Comments on the Legal Services Commission Relationship Management Assurance Process – Guidance for Relationship Manager visits V.4

ILPA is a professional association with some 900 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups including the Legal Services Commission's Civil Contracts Consultative Group and the Immigration Representative Bodies Group that sits beneath it.

We understand from what was said by Ms Kovach-Clark, Head of Civil Policy, at the Immigration Representative Bodies meeting on 24 May 2010 that the Guidance is that now being used by Relationship Managers but is identical to that currently used by auditors. Our comments below focus on its use by Relationship Managers but apply *mutatis mutandis* to auditors.

As to its use by Relationship Managers, ILPA is concerned at the imposition of a further audit process, introduced as a knee- jerk reaction to the report of the National Audit Office of November 2009 . We agree with The Law Society[1] that the criticisms levelled at suppliers in the National Audit Office report were in part based on errors and misunderstandings by the auditors.

Those concerns matter because this extra audit process is an additional, unwelcome and unremunerated administrative burden on suppliers struggling to cope with a highly complex contract with an already heavy administrative burden. The Legal Services Commission appears not to appreciate the concerns of suppliers and their representative bodies, that the costs associated with running a contract are crippling given the derisory levels of remuneration received.

The current contract for immigration is, as we have repeatedly said, far too complex. The mountain of "guidance" and "clarifications" that has been heaped on immigration suppliers since its introduction has at times been overwhelming. Even the most diligent of suppliers struggle to understand, remember and apply it. Yet the blame for this is placed on the suppliers.

The proper response to this should be to simplify, to assist and to treat suppliers as honest partners. We are not reassured that the Commission understands that.

[1] Law Society Hits Back at "Inaccurate and Error-ridden" Legal Aid Report, The Law Society Press Release 6 November 2009, available at www.lawsocietymedia.org.uk/site.php?s=1&content=35&press_release_id=1201&mt=34

Section A

1. We do not agree that it is appropriate to have Relationship Managers carrying out these audits. We consider that it undermines and potentially poisons the relationship that they are supposed to be developing with their suppliers.

Section C1 Evidence of means

2. We are generally concerned that Relationship Managers are not sufficiently trained and experienced in the practical application of the contract rules and specification to undertake this task and that they will rely too heavily as a result on this summary guide. We note that they are not even referred by the guide to Volume 2F of the Manual which is the main source of guidance. There is a risk they will make incorrect assessments which will at the very least mean the time of supplier explaining the correct position to them. Errors in audits by Relationship Managers will undermine further the trust that suppliers will have in them and the Legal Services Commission. Relationship Managers should be instructed that they must check the full content of the rules before indicating to a supplier that they have failed any check.

3. In C1 for example we are concerned that by producing a summary of what are lengthy and in part complex financial assessment rules there is a danger that Relationship Managers will get their review of the means assessment wrong. For example 3.4 says that the client must have signed the legal help or Controlled Legal Representation form, without any mention of the possibility of forms being signed on behalf of someone (for example on behalf of a child or patient).

4. The guidance states that where someone is in receipt of 'NASS' asylum support a copy of the award letter is required as the proof of means. This is not correct and is contrary to the manual. The supplier must require confirmation of the receipt of 'NASS' support. Most long- term 'NASS' support recipients will have that only in the form of a combination of their Application Registration Card and their recent payment receipts (the award letter could have been issued many months, even years, ago).

5. In the immigration category we are particularly concerned that Relationship Managers will not understand (or even potentially be aware of) the complexities that relate to split families (such as when they are counted as living "separate and apart" and so are not to be aggregated and when are they still one household despite living in different countries). This comes up not infrequently in immigration cases. There is no mention of this other than a reference half way down the 3rd page of this section that allowances are for dependants "living in the same household" without further guidance.

