

# **Immigration and Asylum Accreditation Scheme**

November 2010

## **1. Introduction**

- 1.1 In 2005 the Legal Services Commission (LSC) and the Law Society introduced a compulsory accreditation scheme for all individuals performing publicly funded work in the Immigration Category: the **Immigration and Asylum Accreditation Scheme (IAAS)**.
- 1.2 The Law Society (TLS) owns the IAAS and is responsible for setting and administering the assessment process for the scheme, including any re-accreditation requirements. The LSC is responsible for the use of the IAAS within its contracting arrangements, including the Work Restrictions for each level of accreditation.
- 1.3 All individuals who carry out Immigration Contract Work must be properly accredited to the appropriate level (listed below) and comply with the terms of IAAS, including any re-accreditation requirements:
  - Probationer; or
  - Accredited Caseworker; or
  - Probationary Senior Caseworker; or
  - Senior Caseworker; or
  - Advanced Caseworker

Each individual must further be registered with the relevant regulatory body for inclusion on their respective lists of advisers.

- 1.4 Work restrictions are applied by the LSC for different levels of accreditation. The LSC Work Restrictions document below gives details of the work permitted at each level of accreditation for those performing publicly funded immigration and asylum work.

## **2. The Accreditation Process**

- 2.1 All individuals, including trainee solicitors, volunteers, agents or clerks, performing publicly funded immigration and asylum work must be accredited to one of the levels outlined above and be registered with the relevant regulatory body for inclusion on their respective lists of advisers. Barristers not directly employed by an organisation holding an LSC contract in immigration will continue to be exempt from the scheme.
- 2.2 A candidate, upon receiving written confirmation from the assessment board that they have passed all assessments at the accreditation level for which they were entered, may begin to undertake publicly funded work pending the necessary vetting checks from the relevant regulatory body. However if the caseworker subsequently fails the relevant vetting checks no claim may be made for work done by that caseworker.
- 2.3 Non-accredited advisers are not eligible to perform any publicly funded work. Payment will not be made for work undertaken by non-accredited advisers after 1

April 2005 and any provider using non-accredited advisers to undertake such work is in breach of their contract.

### **3. Process for New Immigration and Asylum Advisers**

- 3.1 The IAAS incorporates probationary levels of accreditation, which allow advisers to undertake a limited amount of publicly funded work under close supervision for a defined period of time whilst working towards the full accredited status at the chosen level.
- 3.2 A new adviser should register with TLS as a Probationer using the prescribed application form available from TLS. New advisers who have not previously been accredited will not be permitted to perform any publicly funded work until they have registered with TLS as a Probationer. A Probationer must pass a Multiple Choice Test (MCT) within three months of registering. On passing the MCT the range of work the Probationer may undertake will be increased.
- 3.3 After the MCT has been passed, the remaining assessments must be passed within 12 months of the date of first registration or the Probationer will be barred from performing any public funded work. This means, for example, that if the MCT is passed within one month of registration, the Probationer would then have a further 11 months to pass the remaining assessments.
- 3.4 Failure to pass the MCT within three months of registration will result in the Probationer being ineligible to perform publicly funded work. The individual may continue to attempt the MCT and will be reinstated as a Probationer on successful completion.
- 3.5 The overall period allowed to achieve accreditation as a caseworker with Probationer status will not normally be extended beyond the original 12 months from first registration, except in exceptional circumstances. All applications for an extension must be made in writing to the Law Society.
- 3.6 Within 12 months of the date of registration a Probationer must pass all the assessments for the chosen level and be fully accredited by TLS. Failure to achieve accreditation within 12 months will result in the Probationer being ineligible to perform publicly funded immigration and asylum work. The individual may, however, continue to attempt the assessments to obtain accredited status.
- 3.7 It should be noted that the probationary period exists for the purpose of training only, and that Probationers are expected to attempt all assessments during their 12 months of probationary status.**
- 3.8 An individual who registers as a Probationer but does not achieve accreditation within the appropriate period may not re-register as a Probationer or perform publicly funded immigration and asylum work until he/she has become fully accredited. He/she may, however, continue to re-take the assessments and obtain accredited status when he/she has passed.
- 3.9 If a Probationer moves to a new provider having previously performed publicly funded immigration and asylum casework for a different provider he/she may not

register as a Probationer and perform public funded work in this capacity. If a Probationer moves firms then he/she will still be bound by his/her existing assessment deadlines.

