.
- travel and waiting time in the fees for advocacy. We have decided to continue to include these costs in the fees and have made an allowance of four hours. However, we will keep this under review and will continue to work with the Immigration Nationality Department and Asylum and Immigration Tribunal on their listing policies.

The new schemes aim to maintain, not cut, our level of expenditure and pave the way for best-value tendering. They will create a closer link between the case work undertaken and how much service providers are paid; and they will devolve decisions on what work needs to be done to those of you who handle cases. They also reflect our ongoing commitment to providing services to particular client groups such as detained clients.

We will continue to engage with those of you with an interest in immigration and asylum legal aid over the coming months. In the meantime, I would like to thank you again for your contribution in helping to shape these fee schemes. They are an important part of the overall reform programme, which will provide quality advice for clients, greater certainty for providers and good value for the taxpayer.



Carolyn Regan
CEO, Legal Services Commission

2. Executive Summary

- 1.1 Having considered the responses to the consultation paper *Legal Aid: a sustainable future* the DCA and the Legal Services Commission (LSC) published their initial response in November 2006 in the document *Legal Aid Reform: the Way Ahead*.
- 1.2 In this document we stated that we consider the broad framework for the graduated fee scheme, and the shape of supply as set out in the consultation paper to be correct for the immigration and asylum category. We also believe it provides a basis for moving forward to competition.
- 1.3 We stated that we would continue to give further careful consideration to the issues raised in response to the consultation. We have made important changes to the proposed scheme, reflecting concerns raised both in the consultation responses and in subsequent meetings with stakeholders.
- 1.4 Having already consulted on this scheme, we are now sharing with our stakeholders the details of the revised graduated fee scheme, incorporating the changes we have made and including details of the final fees.
- 1.5 The scheme has the following objectives, which were key in its design:
 - The scheme is designed to be budget neutral and maintain spend Immigration and Asylum to that expected under current funding arrangements.
 - We want to devolve as many decisions as possible to the providers about what work is appropriate to be undertaken for clients, but we need to ensure that the most critical work is always done and is always financially viable.
 - We need a scheme that is effective in preparing the market for best-value tendering without pre-empting it. We need a structure which pays the same amount for the same kind of work undertaken regardless of who undertakes it, while leaving the detailed decisions about what kind of assistance it is appropriate and cost-effective to provide, and when to provide it, to individual providers.
 - We need a solution whereby cases that are justifiably costly to undertake are remunerated fairly, and can escape from the standard fees as exceptional cases at a point which is financially viable for all suppliers.
- 1.6 We remain committed to the proposals for providing services for clients in detention through exclusive contracts. We are consulting with Representative Bodies on the content of the contract for providing services within Immigration Removal Centres, along with the general specifications for civil categories. Consultation began on the 1st March and will close on 12 noon on 16th April. Please see the paper "**Unified Contract Specification (Civil)**" for the details of this consultation. This can be found on the LSC website: <http://www.legalservices.gov.uk/>
- 1.7 The revised scheme will be presented in detail in the subsequent sections of this paper. However, a summary of the key revisions is as follows:

- Final fees will remain broadly the same as those published in the consultation paper but with the interpreter and translation allowance removed, a baseline hourly rate set three quarters between current national and London rates to better reflect the geographical distribution of cases and an amended formula for rounding, which is fairer for providers
- The exceptional case escape threshold will be reduced from four times to three times the graduated fee in both immigration and asylum cases; the fees have not been reduced to offset the lower threshold.
- All disbursements, including interpreter and translation costs, in both asylum and immigration cases, will sit outside the fees and be paid as incurred, subject to extendable financial thresholds
- We will not proceed with the proposal to provide an early resolution payment for asylum cases
- We provide arrangements for remunerating cases that move between graduated fees and excluded services
- Standard fees will apply to immigration cases opened by providers, and asylum cases initially lodged with the Home Office, from 1 October 2007. All cases lodged before this date will be funded through hourly rates.

