

Frequently Asked Questions for Corporate Partners on the Early Legal Advice Project

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1. What is the Early Legal Advice Project (ELAP)?

- The Early Legal Advice Project (ELAP) is a new approach that will be tested across the whole of the Midlands and East Region to improve decisions through the provision of early legal advice.
- The objective of the ELAP process is to get more cases right first time by ensuring decision makers have all the evidence available at the decision making stage. It also aims to identify those who are in need of protection earlier, manage public funds effectively, and increase confidence in the asylum system.
- The aim of the ELAP is to determine the impact of providing legal advice and representation in support of asylum case owner's initial decisions (i.e. to approve or reject a case) across an entire and single UKBA region.
- ELAP is a joint project run by UKBA and Legal Services Commission (LSC)

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2. Hasn't this been run before, why is it being run again?

- The Legal Advice Pilot was run in Solihull from November 2006 to December 2007. The pilot only included adult cases in the West Midlands area. The evaluation of the project was undermined by poor data and a small number of cases going through the process. It therefore could not conclude whether the process was suitable for a national roll out, or if the process was efficient in saving costs.
- The evaluation did find some benefits to the process and the provision of early legal advice continues to be seen positively.
- ELAP is therefore an expansion of the principles tested in 2007, but will be on a larger scale, with all regional cases including children being offered an appointment with a legal representative, allowing the process' suitability for national rollout to be tested.

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3. Why is it being tested in the Midlands and East Region?

- The Project Board have chosen to test ELAP in the Midlands and East region because they want to test the process in the most challenging of settings; the Midlands and East region includes Southend on Sea and Worcester, Derby and Cambridge, and despite these geographical challenges, the region has produced consistent results towards the 75% conclusion target. The geographical layout of the region will throw open all sorts of challenges such as representatives needing to travel with their client to the interview, which will include additional costs which need to be taken into account.

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4. How is it expected to save money?

- ELAP is expected to produce a higher quality decision because the legal representative can assist the caseowner in establishing all the facts of the claim before a decision is made. The applicant's legal representative has additional time before the interview in which to collect evidence, flexibility can be invoked if further evidence would assist the claim, and increased discussion between the caseowner and legal representative should result in better identification of the key facts and agreement over any additional evidence which can be gathered to support the claim.
- We expect that asylum seekers and legal representatives will be more satisfied with the ELAP process and accept the decision as fair. Due to the additional time spent gathering evidence at the initial decision stage, the asylum seeker should have no further evidence to present post decision, so should have no reason to appeal that decision.
- It is expected that fewer appeals will be lodged, and particularly, that of those appeals lodged there should be fewer appeals that are publicly funded with a legal representative (because there should be fewer cases which have merit at appeal).
- ELAP could also save costs in asylum support as those eligible for protection will be identified sooner and their asylum support will be ceased quicker, rather than following a successful appeal.

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5. When does it start and finish?

- The ELAP process will start on 15 November 2010 and it will continue until it is rolled out nationally, or a decision is taken to stop it. The process will be closely monitored by evaluation specialists and initial results are anticipated from September 2011 onwards.

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6. What cases are involved?

- All cases routed to the Midlands and East Region on or after 15 November 2010 will be included in ELAP. These include single adults, family cases and UASC.
- ELAP will not include cases that are transferred in after their interview in another region; Third County Unit cases; Detained Fast Track cases; Fresh Claims or Prison Cases.

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7. What is different about the decision making process under ELAP?

- ELAP gives greater flexibility at the front stage of the process to allow for evidence gathering.
- Under the current process applicants are interviewed around Day 8-12. Under ELAP these interviews will happen around Day 23-25. This allows for the applicant to attend a number of appointments with the Legal Representative to discuss their case; to draft a Witness Statement and to gather any evidence in support of their case.
- The Legal Rep will then provide the Caseowner with the Witness Statement at least 3 days before the substantive asylum interview, allowing the caseowner to prepare for the interview.
- The Legal Rep and Caseowner will have a pre-interview discussion at least 36 hours before the interview. The purpose of this discussion is to discuss and agree the material facts of the case and to narrow the issues prior to the interview.
- The Legal Rep will attend the interview with the applicant. They are allowed to ask questions during the interview to make sure all the evidence is disclosed prior to the decision making. The Caseowner remains in control of the interview.
- After the interview the Legal Rep and the Caseowner discuss the case. This is the opportunity for the Caseowner and legal representative to agree on any additional evidence which may clarify matters still in dispute following the interview. If the legal representative will be gathering the evidence, they will have 5 working days to submit it to the caseowner.
- If the Legal Rep can not gather such evidence in 5 working days they can request for flexibility to the time frame. This is known as the 'flexibility criteria' (see FAQ below).
- The Caseowner will then be in a position to make a well justified decision. The Legal Rep must be aware of the final decision before they receive it.

