ILPA IMMIGRATION LAW PRACTITIONERS' ASSOCIATION
PRESIDENT: IAN MACDONALD QC

Emma McGovern
Legal Services Commission
Immigration Policy
Head Office, 1st Floor
12 Roger Street
London WC1N 2JL
immigration.services@legalservices.gov.uk

27 March 2006

Dear Ms McGovern

Consultation on Proposed Amendments to the General Civil Contract CLR performance standards

I write with ILPA's response to this consultation, as follows.

A. Introductory points:

1. The consultation documentation was sent to us with Paul Newell's letter of 7/3/06 but was not received until 13/3/06, having been posted by 2nd class post on 9/3/06. Contrary to what I understand Mr Newell intended, it was not also e-mailed to us. This has significantly reduced the time for us to respond in what was already a very tight consultation timetable, entirely of the LSC's devising. As you see we are meeting the deadline despite the difficulties. We trust that the limited time the LSC has allowed itself between now and the proposed implementation date will be no barrier to it taking proper account of consultation responses and withdrawing or amending the proposals accordingly.

2. ILPA has a proud record of dedication to high standards of representation in immigration and asylum appeals, so I wish to make clear at the outset that we fundamentally oppose the imposition of CLR targets to be operated in the proposed manner. We believe that, if implemented as proposed, these targets will be at best irrelevant and at worst detrimental to the stated aim of "driving up standards".

3. Our reasons for this position are set out later in this response. The practical and technical comments in the early paragraphs of our response are not to be read as detracting from that fundamental position.

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4. Our positive proposals for how the notion of targets might be transformed into a constructive tool for encouraging quality are also set out later in this response.

B. Devolved power and outcome reporting issues:

5. We welcome the restitution of the devolved power to grant CLR to all suppliers.

6. We welcome the exclusion of outcome code R from the proposed target.

7. We ask whether cases going to the higher courts under other CLS funding may now be reported under code A and thus excluded from the proposed target. They certainly should be. This issue is not directly addressed in the consultation documentation. At present the Span Guidance requires us to use codes T-X, but:

    a. None of these codes fit the situation where the appellant has succeeded in AIT but the Secretary of State is challenging the determination in the higher courts. The client will not at this stage have been granted anything. We have been told to report this as a CLR "win", but are provided with no code for doing so. It really will not do to ask us (as one of your members of staff has suggested in the past) to make a false report on the basis of guessing what leave might have been granted if the Secretary of State had not challenged the determination.

    b. Even if the higher court application is by the appellant, the appeal is still pending, and might well return to the AIT for final determination. Nevertheless we are presently told to report this as a CLR defeat under code X (application refused). This is inaccurate in any event (because what is in issue under CLR case is the appeal, not the initial application) and will lead to downright unfairness under the proposed target regime. A supplier should not be penalised for the conduct of an appeal which, at least arguably, has been lost because of a material error of law by the judiciary. That this is at least arguable is demonstrated by the grant of certificated CLS funding.

8. ILPA therefore considers that code A should be used for all cases continuing to the higher courts under other CLS funding. Further, for cases where the challenge is by the Secretary of State and the appellant is not (for whatever reason) CLS funded in the higher court, then a new code specific to this situation should be provided to enable the supplier to report it as a CLR "win".

9. Another issue relating to outcome reporting is that of continuing Legal Help. ILPA considers it to be good practice, and it is certainly consistent with the contract specification, to keep Legal Help running concurrently with CLR to deal with issues not directly related to appeal preparation (for example, temporary admission, reporting conditions, detention conditions, NASS queries,

documentation issues, post appeal advice and so forth). In the present context this raises two concerns:

a. When the appellant has won an appeal there is no reason to keep the CLR file open once the respondent's deadline to challenge the determination has passed. But no status will yet have been granted, and may not be granted for some time beyond our 3 month deadline for reporting that CLR has concluded. Presently this is reportable as stage outcome Q while we await implementation, during which time we are covered by Legal Help. We then report the appropriate "granted" code when we close Legal Help and bring the case as a whole to an end. Will code Q still be available to us under the proposed target regime? If so, why is there no reference to stage claims in the consultation documentation, and can you assure us that the LSC has systems in place to enable it to connect the Q report to the subsequent T, U or V report and credit it as a win towards the CLR target? Alternatively, if Q is no longer to be available to us, then this is another example of where you need to supply us with a new code on which to report a CLR win when we do not yet know what the client is going to be granted.