Travel time and costs will remain within the graduated fees.

- 1.8 The full details of the revised scheme provided in this document should be read in conjunction with the draft Immigration Specification for October 2007 which details how the arrangements will work in practice.
- 1.9 Further details of excluded services and exceptions to graduated fee schemes will be found towards the end of this document from Paragraph 2.64.

3. Scope

Providers

- 2.1 The remuneration arrangements will apply to all providers holding a contract in immigration from 1 October 2007.

Work

- 2.2 Graduated fees will apply to all immigration cases opened by providers and asylum cases initially lodged with the Home Office from 1 October 2007. All immigration cases opened by providers and asylum cases initially lodged before this date will not be subject to graduated fees but will be funded through hourly rates (For further details regarding the funding of these cases please see **Para 11.2** of the Immigration Specification 2007.)
- 2.3 Onward appeals (application for review and reconsideration) are excluded from fee scheme and will continue to be paid for under existing arrangements. Not-for-Profit providers will be able to claim solicitor payment rates for any of this type of work carried out on or after 1 April 2007 under the provisions of the proposed Unified Contract.
- 2.4 The Immigration Specification 2007 proposes that the following services be excluded from the scheme but may be carried out by all immigration providers:
- Advice in relation to Form Filling (in the limited circumstances when within scope, please see **Para 11.101** of the Immigration Specification 2007)
 - Advising on an application for Licensed Work
 - Appealing to the Court of Appeal from the Asylum and Immigration Tribunal (AIT)
 - Bail applications (when detention cases are conducted under the exceptions to exclusive contracts or where there are no exclusive contracting arrangements in place in the detention facility)
 - Initial advice in relation to an asylum application prior to attendance at the ASU (where following attendance at the Asylum Screening Unit the provider ceases to be instructed).
 - Where advice is required in relation to the merits of lodging a review application under s.103A NIA 2002 and the client has not received advice as part of the graduated fee scheme. e.g. the client was unrepresented at the substantive appeal.
- 2.5 The exceptions from the scheme listed above will be paid by hourly rates, where in scope, and will be subject to the Legal Help, CLR and disbursement cost limits at **Para 11.35 to 11.74** of the Immigration Specification 2007.
- 2.6 National Asylum Support Services (NASS) related advice in excess of 30 minutes, i.e. that constituting a New Matter Start (NMS), is no longer within the scope of the immigration category and should be reported under the most appropriate civil category, or under tolerance if the provider does not hold a contract in the most appropriate category. The case will be subject to the provisions and fees of the Tailored Fixed Fee Replacement scheme (for further details please see *Legal Aid Reform: the Way Ahead*)

- 2.7 As a general rule NASS advice will relate to welfare benefits and the most appropriate category under which the case must be reported will be welfare benefits. If the main reason that a client seeks advice specifically relates to a community care or housing issue, the provider may open a NMS in the most appropriate of these categories, or under tolerance if the provider does not hold a contract in the most appropriate category.
- 2.8 When NASS advice is reported under a category that is not welfare benefits, the provider must be able to demonstrate that the primary issue specifically related to the category under which the case was reported and that the NMS was not simply allocated to the category commanding the highest fee. This will be subject to monitoring and retrospective assessment.
- 2.9 We know that some responses to the consultation asserted that NASS advice directly relates to the asylum application itself and must therefore remain within the scope of the immigration category however we believe that advice in relation to NASS is in effect welfare benefits advice.
- 2.10 Prior to April 2004 NASS advice was reported as Welfare Benefits. With the reforms to immigration and asylum legal aid in 2004 the Immigration Specification was amended to provide that NASS-only advice in excess of 30 minutes must be opened as a non-asylum NMS in the immigration category. This was to prevent the perverse situation where the financial limits for advice relating to NASS would be higher than the financial limit for an asylum application itself. This will no longer be an issue under the graduated fee scheme.