- 3.10 A new adviser wishing to seek accreditation at Senior Caseworker (Level 2) without first being accredited at Level 1 may do so and need not register as a Probationer and sit the MCT. However, there are no separate probationary arrangements for such candidates so unless they register as a Probationer and follow the processes above, they will not be able to perform any publicly funded work until they are fully accredited.

#### **4. Level 2 Probationary Status**

- 4.1 For a Level 1 Accredited Caseworker who wishes to progress to Level 2 Senior Caseworker accreditation, probationary arrangements are permitted, with the proviso that overall responsibility for all cases progressing to the appeal stage must remain with a Senior Caseworker and only specific tasks appropriate to the Level 2 Probationer's skills and experience should be delegated.
- 4.2 In order to become a Level 2 Probationer, an accredited Level 1 Caseworker must pass the Level 2 written examination, having answered questions on **either asylum or immigration** in the optional section of the exam paper. Upon passing the Level 2 written examination the caseworker may apply to register with TLS as a Level 2 Probationer. A Level 2 Probationer is able to carry out the majority of work at Level 2 under the close supervision of an accredited supervisor for a period of 12 months, subject to the exceptions set out in the IAAS Work Restrictions below.
- 4.3 A Level 2 Probationer is required to obtain full accreditation at Level 2 within 12 months of registering as a Level 2 probationer.. If the caseworker is not fully accredited at Level 2 within 12 months he/she will be required to adhere to the Level 1 work restrictions until such time that full accreditation at Level 2 is achieved.
- 4.4 The Level 2 probationary period commences when the candidate registers as a Probationary Senior Caseworker. If the candidate passes the Level 2 written examination before gaining accreditation at Level 1, the candidate may register as a Probationary Senior Caseworker as soon as they become accredited at Level 1.
- 4.5 Overall responsibility for all cases progressing to the appeal stage must remain with a Senior Caseworker and only specific tasks appropriate to the Probationer's skills and experience should be delegated. The Level 2 accredited Supervisor should consider when direct supervision might be appropriate in this training role. In any event, all work performed by a Level 2 Probationer which is beyond that allowed at Level 1 must be performed under close supervision.

#### **5. Assessment Requirements**

- 5.1 Those applying for accreditation at Senior Caseworker (Level 2) level may choose to demonstrate competence in either asylum or immigration law but all candidates will be required to demonstrate a *general knowledge* of all areas of immigration and asylum law.

- 5.2 Individuals wishing to perform publicly funded work should not attempt the managed migration / business immigration option, but should choose **either the asylum or immigration option**.
- 5.3 Where a provider has a schedule with both asylum and immigration matters they must employ at least one caseworker who undertaken the **asylum option**.

## 6. Supervision

- 6.1 In addition to requirements in Section 2 of the Unified Contract Specification, an Immigration Supervisor must:
- Be a IAAS Level 2 Senior Caseworker or Level 3 Advanced Caseworker and
  - Have achieved the IAAS Supervisor Level of Accreditation
- 6.2 Sole practitioners – or any adviser who is the sole member of the provider’s publicly funded immigration department - must be accredited as a Senior Caseworker (Level 2), but need not be assessed against the supervision criteria until such time as they are required to supervise other fee-earning staff. They will still, however, need to meet the requirements of the contract specification and Section 2 of the Unified Contract Specification.

### 7. Level 2 caseworkers

- 7.1 The Immigration Specification requires that all contracted providers employ at least one Level 2 Caseworker for every two Level 1 caseworkers.

## 8. Controlled Legal Representation (CLR) work

- 8.1 Only representatives accredited as a Senior Caseworker or an Advanced Caseworker can grant Controlled Representation (CLR) on any case.