b. NIAT guidance has recently been given to some practitioners to the effect that when a case proceeds to the higher courts suppliers are not only to report CLR closed, but also must close the Legal Help file regardless, apparently, of the fact the client will commonly need advice and assistance with issues not covered by the public funding certificate. I am attaching copy e-mail correspondence challenging this guidance from Vicky Guedalla of the ILPA Executive which, as you will see, has gone unanswered since 3/3/06. Although perhaps not obviously relevant to CLR targets, it would be helpful to have this issue sensibly clarified before we move forward into whatever the new regime is to be.

10. Another issue unaddressed in the consultation documentation is that of reporting successful outcomes in appeals which do not result immediately (or in some cases ever) in the grant of leave to enter or remain. Cases in point are successful appeals against alleged non-compliance refusals in asylum cases, and any other appeals that are allowed to the extent of remittal to the Entry Clearance Officer or Home Office for reconsideration, or where the ECO or Home Office fails to implement because of change in circumstance. How is the supplier to report these as CLR "wins"? This is already a lacuna in the Span Guidance, but it will take on new significance if the proposed target regime comes to pass.

11. Likewise the consultation documentation fails to address the issue of CLR granted for a bail application only. The LSC is encouraging practitioners to consider applying for bail whenever they take on a detained client, an approach which ILPA supports. Often the detainee will not have an appeal pending so there will be no appeal outcome to report, only a bail outcome. Other situations in which it can arise are pre-decision bail applications where the eventual substantive decision is favourable or non-appealable, and bail in some fast track cases which

may not meet the merits test for substantive CLR. Appropriate codes should be made available.

C. The proposed target regime:

12. As far as we are aware, immigration law is the *only* area of law in which the LSC is imposing such a contractual requirement. Criminal lawyers are not required to achieve acquittals in 40% of trials. Family lawyers are not required to obtain contact orders in 40% of applications. Why have immigration lawyers once again been singled out? We are the only sector to be subjected to compulsory accreditation but, having got ourselves and our staff accredited, it seems that we and our clients are still to be treated as second class.

13. How have the 40%/35% target figures been arrived at? At the Refugee Council/ILPA conference on 23/3/06 Paul Newell stated that LSC suppliers are achieving 40% success rates. That is a matter for congratulation, but it says something too about the quality of Home Office decision making, and it is certainly not justified to extrapolate that achievement into a target to beat us with. What if the quality of Home Office decision making were to improve? This is an eventuality yet to come to pass, but if it does it will become harder to win appeals, and outcomes may become even less predictable than they are now. Those facing refusal will, however, still need representation. They will be hard pressed to find it if we have all been driven out business because we could not routinely keep achieving the same success rates as some of us may be achieving now.

14. We are not satisfied that any statistical significance has been, or could be, extrapolated from a success rate falling below 40% when the threshold merits test is 50%. Has any analysis by qualified statisticians been carried out at all, or is the LSC proceeding on unsupported assumptions deriving from the mere fact that 40% is less than 50%?

