

Immigration and Asylum Accreditation Scheme: Update

Introduction

The Legal Services Commission (LSC), the Solicitors Regulation Authority (SRA) and the Office of the Immigration Services Commissioner (OISC) have agreed a new approach to the operation and administration of the Immigration and Asylum Accreditation Scheme (IAAS), which clarifies the roles of the regulatory bodies and the LSC in relation to the scheme.

This will not result in significant changes to the process of accreditation for candidates but is aimed to overcome existing ambiguities around accreditation and regulation, particularly in relation to issues of character and suitability.

Background

The Lord Chancellor's Department (as it was then constituted) and the LSC proposed the introduction of a mandatory accreditation for all caseworkers performing immigration and asylum legal aid work in 2003. Following support for this proposal the LSC subsequently approached the Law Society (TLS) to develop the accreditation scheme in partnership with the LSC. The competence standards underpinning the accreditation scheme were developed by the LSC and TLS, and in consultation with OISC.

The scheme was designed to assess that each candidate possessed both the knowledge of immigration and asylum law and procedure and the practical skills required to provide good quality legal services in this category of law. The LSC asked TLS to take responsibility for setting and administering the assessment process for the scheme. To this end TLS contracted with an independent assessment organisation to set and administer the assessments. TLS also took full responsibility for maintaining the competence standards for each level of accreditation.

The regulatory arm of TLS, now the Solicitors Regulation Authority (SRA), owns the IAAS and the SRA has responsibility for awarding accredited status at Level 1 (Accredited Caseworker) and Level 2 (Senior Caseworker) and through its Advanced Senior Caseworker Selection Panel, is responsible for awarding accredited status at Level 3 (Advanced Caseworker).

The OISC accepts IAAS accreditation as a passport to the competence requirements of the statutory regulatory scheme for immigration advisers with IAAS Level 1 caseworkers meeting the competence standards of OISC Level 2 and IAAS Level 2 caseworkers meeting the competence standards of OISC Level 3. IAAS accredited caseworkers however are required to make a full application to the OISC for either registration or exemption.

The OISC has and continues to maintain a register/list of advisers regulated in terms of their scheme. It is a criminal offence for persons not regulated by a designated professional body or otherwise authorised by section 84 of the

1999 Immigration Act to provide immigration advice or services unless regulated by the OISC

Similarly TLS (as was) maintained a Register of Accredited Immigration and Asylum Practitioners for its members. The TLS register was voluntary and practitioners were able to apply to be added to it once they had met the IAAS standards and subject to further vetting checks. The SRA closed the voluntary register from 1 June 2007.

The LSC was and remains responsible for the use of IAAS in the context of its contracting arrangements including the work restrictions for each level of accreditation. In order to monitor the legal aid requirements the LSC has maintained a register of all candidates that have engaged with the accreditation process. Membership of this list at the appropriate level has been the requirement for carrying out work under an LSC Immigration Contract.

The IAAS was introduced in April 2004 and became mandatory for all caseworkers performing legal aid work under an Immigration Contract in April 2005, and was fully implemented in August 2005. Therefore, since August 2005 only individuals who are accredited under the IAAS have been eligible to perform any work under an LSC Immigration Contract. Caseworkers are restricted in the work that they may carry out depending on the level at which they are accredited. Level 3 accredited caseworkers are entitled to claim 5% uplift on legal aid rates for work that they personally undertake.

The IAAS is only mandatory for caseworkers performing legal aid but the scheme is open to all and is not restricted to those undertaking publicly funded work.

Regulation and Quality

Since the introduction of the IAAS there has been some confusion over the roles of the regulatory bodies (SRA and OISC) and the LSC when it comes to quality requirements for immigration advisers. There has been some misunderstanding that there is “double regulation” as the LSC has maintained a register of accredited representatives as well as the regulatory bodies and also a lack of clarity over the process for dealing with complaints or concerns regarding the competence, character or behaviour of anyone accredited under IAAS.

Therefore, the LSC, the OISC and the SRA have agreed an approach that clarifies the responsibilities of the regulatory bodies and the LSC in relation to the scheme.

From 1 October 2007 the LSC will require all advisers to be accredited to an appropriate standard under IAAS and to be registered with the relevant regulatory organisation for inclusion on their respective lists of approved accredited advisers

IAAS accreditation therefore remains the initial entry-level requirement for advisers to perform work under an LSC Immigration Contract and the LSC will continue to maintain work restrictions according to the level of accreditation.

To remain eligible to perform work under an LSC Immigration Contract, individuals must remain registered for immigration and asylum work with the relevant regulatory authority on the relevant list of regulated advisers (SRA register or OISC list of regulated advisers). This includes meeting any renewal provisions required by the regulatory bodies for any adviser to remain on the relevant list.