The Graduated Fee Scheme

- 2.11 The following sections should be read alongside the proposed Immigration Specification 2007, which provides detail of how the fee scheme will operate in practice
- 2.12 The broad structure of the scheme will remain as detailed within the original consultation paper *Legal Aid: a sustainable future*.
- 2.13 The scheme will consist of two stages: Legal Help and Controlled Legal Representation (CLR).
- 2.14 There will be a single fee for work done under Legal Help in connection with the initial application. At the appeal stage providers will make the decision to grant CLR and then claim one fee for a case that concludes before the substantive hearing or a different, higher fee if representation is also provided at the substantive hearing.
- 2.15 Advocacy services, for example representation at the Home Office interview (when an interview is conducted in an asylum or immigration case and attendance at the interview is within scope for funding) or at the AIT, will attract additional payments. These will be paid on top of the appropriate standard fee.
- 2.16 Several consultation responses suggested that the additional payments in relation to advocacy services at the AIT are not of sufficient value to allow for

the instruction of counsel. However, providers that choose to instruct counsel in a case will be expected to pay for those services from the graduated fee **and** the additional payments.

- 2.17 We believe the combination of the graduated fee **and** the additional payments on average are sufficient to pay for the services of counsel. The additional payments are designed to cover providing advocacy at the hearings and the CLR fee is designed to cover the substantive preparation relating to the appeal, irrespective of whether the preparation is undertaken by counsel or the instructing provider.

Disbursements

- 2.18 We originally proposed that the fees for asylum cases would incorporate a set allowance for interpreter and translation costs and no additional payments would be made for these services. We also proposed that separate payments would be made for experts' reports when required in all cases, as well as interpreter and translation costs in immigration cases only.
- 2.19 Whilst we believe that our reasons for proposing that interpreter costs be included within the fees in asylum cases were correct, we have accepted the concerns raised by a majority of respondents that there may also be negative effects. Therefore, the cost of all disbursements including interpreter and translation costs in both immigration and asylum cases will be excluded from the fees and may be claimed as separate payments.
- 2.20 All disbursements are subject to cost limits and prior authority must be sought by the LSC to exceed these. The limits are set at two points with limits for both an individual disbursement and total disbursements for each stage of the case (please see **Para 11.45** of the Immigration Specification for further details.)

Early Resolution Payment

- 2.21 To incentivise obtaining an early positive result for clients in asylum cases, we proposed to provide an early resolution payment on top of the stage 1 graduated fee when the client is awarded full refugee status during that stage. However, feedback from providers indicated that this proposal would not achieve its intended objective and therefore we do not intend to proceed with this proposal. Several stakeholders have indicated that they would like to see the part of the immigration and asylum budget apportioned to the provision of the early resolution payment recycled and used to increase the value of the graduated fees.
- 2.22 We have looked again at the fee scheme as a whole following consideration of the feedback received and have made changes where we believe that the limited budget can be better structured to meet the needs of clients, for example reducing the exceptional case threshold and removing interpreter costs from asylum cases. We believe this approach is preferable to simply increasing fees, the impact of which would be negligible bearing in mind the limited amount of funding involved (approximately £380,000).

Travel And Waiting

- 2.23 An allowance for travel and waiting has been included within the graduated fees. There will be no separate payment for travel and waiting time.
- 2.24 Better control and more certainty of the cost of non-advice services such as travel and waiting is a key aim of the LSC. We want to focus the payment of funds to provide advice services to clients within their local community and discourage providers from incurring travel costs for clients who could be referred to a more local provider.
- 2.25 The more structured allocation of cases to local providers that will come with the introduction of the proposed service at the Asylum Screening Unit and the role out of the Home Office New Asylum Model will help to make it possible for access to be maintained.
- 2.26 Furthermore, to assist with the transition to competition based on cost and quality it is important that we encourage providers to organise their practices so that travelling long distances is not required in all but exceptional circumstances.
- 2.27 We are working with the AIT to gain a better understanding of listing practice and will provide input into how this could be developed to operate most efficiently for legal representatives.