## 9 Certificated work

- 9.1 Court procedures require that a solicitor apply for a certificate and that solicitor is responsible for all work performed under the certificate. Suppliers that have accredited Level 2 Caseworkers none of whom are solicitors, can apply for a funding certificate if a solicitor within the organisation applies for the certificate.
- 9.2 However all work must be delegated to IAAS accredited caseworkers in line with the work allowed at different levels of accreditation within the work restrictions. Please consult the Law Society regarding any professional conduct issues and actual supervision requirements.
- 9.3 Accredited Caseworkers and Probationers who have passed the Multiple Choice Test should also be allowed to attend with Counsel at a hearing relating to a certificated matter where appropriate. We would however urge the conducting advisor to give serious consideration to the complexity of the case and the depth of knowledge about the case that is usually required in Court of Appeal and Judicial

Review matters by the caseworker attending before delegating this work to a Probationer or Accredited Caseworker.

## **10 Work done under a Separate Contract Schedule**

10.1 Those services provided under a separate contract schedule may be governed by additional work restrictions. These work restrictions will be detailed in the schedule

## **Work Restrictions of the Immigration and Asylum Accreditation Scheme**

### **1. Permitted work for Probationers prior to completion of the Multiple Choice Test (under close supervision)**

- Advice on applications for entry clearance and variations of leave within the immigration rules
- Advice on rights of entry and stay under the EEA provisions
- Making applications for entry clearance and variations of leave within the immigration rules
- Advice on naturalisation and registrations for British Nationality Act, 1981, and any amendments thereafter and applications for British citizenship within the terms of the British Nationality Act, 1981, and any amendments thereafter
- Taking instructions relating to an asylum applicant's personal details
- Taking instructions relating to an asylum applicant's family details
- Researching case law and background evidence in support of an asylum claim (where permitted under the Unified Contract)
- Advice on support provisions for asylum seekers
- Explaining relevant interview procedures to clients in advance of interviews with the immigration authorities
- Advice on the provisions relating to refugee status if this has been granted
- Advice on time-limits and rights of appeals
- Advice on any liability for detention
- Advice on bail/temporary admission applications (this does not include taking instructions)
- Basic correspondence with the Home Office (UKBA) and any other relevant authority
- Bundling and drafting chronologies.

### **2. Additional permitted work for Probationers after successful completion of the Multiple Choice Test (under close supervision) and for Accredited Caseworkers (Level 1).**

- Interviewing clients in relation to asylum claims (including identifying where there are ECHR considerations or where human rights considerations are to be included) and taking detailed instructions
- Drafting statements or representations relating to asylum claims and appeals
- Making applications for asylum, Humanitarian Protection or Discretionary Leave
- Making nationality applications (where permitted under the Unified Contract)
- Preparing an appeal before the AIT
- Lodging appeals (*this does not include drafting skeleton arguments*)
- Taking instructions and making applications for temporary admission and bail (*this does not include representation at the AIT*)
- Making applications for entry clearance and variations of leave outside of the immigration rules
  
- Representing clients in correspondence with the immigration authorities (or other parties)
- Representing clients at interviews with the immigration authorities where otherwise not prohibited under the contract schedule

- Instructing a barrister or advocate for advice and to draft grounds of appeal, and attending conferences (*this does not include instructing a barrister or advocate to appear at the AIT or other court*).
- Attendance with Counsel at a hearing related to a certificated matter.

### **3. Excluded work**

All other work is excluded.

In particular, all Probationers are prohibited from dealing with detained ‘fast track’ cases.

Probationers are prohibited from dealing with cases involving especially vulnerable people, including minors, unaccompanied asylum seeking children (UASC) and those who are mentally incapacitated.

Additional restrictions may be contained in the immigration contract schedule.

### **4. Level 2 Probationers**

In the main a Level 2 Probationer will be allowed to perform the full range of work at Level 2 but the following exceptions apply.

- Work at the Upper Tribunal.
- Representation at the first tier hearing (a Probationer may perform this work provided that the Supervisor attends the hearing, and is sitting in close proximity to the Probationer and is able to intervene should this be required. However, only one fee may be claimed for the hearing and NOT one fee for the Probationer AND a further fee for the Supervisor)
- Cases where nationality is in dispute
- Detained fast-Track cases
- Cases involving especially vulnerable clients, including minors, UASC and those who are mentally incapacitated

These exceptions refer only to further work that is not allowed by virtue of being an Accredited Caseworker (Level 1)