15. Under the merits test CLR will be warranted if the chances of success seem to be no better than 50% if the case "has a significant wider public interest, is of overwhelming importance to the client or raises significant human rights issues". So it would be perfectly possible for a firm to apply the merits test correctly in 100% of the cases in which it grants CLR and still lose all of them. The only question relevant to the standard of service provided would be why they had been lost. If it was because the firm had failed to prepare or present them properly then that would be a proper cause for LSC concern, but not otherwise. Diligent firms, who are taking on cases in these important categories, should certainly not be penalised for the vagaries of the judiciary, the unpredicted failure of an appellant or witness to come up to proof, or the notoriously uneven playing field that is the immigration appellate jurisdiction in which the odds are stacked in favour of one side (and it is not the side that our clients are on).

16. How has the size of the contracting organisation been factored into the LSC's calculations? A big firm doing many appeals could afford to lose a few with some confidence that things would even out over the course of the year. By contrast a small firm doing only a handful of appeals which has (despite diligent application of the merits test) lost 3 out of the last 4 will simply have to stop taking on any appeals at all for the rest of the year because there is no such thing as a sure fire certainty and to lose one more would put the firm in fundamental breach of contract.

17. No matter how carefully the merits test is applied, the odds are always skewed by the unpredictability of which immigration judge hears an appeal. The only way this can be factored in at merits test stage is by the practitioner weighing into the decision a view as to whether case falls into the category of (a) "any reasonable IJ would allow this", or (b) "if we are halfway lucky with the IJ we should win this", or (c) "we will have to be lucky with our IJ to win this" or (d) "it is unlikely that any IJ would allow this". Categories (a)-(c) surely all merit the grant of CLR if there is sufficient potential benefit to the client, but all carry a risk of losing for no reason other than bad luck with the IJ. How precisely, if at all, has the LSC factored this into its 40% calculation?

18. We cannot over-estimate the significance of luck of the draw as to which IJ is allocated to the outcome of an appeal. This is the universal experience of our membership, including those at the bar. It is perhaps the single greatest variable, and one that is completely outside the control of the supplier or the client. It is also now wholly unmitigated by access to any review of determinations on other than error of law grounds. The band of decisions lawfully open to an IJ is of different breadth in different cases, but it is always impossible to predict in advance whether a particular case is going to come in front of an IJ who, all things being equal, is inclined to allow where possible or one who inclines to dismiss.

19. This difficulty is illustrated well by Article 8 cases and the need under current case law to satisfy the Tribunal that the exceptionality threshold has been passed. Compassionate circumstances that strike one IJ as sufficiently unusual and compelling may well leave another cold, without either of them making an error of law, and without it being remotely possible for the practitioner to predict the outcome. An even more pervasive illustration is the assessment of credibility on which so many asylum appeals turn, but which is not open to challenge as an error of law except in the most extreme cases.

20. There is a wealth of anecdotal evidence about variations between regional hearing centres, both from exchanges of information between firms practising in different areas, and from counsel with individual experience of appearing in several regional centres. A good deal of investigation into the quality of appeal preparation and advocacy on the one hand, and the quality of hearings and determinations on the other, would be required before it might reasonably be concluded that a lower than national average success rate on the part of LSC firms in a particular region was attributable to their conduct rather than that of

the judiciary. Such investigation would need to be considerably more sophisticated than the routine national application of any percentage target, whether set at 40% or at some other level. We do not suggest for a moment that different targets should be set for different regions. What we do suggest is that variations from a notional success rate should always inspire investigation first, not automatic classification as breach of contract.

21. The fact of dispersal can have significant detrimental impact on an asylum appellant's chances on appeal, regardless of the merits of the claim, and in some cases regardless of the best efforts of competent representatives. Dispersal can dislocate the conduct of an appeal commenced prior to dispersal, reducing the preparation time available to the new representative, if indeed one can be found in the dispersal area. If so, the new firm is likely to be faced with a situation where grounds of appeal have been lodged without their input and hearing dates already loom. So all the work of interviewing the client, obtaining and reading the file from the previous representative, assessing the merits, gathering evidence and instructing counsel or otherwise preparing for the hearing all has to be done at breakneck speed. This is all contrary to ILPA best practice guidance (including gender and children's guidelines) about taking time to win the confidence of vulnerable clients, and not conducive to the continued application of the merits test unless we are to countenance the wholesale abandonment of asylum appellants with borderline cases at the doors of the courts in the dispersal areas. To do so would put solicitors in breach of Law Society guidelines for immigration practitioners, but not to do so in some cases could put us in breach of LSC contract if the present proposals go through. Creating predictable situations of conflict between professional and contractual obligations is no way to "drive up standards".