- If the case is refused it will proceed to appeal as normal. The Legal Representative will have to apply a 'merits test' to the case to decide whether the case has a chance of success at appeal and should be publicly funded.

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8. What is the flexibility criteria?

- The caseowner can give flexibility when it is not possible to make a fair decision in normal timescales without further evidence which takes additional time to source.
- An example of this could be if a caseowner needs a medical report to substantiate that a person was tortured in the manner that they claim. Such evidence could change a decision from a refusal to a grant and it is therefore worth waiting for the evidence so the right decision is made at the outset and does not prolong an applicant's claim or waste public funding at appeal.

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9. How is an adult case referred to a legal representative?

- Adult applicants will be referred automatically when they are routed to the region. Referrals are based on the applicant's location, nearest legal representative and most appropriate appointment time. All the legal representative firms are entirely independent from the UK Border Agency.
- The applicant will receive a letter from the UKBA outlining the details of the appointment (including time and location). The applicant should attend this appointment to maximise the time available with the representative to establish their claim and gather evidence.
- If an applicant does not attend this pre-booked appointment, they can find a list of legally aided representatives from the Community Legal Advice (CLA) website (<http://www.communitylegaladvice.org.uk/>). They can also contact CLA by phone on 0845 345 4345. It is recommended the applicant makes every effort to attend the pre-booked appointment however to ensure the legal representative has sufficient time to spend with the applicant prior to the substantive interview.

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10. How is a UASC case referred to a legal representative?

- The process for children will be very similar to the current process, however the legal representative and Caseowner will be discussing the case, and they may ask you to provide additional information about the child. It would be really helpful if you can liaise with the Caseowner and legal representative to agree a timeframe for any evidence to be submitted in.
- Social Services within the region will be provided with a list of local representatives that are funded to carry out the ELAP process.
- Social Services will continue the current process of liaising directly with the Legal Representatives to book an appointment, rather than UKBA referring the child to a representative firm and booking an appointment which may not be convenient to Social Services.

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11. What does the legal representative do at the interview?

- The purpose of having the legal representative at the interview is so that they work alongside the Caseowner in making sure all evidence relevant to the case has been presented to the Caseowner.
- The Caseowner remains in control of the interview but should invite the Legal Representative to ask questions at regular intervals. The legal representative also may request the Caseowner to ask follow up questions where an issue does not appear to have been adequately explored.
- There may also be some cases where it will be more appropriate for the Legal Representative to ask questions because the applicant feels more comfortable with their rep when discussing sensitive aspects of their case.

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12. How will it be evaluated?

- The evaluation of the project will be overseen by an Evaluation Steering Group, which contains analytical experts from the Home Office and other UKBA and LSC (Legal Services Commission) departments. Some work will be undertaken by independent specialists. The group has designed the methods in which data will be collected and analysed. Data will be captured from a number of sources including our Asylum database called CID, LSC billing records and from Caseowners.

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13. Where can I go for further information?

- The guidance and relevant documents will be available on the Midlands and East regional internet site (<http://www.ukba.homeoffice.gov.uk/aboutus/your-region/midlands-east/>) from 1 November 2010.
- You can read more about the Legal Advice Pilot run previously in 2006-2007 here - <http://www.parliament.uk/deposits/depositedpapers/2009/DEP2009-1107.pdf>
- For questions about the ELAP process please contact Sarah Aspinall – ELAP Regional Project Manager (sarah.aspinall6@homeoffice.gsi.gov.uk / 0121 345 8040)
- For questions relating to matters concerning legal aid provision for ELAP cases, please contact the Legal Services Commission (John.facey@legalservices.gsi.gov.uk)

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