Furthermore, SRA or the Legal Complaints Service and OISC will deal with complaints and regulatory matters concerning the character, conduct, behaviour or inadequate service of those they regulate. If any complaint or regulatory matter concludes with an adviser being suspended or removed from their respective lists the adviser will be ineligible to perform publicly funded work under an LSC Immigration Contract until such time the adviser is reinstated or re-approved by the regulatory body. Each of the regulatory authorities operates an appeal process for advisers suspended or removed from their respective lists.

If an adviser's accredited status is reduced in level by the SRA or OISC, the LSC work restrictions relating to the accreditation level at which the adviser appears on the relevant list/register will apply.

If an adviser achieves IAAS accreditation but is unsuccessful in their application to the SRA or OISC the adviser will not be eligible to undertake publicly funded immigration and asylum advice until such time they are included on the relevant regulatory body's list of regulated advisers.

The LSC, SRA and OISC have agreed to exchange information regarding issues relating to individual caseworkers or organisations as may affect suitability to be included on the relevant lists.

Solicitors and their Employees

The SRA took full responsibility for the operation of IAAS for solicitors and their employees on 1 June 2007. The SRA alone will maintain the register of solicitors and their employees who have successfully completed the accreditation assessments. It will also maintain the register of all probationary caseworkers and ensure that they comply with the assessment requirements within the specified timescale.

The LSC will not maintain a separate register of accredited solicitors and their employees. The LSC will monitor the legal aid contract requirements using the SRA's register of accredited solicitors and their employees and other information provided by the SRA as required.

All solicitors and their employees that were included on the LSC's register of accredited advisers have, subject to a satisfactory vetting check, been transferred to the new SRA register.

As a transitional measure any accredited caseworker who is refused registration by the SRA as a result of an unsatisfactory vetting check will not automatically be barred from performing publicly funded work under an Immigration Contract until 1 October 2007. However, it is likely that the LSC will consider whether the concerns are such that action should be taken through existing provisions of the Unified Contract.

The SRA has published full guidance relating to their operation of IAAS for solicitors and their employees, including an update on their re-accreditation requirements at: www.panels.sra.org.uk

OISC Regulated Advisers

The OISC will not take full responsibility of IAAS for non-solicitors whom they regulate in the same way that the SRA will for solicitors and their employees.

However, the LSC will still require that any adviser (that is not regulated by the SRA) performing publicly funded advice in the Immigration Category is included on the OISC list of regulated advisers. This will be at either OISC Level 2 or OISC Level 3 having been passported through the OISC competence requirements by virtue of achieving IAAS Level 1 (Accredited Caseworker) or IAAS Level 2 (Senior Caseworker). The work restrictions appropriate to the IAAS level achieved will apply.

Once registered or exempted by the OISC the adviser will remain eligible to perform publicly funded work provided that they remain regulated by the OISC, including meeting any renewal requirements of the OISC.

In order to monitor legal aid requirements the LSC will continue to maintain a record of these advisers as the OISC list of advisers will also contain those not eligible to undertake work under an LSC contract.

Others

IAAS is open to all but is only mandatory for caseworkers performing publicly funded work in accordance with the Immigration Specification of the LSC's Unified Contract. Non-employed barristers will continue to be exempt from the scheme.

Any individual who wishes to undertake IAAS but who will not be performing legal aid and/or is a non-employed barrister should register to sit the assessments directly with an assessment organisation(s) appointed by SRA (currently only Central Law Training Ltd.).

If an individual who has passed the IAAS assessments whilst not performing publicly funded work wishes to perform such work at some point in the future,

they will become eligible to do so upon applying to and being included on the relevant regulatory body's list of regulated advisors.

Any individual who starts the accreditation process whilst not performing publicly funded work but who subsequently wishes to register as a probationer so that they can perform some publicly funded work whilst completing accreditation should register as a probationer with the SRA using the relevant form, that can be downloaded from the SRA web-site.

Probationary Registration

Since 1 June 2007, there has been a single SRA application form for any candidate wishing to register as a probationer in order to undertake publicly funded work whilst undertaking IAAS, including for individuals regulated by OISC. The SRA will also monitor that each probationer complies with the assessment requirements within the specified timescale and provide the LSC and OISC with the relevant monitoring information.

Going Forward

The LSC, SRA and OISC will hold regular meetings to review the operation of IAAS, regulatory issues and LSC contract requirements in relation to IAAS: operational changes to the scheme may be made accordingly.

The revised LSC contractual requirement from 1 October 2007 will read:

“In order to carry out Contract Work in the Immigration Category of Law, all staff must have passed the assessments of the Immigration and Asylum Accreditation Scheme and be registered with the relevant regulatory body for inclusion on their respective lists of accredited advisers (SRA register or the OISC list of regulated advisers).”

Supervision Requirements

The LSC's Specialist Quality Mark (SQM) will continue to require that supervisors in the immigration category have IAAS accredited status at Level 2 (Senior Caseworker) or Level 3 (Advanced Caseworker) and have passed the supervisor level assessment. Supervisors are also required to meet the case involvement hours as per D3.2 of the Specialist Quality Mark.

*Immigration Policy Team
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