22. The proposals would create other conflicts, including conflicts between different duties under the contract itself. There is a duty to apply the CLR merits test which, if it produces the result that CLR is merited on the borderline, will put a firm who has no current slack in its success rate in conflict with its contractual obligation to ensure that it wins 40% of its appeals. ILPA's position is that the grant of CLR in all cases that meet the merits test is the duty that should be paramount because it is consistent with our professional duties and the interests of our clients. The target proposal should be radically amended to reflect this, and to become a quality monitoring tool rather than a punishment device. That, alongside the effective monitoring of CLR refusals, would be a real contribution that the LSC might make to improving standards.

23. The present proposals very clearly put practitioners' professional duty to act in the best interests of their clients in conflict with their own interests. The client's best interests are that the practitioner continues the case if the CLR merits test is passed but, under these proposals, if the firm's target score at that point happens to be below 40% it is in its interests (and indeed might be its contractual duty) to refuse CLR if the case is borderline, albeit potentially winnable. For solicitors this will create real conflicts between their code of

professional conduct, the contractual obligations which the LSC proposes to impose, and the financial survival of their firms.

24. Has the LSC considered the impact of these proposals on the morale of the surviving competent practitioners? We operate within a system of tight deadlines and short turnaround times, with demanding clients, low payment and burdensome paperwork. The prospect of the fear of being in breach of contract hanging over us month by month as we submit our CMRFs, on top of the continuing burden of the accreditation process and the encroachments of the New Asylum Model, is simply adding to the pressures in this already too pressurised area of work, to an extent that may simply be too much for some of us. Is this any way to "drive up standards"?

25. What exactly is the LSC's view of the right of those with difficult cases to access to justice, or at least to representation in the existing appeal process? Suppliers are at the mercy of the NASS dispersal system. Firm A may practise in a dispersal area for applicants from countries whose cases tend to win. It may thus have a generally high success rate, so can afford to take on some more difficult cases without putting its target at risk. Firm B may practise in an area where dispersals are mainly of those whose cases have already been deemed unfounded, or are otherwise more difficult. They are likely to have a lower success rate and, if they are to meet their target under the proposed regime, would apparently be expected to refuse CLR to applicants who would have been granted it by firm A. ILPA believes that firm B should be encouraged to continue to take on difficult cases, not threatened with penalties or loss of contract for taking that risk, and that it is an absolute disgrace and an affront to any concept of access to justice for the LSC to propose any other approach.

26. As it is, far from encouraging firms to take on borderline cases, these proposals seem to push them towards taking on only the most winnable cases. This is arguably a poor use of LSC resources since it is the borderline cases to which effective, skilled representation can make the most difference, or "add the most value" as the jargon goes. All contracted suppliers would face the same pressure to cherry-pick. Those who, rightly in ILPA's view, consider it contrary to professional conduct standards to do so would likely lose their contracts. So where would the borderline but winnable cases go for representation? I stress that we are talking about cases that meet the CLR borderline merits test which means that, by definition, they have a wider public interest, or are of overwhelming importance to the client or raise significant human rights issues.

27. And what about the development of the law, which is more apt to come about through competent practitioners pressing forward with borderline cases, even at the risk of losing today because we are pushing against a frontier that might be breached tomorrow. Funding such battles should be part of the proper purposes of a Legal Services Commission not completely in thrall to the government of the day, but the present proposals will discourage practitioners from even engaging in them.