C2 Case Splitting

6. We note that there is no reference to immigration cases under this category as it is presumably not considered to be a significant issue. However, it is not

excluded from consideration. We agree that it is a minor issue but would comment that there has been confusion both within the Legal Services Commission and amongst providers about the application of the case splitting rule where there are a number of family members applying for leave to enter or remain at the same time in a coordinated application. In these cases each individual may well have to complete a separate application form and each will have to complete an appeal form if refused. This might for example be a refugee family reunion application which could include a spouse and children under and over 18 and other relatives such as nieces and nephews who were *de facto* adopted children of the applicant. There will be different legal issues for each group and each individual must be an appellant. The decision as to when those cases should be split comes down to the question of whether each had sufficient benefit in receiving funding given that others were being funded. This is a subjective test and often a very close call and suppliers find themselves under real pressure making that decision, knowing that erring on the side of caution may mean the case is a loss- making one for them. We believe in such circumstances if a supplier comes to a different but not unreasonable opinion from that reached by the RM, they must be given the benefit of the doubt.

C4 - Evaluating Work in Progress in certificated cases

7. The approach proposed in section 6.4 is inappropriate. Is this to this that the "relationship" between a Relationship Manager and a supplier is come? The Relationship Manager is instructed and guided to evaluate how risky the supplier is to the Commission by assessing whether they "bluster" or "become evasive" when asked to explain how they value the work on their cases. This is highly insulting to your suppliers and scarcely less insulting to the Relationship Managers (and auditors). Perhaps we should be grateful that the author stopped short (just) of highlighting that sweaty palms or excessive blinking may also indicate that the supplier is under stress and that a lie is about to be told. What is set out here is not an attempt to evaluate work in progress. This is an attempt to ambush suppliers with a previously unseen list of files and a request to provide information that you have not asked for in the past, with the hope that some will be badly ruffled by the experience. This is not an appropriate way for the Legal Services Commission to approach suppliers where there is no suggestion of fraud. We see no need or justification for this approach.

8. The list of files to be considered should be provided in advance together with an explanation of what the Legal Services Commission is looking for and why and the information it requires. If there is any doubt about the reliability of the figures then the Relationship Manager or auditor can ask to be shown how files are costed and the figures reported by the supplier arrived at. Where the information given is inadequate or not supported by comparison with computer and paper records, then further action can be taken.

9. We would comment that most suppliers are owed vastly more by the Legal Services Commission for work in progress than they will have received in payments on account if legal help files are taken into account. The risk to the Legal Services Commission is hugely overstated as a result and we are

concerned that this part of the exercise is a waste of time and money on both sides.

10. A further minor point about 6.3 is that the Commission cannot expect suppliers to agree what payments on account they are responsible for (i.e. have received to date) if it is going to provide these lists only on the day of the visit. We know, as does the Commission, from the recoupment exercises run by the Commission over many years, that the Commission data is not infallible and without being able to check each and every file record (a very considerable undertaking for some providers) we should not expect any supplier to be prepared to *agree* a figure with the Commission at this stage and in this way. The wording used implies that the Commission expects to be able to take decisions arising from that agreed figure and hold the supplier to it.

11. There is a potentially misleading sentence in the paragraph numbered 3 under 6.4 where it says "Claims should be made for 75% of the costs incurred." The correct explanation would be "Providers report their total costs incurred to the date of the claim and they are paid 75% of those costs." It should also be noted that costs can, where justified, be reported at an enhanced rate (for example if the case has been carried out with exceptional dispatch). Will Relationship Managers be aware of this?

C5 – Management of Civil Payments on Account

12. We refer to our comments above objecting to references to evaluating whether the provider is being evasive or defensive, which apply equally here.

C6 – Validation of Tolerance Claims

13. We should hope that the need will quickly end for the Relationship Manager to check whether suppliers have claimed for work:
    a. in categories for which they have no schedule without indicating it is a tolerance matter (and therefore being overpaid) or
    b. as tolerance when it is excluded from tolerance

    It seems astonishing given that the claim reporting system is entirely computerised that such basic checks are not yet built in to the system.

D File Sampling

14. In respect of case splitting the group of files selected must not include more than one file from a particular incident of alleged case splitting (e.g. if two matters have been opened for one client where the work should all have been under one matter then only one of the two can be included in the sample whether of the original five or subsequent files). Otherwise the same incident will be counted multiple times giving a false reading of the problem rate.

15. We also do not understand why "case splitting" should be subject automatically to extrapolation given that the Legal Services Commission is capable of identifying potentially suspicious files. Suppliers should be given the

option of accepting the extrapolation (to avoid the time required to check every suspicious occurrence) or responding to each suspicion raised directly.

16. It is unclear what is meant by the contract notice that will be issued if three – four files have the same error.

ILPA

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