The Fee Structure

- 2.28 The fee structure is set out in the tables below. These fees rely on the full implementation of measures to reduce duplication whereby in the majority of cases only one provider will deal with one case or stage of case. If we are unable to more closely align the number of asylum applications to the number of NMS, we will need to revise the value of the of the fees to reflect that on average less work will be carried out per new matter start.
- 2.29 In light of concerns about the uncertainty of what impact on case costs the New Asylum Model (NAM) may have when it is fully rolled out we will actively monitor and review the fee levels as compared to actual costs during the life of the scheme.

Table 1: Immigration and asylum scheme fees (exclusive of VAT)

	Stage 1 (Legal Help)	Stage 2a (CLR)	Stage 2b (CLR)
Asylum Graduated Fee	£450	£240	£600
Immigration Graduated Fee	£255	£240	£480

Table 2: Additional payments for immigration and asylum cases (exclusive VAT)

Representation at the Home Office Interview (asylum and Immigration cases within scope)	£290
Representation at oral CMRH	£175
Representation at telephone CMRH (pilot only at present)	£95
Representation at substantive AIT hearing	Asylum £320 Immigration £250
Additional hearing: part heard or re-list	Asylum £170 Immigration £170
All disbursements (interpreters & translators, expert reports, travel expenses)	Separate payments outside of the graduated fee scheme, subject to cost thresholds.

- 2.30 The allowance for interpreter and translation costs that were contained within the original fees has been removed, as these costs will now be paid separately, outside the graduated fees. Please see paragraph 2.18 for further detail.
- 2.31 Following feedback from stakeholders, the fees have been rounded to the nearest £5 rather than the nearest £50 as originally published. This sees an overall increase of the fees across an asylum case and a reduction in the fees across an immigration case, but represents a fairer system of rounding overall.
- 2.32 It should be noted that we have not made any amendments to scope in relation to attending Home Office interviews. Additional payments for attending Home Office interviews may only be claimed if the case meets the scope requirements of the immigration specification (for further details, please see **Para 11.107** of the Immigration Specification 2007).
- 2.33 The fees and additional payments specified will apply to all providers irrespective of geographical location. London providers will not attract uplifted payment rates. The case costs of London providers are not higher than those of all other regions under the current payment arrangements.
- 2.34 However, the hourly rate used as the baseline for calculating the graduated fees has been set at three quarters of the way between the current national hourly rate and the current hourly rate for London. This better reflects the geographical distribution of cases.
- 2.35 A majority of respondents said that they believed that the fees were set too low; however we believe that the revised scheme represents a workable and fair average for work undertaken at different stages of the case whilst maintaining cost-neutrality of the total immigration and asylum budget. There is no money available for an increase in legal aid fee levels without making cuts in scope of the front-line services eligible to be funded through legal aid.

- 2.36 Although historical claim data for immigration and asylum is unreliable and is predominantly used as a sense-checking tool, the Regulatory Impact Assessment for this scheme suggests that under the revised proposals a good majority of cases and providers will “gain” under the scheme.
- 2.37 A breakdown of the composite components, calculations and corresponding values making up our fees and additional payments can be found at **Annex 1**.

Exceptional Cases

- 2.38 A majority of respondents commented that the proposed escape threshold set at four times the fees was too high. We have set a revised escape threshold of three times the fees to reduce the level of risk on providers and reduce any disincentive to avoid exceptionally complex and costly cases.
- 2.39 Lowering the escape threshold increases the pressure on costs because of the increased number of cases not covered by the fees. However, bearing in mind the concerns of many respondents over the level of the fees we have not made a corresponding reduction to the graduated fee levels available.
- 2.40 The pressure on costs of setting the escape thresholds any lower than three times would be such as to require a considerable reduction in the graduated fee levels available. We are satisfied that there are now adequate safeguards within the fee system for complex cases.
- 2.41 The principle of swings and roundabouts works most effectively if the full range of cases is undertaken reflecting the needs of the whole community and providing a holistic service. It is vital that providers who currently do specialise in the most complex and costly cases re-organise their practices to take on the full range of cases, in line with the General Civil Contract. Indeed, this is necessary to ensure that they are in a position to compete for contracts awarded on the basis of cost and quality in future years.
- 2.42 Therefore, we will monitor providers who have a higher than normal proportion of exceptional cases and will manage contracts in a more proactive way to encourage a fuller range of cases. We will consult on criteria for setting contract levels from April 2008 which will redistribute some cases from providers whose average costs are either very high or very low. Exceptional cases will also be subject to cost assessment.
- 2.43 A case will be considered exceptional if it meets the following equation:

T (total profit costs) – AS (additional payments claimed)

> or =

3* GFS (Graduated fees claimed)

- 2.44 This differs slightly from the method of calculating exceptional cases originally proposed in order to reduce the complexities of performing the calculation and recording the corresponding data. However, the principles of the calculation remain the same.

- 2.45 The value of additional payments for advocacy services provided within a case, as prescribed in table 2 above, will be excluded from the calculation rather than the exact proportion of a provider's profit costs that directly relate to the component services covered by the additional payments.
- 2.46 Disbursements paid outside of the graduated fee (e.g. experts' reports and interpreter and translation costs) will not be included within the calculation.
- 2.47 Work relating to an application for review and reconsideration will not be included within the calculation as this is subject to different remuneration arrangements.
- 2.48 Work relating to services excluded from the graduated fee scheme and paid by hourly rates as detailed at paragraph 2.4 above will not be included within this calculation.
- 2.49 The exceptional case calculation can only be performed at the conclusion of the case or at the point that CLR is either granted or refused in relation to an application for review and reconsideration (the conclusion of stage 2) to incorporate all relevant stages within the graduated fee.
- 2.50 Where a case is exceptional, the total profit costs of the case, based on current hourly rates, minus the total value of payments received by way of the graduated fee will be paid in full, based on the appropriate hourly rates.
- 2.51 The full current London hourly rates will be used in the calculation for providers located within London. The current national hourly rates will be used in the calculation for providers located outside London.
- 2.52 VAT on profit costs will not be included within the calculation.

Example

In the following asylum case, the fees for Stage 1 and Stage 2b have been claimed under the graduated fee scheme 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 net profit costs for the work covered by the scheme and work up to the application of the merits test in relation to review and reconsideration, 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 payment of **£290** has been claimed for representation at the Home Office Interview plus **£175** for the CMRH and **£320** for the substantive AIT hearing, totalling **£785**

Equation for calculating exceptional case:

$$\begin{array}{rcl}
 \text{T (total profit costs) – AS (additional payments claimed) } & & > \text{ or } = \text{ 3* GFS (Graduated} \\
 \text{fees claimed)} & & > \text{ or } = \text{ 3* GFS (Graduated} \\
 \text{£4025} & - \text{ £785} & = \text{ £3,240} & > \text{ £3,150 (£1,050 x 3)}
 \end{array}$$

Therefore, the exceptional payment is made 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 claimed:	£1,050
➤	Additional payments claimed:	£785
➤	Total payments claimed:	£1,835
➤	Exceptional payment due:	£2,190 (£4,025 -£1835)
➤	Total payments made:	£4,025

Stage Claiming

- 2.53 Under the scheme there will be two claim points only in a case up to an application for reconsideration of the AIT decision (onward appeal). These will be as follows:
- The Legal Help costs up to the lodging of the appeal or close of case.
 - The CLR costs up to the point that CLR is either granted or refused in relation to an application for review and reconsideration or the close of case.
- 2.54 We have considered the argument made by some stakeholders that under a system of standard fees the full fee for each stage should be paid at the point that work begins on that stage and additional payments should be paid as incurred.
- 2.55 We do not believe that this is feasible as in order to monitor and review the fee levels as compared to the to actual costs, we require the actual time spent at each stage reported when the claim is made.
- 2.56 Furthermore, at the CLR stage it will not be known at the outset whether the CLR stage 2a or CLR stage 2b fee would be claimable.
- 2.57 Similarly, it will not be known until conclusion which additional payments are to be claimed meaning that a new claim would have to be made each time a service attracting an additional payment is incurred.
- 2.58 The risk of error in connecting claims to a case increases in correlation with increases to the number of claims made. This is a particular issue when it comes to trying to identify exceptional cases that qualify to escape the scheme.