28. We draw attention to the evidence of Judge Collins and Judge Hodge to the House of Commons Constitutional Affairs Committee on 21/2/06 when both expressed concern about unrepresented appellants, and Judge Hodge indicated that their numbers are rising. Issues of access to justice aside, has any research been done into the overall cost of an represented appellant appearing in the Asylum and Immigration Tribunal, that is to say the cost to the system as a whole rather than considering legal aid costs in isolation? We suspect not, and urge that it should be undertaken before any more scythes are taken to CLR.

29. How do the mechanistic proposed targets sit with the broadened merits test for unaccompanied minors? Are we to ration the number of children we take on for fear of the effect on our averages? Where are the others to go? What of the mentally ill and the learning-disabled, whose condition might in itself make it more difficult to win their appeals? Are they to muddle through the process unaided because we might lose their cases and our contracts, or because we have bowed out of LSC contracted work rather than breach our code of professional conduct? Has the LSC considered the Disability Discrimination Act implications.

30. These proposals may also have an unfairly unequal impact on certain nationalities and groups whose cases are generally harder to win, which is of course to say nothing about the merits of any individual case within the group. At the Refugee Council ILPA conference on 23/3/06 it was reported that some practitioners have been heard to say that if the 40% target comes in then they will cease to take on Afghan or Iraqi clients. Neither can it be supposed that those clients can simply go elsewhere. As it is the LSC has conceded that its asylum suppliers are not spread well geographically, and most asylum seekers are stuck with what is on offer in their area. So the proposals raise the risk that some client groups will be wholly unable to find representation.

31. By all means have performance standards, and by all means analyse our outcome reports and allow deviations from the average (in either direction) to trigger enquiry and appropriate action to "drive up standards"; but do not pretend that the sledgehammer of an arbitrary percentage target backed up by punitive measures is anything to do with dedication to high standards for sake of clients. It will be unethical practitioners who are prepared to cut their clients' coats to fit the LSC's cloth who will have the best survival chances under these proposals, while those of us who are not prepared to compromise our professional ethics by cherry-picking our cases risk going under. The more draconian the targets, and the more automatically they are applied, the worse this will get.

32. The consultation documentation contains little or nothing designed to militate against this effect. ILPA has previously raised concerns about firms playing safe to the detriment of vulnerable appellants, including detainees, a tendency which these proposals would exacerbate. We have urged the LSC to monitor this, and to take inappropriate refusals of CLR just as seriously as unjustified grants but,

judging from the contents of this consultation documentation, this has not yet been taken on board.

33. Last year, in a meeting with Paul Newell, ILPA proposed that suppliers be required to submit to the LSC all CW4 forms recording the reasons for merits-based refusals of CLR, regardless of whether the clients appealed the refusals. This is the only way we can see that would enable the LSC to monitor this (if it has the will to do so) and to work appropriately with suppliers who are found to be over anxious about granting CLR in borderline cases. Why then is there nothing about this, or any alternative proposal to monitor refusals of CLR? "Driving up standards" begins to have an Orwellian ring if it applies only to success rates achieved at any price, and not to the standard of decision making required to risk granting CLR in borderline cases of overwhelming importance to the client.

34. The only indication in the consultation documentation that any attention at all will be paid by the LSC to what might be going on above the target levels is the curious comment in paragraph 17 of the proposed contract amendments that "for every 100 CLR claims we will expect a particular distribution against the endpoint codes". This seems to be another sign that the LSC is attempting to apply statistical concepts without demonstrating that it has approached the question on a statistically valid basis at all, let alone one that might validly be applied to different firms of varying sizes in different areas and with differing client bases. For example what "particular distribution" will be expected of a small firm concluding only a handful of CLR cases in a contract year, and how will this be judged against the performance of an organisation concluding dozens every month?

