

Immigration Advisory Service (IAS) – Urgent Guidance

The following is guidance for all providers who are approached to assist former IAS clients with their case.

If you are a legal aid provider and you receive a transfer request from an IAS client we would ask that at present you only take on urgent cases (e.g. cases where an appeal deadline is approaching or a hearing has been listed) or those involving an especially vulnerable client (e.g. an Unaccompanied Asylum Seeking Child (UASC)).

You should not take on clients where the matter is pending a decision unless other work is required or it is a case where the client has made a fresh claim for asylum and a decision on that is awaited. You should instead ask that the client return to you once he has received the decision. This will ensure that clients who have genuinely urgent matters will be able to access advisers as quickly as possible.

Where a former client of IAS approaches another LSC provider to take on their case, what action can that provider take?

Providing that the client continues to meet the means and sufficient benefit/merits test, in principle, providers can grant funding in the matter in the normal way. The previous legal advice rule may be deemed to have been met in such cases (see paragraphs 3.51 to 3.57 of the Standard Civil Contract General Provisions).

Will I be required to open a New Matter Start (NMS) to provide advice?

Yes. Where a provider assesses the client as eligible, a new matter start should be opened to provide the relevant advice required. New Legal Help and where appropriate, CLR forms will need to be completed and signed.

Will I be granted additional NMS?

Our priority is to ensure clients in this situation have access to advice. If you require an increase in order to deal with clients under this process then you should approach your Contract Manager.

If I took on a former IAS case then under which fee scheme will the case proceed?

Where funding is granted by you, the matter should proceed under the existing provisions of the Standard Civil Contract which apply to your firm. For avoidance of doubt, matters will be payable under the Standard Fee Scheme unless one of the exceptions detailed in paragraph 8.83 of the Immigration Specification are met.

Where a matter is subject to a costs limit will the new provider inherit IAS's old cost limit?

Where the matter is payable under Hourly Rates or in relation to a disbursement under Standard Fee then you will be entitled to a new cost limit. Please see paragraphs 8.86 to 8.95 Immigration Specification for Hourly Rate cases and paragraph 8.75 for Standard Fee cases for confirmation of the applicable limits.

Where authorisation for a disbursement has been granted by the LSC but has yet to be incurred, will this authorisation remain should the second provider seek to incur the same disbursement?

Where an extension has been granted by the LSC for a particular piece of work e.g. the instruction of an expert, and that disbursement has yet to be commissioned, you should seek further authorisation from the LSC to continue to obtain that disbursement. You should enclose evidence of the previous authorisation and LSC will endeavour to expedite consideration. You should actively reconsider the reasonableness of incurring the expenditure.

Where IAS have refused CLR funding for an appeal before the First Tier Tribunal, can the new representative open a matter start and claim a Stage 1 Legal Help fee for assessing the merits of an appeal?

No. Where CLR has been refused by IAS in relation to an appeal, then the client has a right of appeal of that refusal to an Independent Funding Adjudicator. In those circumstances, a further Legal Help standard fee will not be payable for assessing the merits of an appeal and providing a second opinion.

Where an appeal is being heard before the Upper Tribunal, what work can a new provider undertake in assessing the merits of granting CLR for the appeal?

As per paragraph 8.86(iii) of the Immigration Specification, you may claim up to £100 under Legal Help for assessing the merits of granting CLR in relation to an appeal before the Upper Tribunal. Where funding is granted, the costs (up to £100) should be claimed as part of the final bill.

How can I obtain the previous file of papers?

Requests for former IAS files should be directed to Cork Gully LLP at 52 Brook Street, London, W1K 5DS.

What if I have any other questions?

Please email any other queries that you may have to
paul.benjamin@legalservices.gsi.gov.uk

Legal Services Commission

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