Uplift for Advanced Panel Membership

- 2.59 We will continue to pay a 5% uplift in legal aid rates for all casework personally undertaken under an Immigration Contract by an individual accredited as an Advanced Caseworker under the Immigration and Asylum Accreditation Scheme. The Advanced Caseworker Level of the Immigration and Asylum Accreditation Scheme has only been operational for a short

period and the volume of Advanced Caseworkers is small and thus the financial impact of the uplift is limited.

- 2.60 However, it is arguable as to whether this uplift makes a significant contribution to quality standards. Moreover, experienced staff will gain under graduated fees as they will deal with cases more efficiently. Therefore, we will keep the existence of the uplift under review.
- 2.61 The arrangements for claiming the uplift will remain as proposed in the original consultation.
- 2.62 The provider will be required to calculate the hours of casework that the Advanced Caseworker personally undertakes and submit a claim once a year for the additional amount due to reflect the 5% uplift, based on the appropriate hourly rate.

Not-for-profit sector

- 2.63 Our stated position is that subject to contract performance in 2006/07 and subject to any other criteria for the award of contracts in 2007/08, as a starting point not for profit providers can expect the same level of non-disbursement related income in 2007/08 and we will develop transitional arrangements in order to agree the reconciliation process for cases started under both the old and new schemes.

Excluded services

- 2.64 The services that will be specifically excluded from the scheme are:
- information, advice and representation at the Asylum Screening Unit (ASU)
 - advice and representation for those held in detention including those that are subject to the Home Office Fast Track process
 - advice and representation for Unaccompanied Asylum Seeking Children (UASC)
 - all cases covered by the New Asylum Model Early Advice Pilot in Solihull (if still operating in October 2007)
- 2.65 The provision of these services will be through either exclusive contracts or exclusive panels with their own remuneration arrangements. Only providers awarded the relevant exclusive contract schedule will be able to undertake this work.
- 2.66 We will consider all suggestions that were made about specific criteria that should be used for the bid rounds for the exclusive services when developing our bid criteria.

- 2.67 There will be certain circumstances in which a provider who does not hold a relevant contract will be permitted to perform controlled work where the client's case is subject to an exclusive arrangement. These include:
- where the client is referred by a provider who does hold the relevant exclusive contract
 - 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
 - the client is an existing client (must have attended in the UK and carried out at least five hours work)
 - the provider was performing contract work on the client's case before any date specified for the commencement of its application to a location, scheme or pilot b) once the client has left, or been removed from any specified location, scheme or pilot
- 2.68 Where these exceptions apply the case will normally be excluded from the graduated fee scheme and will be paid by hourly rates, subject to the relevant Legal Help, CLR and disbursement upper cost limits. For further details, please see **Para 11.101** of the Immigration Specification 2007.
- 2.69 The exception to payment by hourly rates is when the client is in detention, whereby the graduated fee scheme arrangements will apply but with additional payments in certain circumstances. Please see **Para 11.109** below for further detail.