35. The other comment in paragraph 17 is also curious. What "particular proportion of the overall costs" is expected to be spent on unsuccessful cases? How is this proportion to be determined? Firm by firm? Region by region? Is it a secret, or will it be disclosed to suppliers? Might the day dawn when we will be penalised for spending too much on failed cases, even though we win more than 40%? Or for spending too little? Penalised for happenstances in our caseload such as a run of strong cases for English speaking appellants and borderline cases in which interpreting and translating costs are incurred? Or vice versa? The LSC really should accept that these are not matters capable of assessment by the application by rote of dubious statistical concepts, but require well informed experienced Account Managers, committed above all to the principle of access to justice, to work individually with firms to analyse the pattern of their CLR decisions and outcomes to determine the reasons for any deviations against the average in comparison with other suppliers or with their own previous performance.

36. ILPA welcomes and supports the development of independent peer review in immigration. We believe that this is probably a more potent tool for the genuine driving up of standards than any number of percentage success rate targets. We believe that the appropriate course for the LSC to take if a supplier is performing

significantly above or below a putative target would be for the Account Manager to carry out an analysis with the firm as indicated above (taking account of any particular features that might account for the variance). Guidance might be given about the pattern of cases taken on or other matters arising. If concerns about quality arise (whether in relation to the application of the merits test, or to the preparation and presentation of the appeals) then the relevant files should be independently peer reviewed. If they are rated 1 or 2 then it cannot rationally be concluded that the quality of the firm's work, or its CLR decision making, accounts for the "off-target" pattern of outcomes, and it cannot rationally be held in breach of contract if there is nothing wrong with the quality of its contractual work. If rated 3 there would room for improvement, and the opportunity for this should be given before deeming the supplier to be in breach of contract.

37. ILPA has no quarrel with deeming suppliers who are independently peer reviewed at rating 4 or 5 to be in breach or fundamental breach of contract as set out in Appendix A to the consultation documentation. Likewise we have no quarrel with the LSC having a CLR yardstick, which we suppose might as well be 40% overall and 35% each in Immigration and Asylum as anything else (provided no pretence is made that there is any statistical significance in the selected percentages), so long as this is a trigger for consultation, analysis and peer review, not a target which we must meet or be punished without more. We propose that the relevant passage in Appendix A to the consultation documentation should be amended along the following lines:

Your Contract Work success rate at the Asylum and Immigration Tribunal (AIT) ("success rate") is a Performance Indicator. ***Explanation will be required, and Independent Peer Review may be triggered, if it does not*** equal or exceed all the following levels of performance:

- Overall success rate of 40% in Immigration and Asylum cases where the Commission funds representation at the AIT
- Success rate of 35% in Immigration cases where the Commission funds representation at the AIT
- Success rate of 35% in Asylum cases where the Commission funds representation at the AIT

You must report the outcomes of such cases promptly (see Clause 3.2 Contract Standard Terms). We reserve the right to take delayed reports into account. Repeated misreporting or late reporting is a Fundamental Breach. We will measure your performance by looking at outcomes from each 1 April (or, if later, from the date this Performance Indicator comes into effect) and the following 31 March (and at such dates earlier than 31 March as we consider appropriate).

If your success rate fails to equal or exceed all the specified levels of performance, this ***will be*** a breach of Contract ***if the Commission is satisfied that the failure is attributable to the quality of your contract work as indicated by an Independent Peer Review Rating 4, or, after an Independent Peer Review 3, by continued failure to meet***

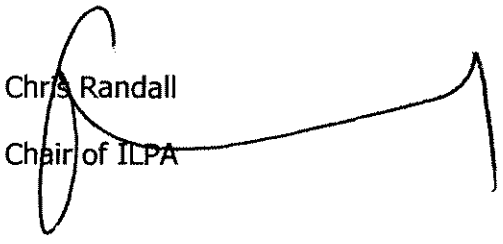
the performance levels followed by Rating 3 or 4 on the next Independent Peer Review.

If your success rate is no better than half of any of the specified levels of performance ***without satisfactory explanation, and/or if Independent Peer Review is triggered and results in Rating 5***, this is a Fundamental Breach.

