

Comments From ILPA on Immigration Coding and Guidance

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.

1. We have set out below some comments on the coding and guidance as it affects the immigration category. We would state at the outset that the coding scheme for immigration has, since the introduction of the Graduated Fee Scheme, been extremely and, to an extent, unnecessarily complex. Part of the complexity reflects the complexity of the scheme itself, but some comes purely from trying to shoe-horn this scheme into a reporting system that is not well designed for the purpose and with the minimal possible changes. It is a mess. If we are asked how to get to a system that is fit for purpose our answer must be "don't start from here". With the best will in the world suppliers will make errors reporting claims using this system.
2. Suppliers' ideal is a system that is simple and straightforward and does not rely on complex combinations of codes to differentiate between, for example, what is paid hourly and what by fixed fee. However, suppliers are also in many cases struggling financially to survive the combination of poor cash flow and low remuneration rates for doing legal aid work. Consequently they cannot afford to fund significant changes to computer software. Therefore we restrict our comments to smaller amendments and clarifications at this stage rather than to proposing any major overhaul of the system.

Specifics:

3. The concept of "form filling" work, which is outside the Graduated Fee Scheme, is utterly confused. A member seeking clarification was told by the Immigration Policy Team that yes it was confusing but that would hopefully be resolved in the next contract. We see no reason to believe it will be.
4. A particular confusion, for example, arises over advice and assistance with citizenship applications (inappropriately classified as "form filling"). Assistance with such applications is only allowed under controlled work under paragraph 11.99 of the Immigration Specification "in limited circumstances where an issue of law arises". Where assistance is to be allowed payment is by hourly rates (paragraph 11.2 (g): Advice solely in relation to form filling as permitted by Paragraph 11.98 to 11.99). In terms of coding these matters have to be coded with matter type 2 of "IFFL:form filling" otherwise the hourly rate is

not paid. Also they must have an outcome of IX which is explained as: “*Client Advised – No Further Action Necessary. This code should be used where one-off advice regarding the client’s legal rights has been provided to a client*”. Clearly that outcome code makes no sense in a case where a citizenship application has been made and either granted or refused. The guidance is also unhelpful in that the guidance at IX does not refer back to the IFFL matter 2 code. It is as a result unclear why there is a matter type 2 code “ICZN: Obtaining Citizenship” and an outcome “ID; Citizenship gained” as they presumably cannot be used. Alternatively the specification is misleading as to when a case paid at hourly rates is intended.

5. It is unacceptable that the Legal Services Commission still does not have a way of properly electronically recording the final outcome of a case that fails in the Tribunals but then goes on appeal to the Court of Appeal, is remitted and then finally determined by a Tribunal. This is important for measuring the appeal 40% success rate Key Performance Indicator. At the moment such an appeal has to have a “final outcome” reported before it goes up to the Court of Appeal and then a second one when it is remitted. Suppliers are merely told to keep a note of these so they can mention them in case their success rate is as a result too low.
6. There is a need for clarification of the use of stage reached and outcome of IK:IF when case progresses to recon hearing that subsequently does not take place. The explanation of IK stage reached code states: “Final determination following an application for review and reconsideration”. This is clearly not an appropriate description for this situation.
7. A member has asked for clarification on which stage reached and outcome codes to use when referral takes place due to breakdown of trust in client/advisor relationship.
8. Also clarification is requested on what stage reached and outcome codes to use when the Home Office withdraws a decision at a) a Case Management Review Hearing b) a full appeal.
9. On the CMRF “Guidance for Reporting Controlled Work”, in the coding of other fields, it should be made clearer that in a Graduated Fee Scheme case detention travel and wait time must include any detention travel and waiting by counsel (most likely to be to a conference before a substantive hearing). Otherwise the additional sum payable for that will not be paid.
10. Also in the same document, as the general “advice” and non-detention “travel” and “waiting time” fields and the “travel and wait costs” field should include counsel’s times and costs, that description should be clarified. As should that counsel’s disbursements should be included in the disbursement field, not under counsel’s costs.
11. We should also point out that some suppliers have reported that it is disproportionately difficult for them to report actual travel times where these include travel in excess of three hours for the return journey to a detained client, but limit the costs claimed for each of those journeys to the three

hour maximum. We anticipate that these adjustments have to be done manually by most suppliers.

12. In the Guidance it should also be clarified that the postcode for an address overseas should be "NFA" or an alternative code provided.
13. There should be separate Value-Added Tax indicators for counsel and supplier as not all counsel are Value-Added Tax registered so there can be a situation where the case is subject to Value-Added Tax so the supplier must charge it but Counsel is not. The way round this at present is for Value-Added Tax to be charged for Counsel as output Value-Added Tax of the supplier which is explained in the Guidance. Whilst this is overall of no impact on the supplier it does mean the Legal Services Commission is needlessly passing money to Her Majesty's Revenue and Customs. Also, the Value-Added Tax amount claimed should be input by the supplier and not calculated by the system. This is the correct way for a Value-Added Tax invoice to be raised. It should not be the "purchaser" who specifies the amount of Value-Added Tax to be paid by them. When the amount is calculated by the system rounding errors mean that the sums for suppliers and counsel can be out from what had been calculated for them individually. Whilst this is generally only a few pence the supplier is required by the Solicitors Accounts Rules and Her Majesty's Revenue and Customs to repost their own bills on their own systems to remove these small discrepancies. So there is a disproportionate inconvenience to suppliers as a result.
14. As the Value-Added Tax rate is expected to increase shortly reconciling Value-Added Tax is going to be a significant issue over coming months.
15. There should be clarification of how to report and claim for Pre-hearing Reviews which are not formally designated as Case Management Review Hearings. Are they to be reported as a CMRH or as an adjourned substantive hearing?
16. There should be clarification in the Guidance that not all exceptional claims are identified by the system, contrary to the statement there. There seem to still be significant problems linking up legal help and Controlled Legal Representation claims and suppliers who rely solely on the system to identify an exceptional claim will be missing out.

ILPA
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