4. Services

Services to clients in Detention Centres

- 3.1 We plan to proceed with our original proposals for providing services to clients in detention as detailed in *Legal Aid: a sustainable future*. Bid rounds for exclusive contracts for providing these services will be held later this year with the intention of the contracts coming into effect at the same time as the graduated fee scheme in October 2007.
- 3.2 The current exclusive contracts for clients who are in detention and are subject to the Home Office Fast Track process, some of which are due to expire in April 2007, will be extended until October 2007.
- 3.3 We are consulting separately on the content of the contract for advice provision within Immigration Removal Centres with representative bodies alongside the specifications for civil categories.
- 3.4 We have published the evaluation of the recent pilot for providing advice surgeries in detention centres. The evaluation concludes that the surgeries have been of benefit in meeting the needs of detainees without a representative, particularly at the end of the process. The pilot will therefore be extended until October 2007, at which time the service will be incorporated within the exclusive contract for providing all legal services to clients in detention. The evaluation is available on the LSC's web-site: <http://www.legalservices.gov.uk/>

- 3.5 The Immigration Specification allows providers to give advice and representation to individuals in detention without an exclusive contract schedule to do so in the following circumstances:
- The client is an existing client or a close family member is an existing client (please see **Para 11.101**).
 - There are no Exclusive Contracting arrangements in operation in the Detention Centre (this will very often be the case in prisons)
 - An Exclusive Contract Provider refers the client to another provider
- 3.6 Where these exceptions apply the cases will be subject to a combination of the graduated fees and hourly rates for specified work.
- 3.7 Reasonable additional costs for travel to the detention centre can be claimed in addition to the graduated fee payments for attendance on the client to take instructions up to a maximum of three hours for a return journey.
- 3.8 Additional costs for travel to the detention centre cannot be claimed on top of the additional payments of the graduated fee scheme in connection with representing a client at the Home Office interview or any hearing before the AIT. An allowance for travel and waiting is already provided within the additional payments of the graduated fee scheme.
- 3.9 Following concerns raised in consultation, we are also permitting the reasonable cost of any bail application made to be claimed up to an upper costs limit £500 (in relation to bail only matters). For further details, please see **Para 11.109** of the Immigration Specification 2007.
- 3.10 This is a transitional arrangement whilst we gather data relating to the costs of bail applications. We intend to introduce a fixed fee for bail applications as soon as we have sufficient information to make this possible.
- 3.11 Where a client is being represented under the graduated fee scheme and is subsequently detained in a centre where Exclusive Contracting Arrangements are in operation, the provider should continue to act for the client until the completion of the next graduated fee scheme stage and then decide whether it is in the best interest of the client to refer the matter to an exclusive provider or to continue to represent the client.
- 3.12 Clients held in prison will normally fall within the exceptions to the exclusive contract arrangements and will be subject to the arrangements detailed above.

Services to clients in police stations

- 3.13 A pilot telephone advice service for clients held in Police Stations started on 12 June 2006 and finished on 21 January 2007. We have begun the evaluation of this pilot and will consult with stakeholders about the success of the pilot during the evaluation period.
- 3.14 If we decide to continue with this type of service, our approach is likely to be to award exclusive contracts from October 2007 to a small number of providers following a competitive bid round. In the meantime pilot contracts have been rolled over and the service continues to be provided.

Services to clients detained under anti-terrorist legislation

- 3.15 Feedback from stakeholders suggests that due to the extremely specialist nature of work relating to appeals before the Special Immigration Appeals Commission (SIAC) only a small number of appropriately qualified and experienced providers undertake this work at present and therefore there would be little benefit in creating a formal specialist panel following a bid round.
- 3.16 We have taken this on board and considering also that SIAC cases are already subjected to greater LSC scrutiny by virtue of being high cost cases funded by way of certificate and that there was never any proposal to move away from payment by hourly rate for these cases, we have decided not to proceed with our proposals relating to SIAC cases.

Services at the Asylum Screening Unit (ASU) and Services to Unaccompanied Asylum Seeking Children (UASC)

- 3.17 We remain committed to the proposals for providing services at the ASU and to UASC as contained in *Legal Aid: a sustainable future*.
- 3.18 The Home Office proposals for the future processing of UASCs and developing services at the ASU have not yet progressed to a stage that will allow us to consult further on or provide an update on our proposals for providing services in these areas at this time.

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