D. Conclusion:

I hope that this contribution to the consultation will be found constructive, that serious consideration will be given to it, and that it will prove capable of halting the onward march of the present proposals.

Yours sincerely



Chris Randall

Chair of ILPA

URGENT: CLR performance standards: please respond by 20/3/06

Attached is the LSC consultation documentation on proposed amendments to the contract and the introduction of CLR performance standards. We received these late. Time for responding is very constrained, and is not extendable. We must act fast.

If you wish to make comments for possible inclusion in ILPA's response please forward them to me at vg@deightonguedalla.com by **Monday 20/3/06 at the latest**. If you would like the chance to comment on copies of our draft before it is finalised please let me know by the same date.

Do feel free to comment in any way you wish, but you may wish to consider including comments on::

- Setting aside the issue of enforcement, whether it is reasonable to have a CLR percentage success target at all. If so, is 40% reasonable? If not, what performance measures might the LSC use?

- Whether performance targets should be incorporated into the contract as proposed, so that failure to meet them constitutes a breach, potentially giving rise to sanctions under clause 20(10) (rectification notice) or 22 (curtailing contract work, payment sanctions, devolved powers notices).

- If not, what alternatives are there for the LSC to seek to ensure performance standards, by whatever means these may be set and measured?

- Whether it is reasonable for egregious failure to meet the proposed standards (20% or lower overall success rate) to constitute a Fundamental Breach potentially giving rise to a clause 20(16) notice of immediate termination.

- Do you have any comments on the proposed method of measurement and/or the endpoint codes?

- Do you believe that performance standards as proposed will have the effect of "driving up standards"? If so, please elaborate. If not, why not?

- Do you believe that there are any features of the immigration and asylum appeal system that make percentage success rates a particularly appropriate or inappropriate measurement of performance?

- Do you envisage that the proposals would present any particular difficulties (a) for your firm or organisation and/or (b) for clients or potential clients?

- Do you welcome the proposed extension of CLR devolved powers to all suppliers?

Thank you.

Vicky Guedalla
For ILPA

Text of e-mail correspondence referred to in para 8.b of ILPA submission:

-----Original Message-----
From: Vicky Guedalla
Sent: 03 March 2006 09:52
To: 'Adrian Burke'; jpeirce@glazerdelmar.com
Cc: Barry Scott; Davinder Sidhu; Matthew Doddridge; Nick Stocker; Paul Benjamin; 'paul.newell@legalservices.gov.uk'
Subject: RE: Cases going to the Court of Appeal - CLR reporting, endpoints and Legal Help

Dear Adrian

Thank you for your e-mail (below), but I am stunned by what I perceive to be the irrationality of its contents. Please answer the following:

1. Why does the fact that we are told to close CLR when a case is going to the Court of Appeal mean that we must also close Legal Help? You state that this is in line with current guidance that where a matter proceeds to full funding all controlled work should cease, but so far as I can see this is not so because:

a. The GCC Specification rule 2.10 (2d-026 in the Manual) states that a matter ends when . . . "a certificate is granted under Section C of the Funding Code procedures (unless further Legal Help is required *on matters not covered by the certificate*) . . . . [my emphasis]. Why should we not continue to work to the specification in immigration matters? The issues for which we need to keep legal help running in CA cases (as in JR cases) are precisely issues not covered by the certificates.

b. The GCC Specification rule 2.11 (2D-027 in the Manual) states that where we have already included a claim for a matter in a report form submitted in accordance with Rule 2.14 (ie a CMRF) "then any further Controlled Work provided to the client in relation to the same matter will count as a separate Matter Start". So even setting aside the irrationality of it (in my opinion), from where do you derive the power to require this proposed cumbersome and bizarre system of "supplemental" legal help claims?

2. You have not explained how to report a CLR "win" where the Secretary of State gets permission to take a case to the Court of Appeal. The client has not been granted anything. None of codes T-X apply. When I raised this previously I seem to recall Michael Adewole suggesting that one should use the code that would have applied if SSHD were not challenging the determination, but it seems to me that this is obviously unsatisfactory. First of all because it is inviting us to make untrue reports (and we are after all solicitors with a prejudice in favour of truth and accuracy), and secondly because, depending on the circumstances of the case and whether or not directions were given, it may be pure guesswork whether T, U or V would have applied. We surely need a new endpoint code if you insist on us closing the CLR matter at this stage.

I look forward to your response. As you will see, I am copying this to everyone on your distribution list plus Paul Newell. I am writing in my personal capacity rather than formally on behalf of ILPA, but I am bringing the correspondence to the attention of the ILPA EC and hope that your response will enable me to report to them that we at last have clear workable guidance on this topic which can be circulated to our members.

Best wishes,
Vicky

-----Original Message-----
From: Adrian Burke [mailto:adrian.burke@legalservices.gov.uk]
Sent: 01 March 2006 17:19
To: Vicky Guedalla; jpeirce@glazerdelmar.com
Cc: Barry Scott; Davinder Sidhu; Matthew Doddridge; Nick Stocker; Paul Benjamin
Subject: RE: An end point coding query

Vicky/Jackie

I have just met with members of our Policy Team to discuss the issues raised below. The following was confirmed:

As advised previously where permission to appeal to the court of appeal is obtained the matter must be final billed at that stage - this bill should include all Review & Reconsideration costs (where a costs order is obtained if appropriate) and any additional Legal Help costs incurred since the Home Office decision. The outcome codes are X- N(P)- K. You can also include in this claim the costs of completing App1 and Means with your client. Although this will technically close CLR and LH, under the original matter, we will accept a supplemental LH claim at a later date for any unrelated appeal advice. Where additional LH costs are to be claimed you will need to inform your Account Manager of the additional costs who will then request an amendment to the original claim.

The above is in line with current guidance that where a matter proceeds to full funding all controlled work should cease.

If the court of appeal remit the matter to the AIT (which as far as I am aware they shouldn't be) a new NMS will have to be opened. This will need to be reported separately following the outcome of the remitted hearing.

Unfortunately, there is no way round having to keep a note of these cases so that they can be taken into consideration when determining you actual success rate.

The above will also apply where you have won on Review and Reconsideration and the Home Office appeal. Again this should be final billed, once the HO has obtained leave to appeal to the CA, save in this case it will be reported as a win. Any LH

costs should also be included at this stage but as above a supplemental LH claim will be accepted at a later stage.

Where this is the case a record will need to be kept so that we adjust your success rate.

Hope the above confirms matters.

regards
Adrian

>>> "Vicky Guedalla" <vg@deightonguedalla.com> 27/02/06 17:56 >>>

Well if you're meeting about this, maybe the opportunity could be taken also to deal with the applicable CLR endpoint code where we succeed before the IJ and it is SSHD who applies for a review / appeals to the CA . . . .

-----Original Message-----
From: Adrian Burke [mailto:adrian.burke@legalservices.gov.uk]
Sent: 27 February 2006 17:49
To: Vicky Guedalla
Subject: RE: An end point coding query

Hello Vicky,

Thanks for your e-mail. NIAT has called for a further meeting on this - hopefully this Wednesday - as current guidance not very clear.

Will revert asap.
Regards
Adrian

>>> "Vicky Guedalla" <vg@deightonguedalla.com> 27/02/06 11:18 >>>

I have been away so have just seen this. I confirm that I agree with Jackie about the continuation of Legal Help. I see no basis for it to be brought to an end until the case is concluded, and no justification for leaving clients uncovered for advice and assistance on matters arising from the immigration status but beyond the ambit of the CA certificate.
Or does the LSC seriously want us to commence fresh matter starts at this stage to cover those contingencies? Why on earth??