Immigration Law Practitioners' Association comments on the Legal Services Commission: Account Qualification – Impact of Immigration Legal Help Errors, Draft for Civil Contracts Consultative Group Members for comment prior to publication

Title

This should refer to Legal Help and Controlled Legal Representation as the paper clearly refers to both.

Immigration Focus – The Big Issues

This states:

> *"When it comes to Immigration it can be a complex area, in particular as the Fee scheme allows certain cases to be paid at hourly rates and others under a fixed fee, and then after that there are rules within rules."*

ILPA has repeatedly pleaded with the Commission to address this complexity and to come up with a system for immigration that is less complex and less burdensome for practitioners. If that is not to be done, then the time allowed and paid for, for dealing with administration must be increased.

1. Means

It would be helpful to clarify the evidence of means acceptable for those asylum seekers in initial accommodation, whence a number of providers get referrals through the Legal Service's Commission's Electronic Appointment System. These clients are not yet in receipt of 'NASS' support, but have no documentary evidence of their destitution. Being an asylum-seeker in initial accommodation should be sufficient evidence of eligibility at this stage.

The paper states:

> *"If the above detail is not available, or it is not possible to determine the level of support being provided, or it does not cover the computation period, the claim should be void (Point of Principle CLA55)."*

This is subject to conflict of interest issues. Some people refuse to give letters, either to avoid being associated with someone unlawfully in the UK or to maintain control over that that person, so there should not be a blanket provision for treating the claim as void. Some suppliers turn people away if they do not have "proof" even though the supplier can apply for legal help. The Commission should be taking steps to deter this, not to encourage it.

2. VAT

The paper states:

"It is more likely that VAT will be applied in a non-asylum matter, as the client (often the sponsor) will usually reside in the UK and will have some form of status. This is particularly so on Family Reunion matters where the client is seeking to bring a family member into the country. VAT should not be applied where the client resides outside the UK or EU/EEA e.g. entry clearance appeals. To review the situation here filter for IMMOS on CWA."

The terminology here is apt to confuse. We assume that the Commission is referring to any family entry clearance case under the rules and not just to Refugee Family Reunion, but when immigration practitioners see the words Family Reunion without more (and with capitals) they are likely to think that the point concerns refugee family reunion cases.

It is necessary to look at who is the client in a family entrance clearance case. If the client is the applicant and not the sponsor (the controlled work form having been signed by the applicant or on their behalf by a family member in accordance with paragraph 8.22 immigration specification) there will be generally be no VAT payable. Rarely a sponsor may seek advice solely on their position regarding the entry of their family member, in which case the VAT position depends entirely on their liability. More commonly, a sponsor applies for controlled work in accordance with the paragraph 8.23 specification (having sufficient interest) but the instructions are on behalf of the applicant and the applicant and the sponsor are clients in the matter. The Commission should set out the VAT position for the situation where there is such a joint retainer.

4. Fixed Fee V Hourly Rates

Under this heading it is stated

"As mentioned above the Immigration fee scheme is not straight forward."

We reiterate our plea that it be simplified.

The text then states

"Asylum is a little bit trickier as many of these will continue to be paid under hourly rates. The key ones are as follows:

(d) Fresh Claims (Matter Type II code IFRA/IFRB) where the original asylum claim was lodged before 1st OCT 2007. Where the original claim was lodged after 1st Oct 2007 then a graduated fee will apply. A review of any such files should quickly identify when the original claim was lodged. NB: A fresh claim is not a new claim, as often reported by providers, it is a second/further claim where a previous claim has been refused – often after all appeal rights have been exhausted. Fresh claims pose a risk to the fund and where reviewed previous solicitor involvement (in the previous 6 months) should be closely reviewed."

The text is unclear. It appears to suggest that suppliers do not know what is a "fresh claim" as opposed to what the document terms a "new claim." What is meant by

'new claim' here? Does it mean the applicant's first claim for asylum? If so, please use the term "first" or "initial".

We are unclear why there is a reference to involvement of another solicitor (which should be read "provider") within six months. If this is a reference to paragraph 3.47 of the General specification concerning work on the same matter, then this document should make clear that a fresh claim is a separate matter from the preceding claim (as confirmed by paragraph 8.32 of the immigration specification). Therefore there is no question of paragraph 3.47 (which relate to signing forms with more than one provider in the same matter) applying.

We do not understand what is meant by a "risk to the fund."

5. CLR – Claiming a Stage 2b rather than a 2a

The text states:

> *"Under the graduated fee scheme a provider can report either a Stage 2a or a Stage 2b claim, depending on whether the matter proceeded to hearing. In order to claim a Stage 2b the provider must have at least put his/her foot inside the court door. If not and the matter is withdrawn before this, then only a Stage 2a fee should be claimed – irrespective of the amount of work done for the hearing."*

We assume that the phrase "court door" means "hearing centre door" rather than literally the door of the courtroom/tribunal hearing room. There are cases where a representative arrives at the hearing centre and manages to speak to a Home Office Presenting Officer and the Presenting Officer agrees, or has already decided, to concede the case. This may be communicated to the tribunal judge via his/her clerk rather than in open court/hearing. This should be categorised as a stage 2b fee even though the case has not come on for an oral hearing.

The text continues:

> *"The Matter Type 1 code will determine the level of fee paid as follows:*
> *Stage 2a – Asylum (IACA - £252), Non-Asylum (IMCA - £252)*
> *Stage 2b – Asylum (IACB - £630) Non-Asylum (IMCB - £504).*
>
> *When reviewing files it should be established that the appropriate fee has been claimed i.e. if a Stage 2b fee is reported has a hearing been attended? It would also be unusual to see a Stage 2b fee being claimed, without also claiming an additional fee for attendance at the hearing (which is not covered by the Stage 2b fee) – are there any of these. If so it would certainly be worth reviewing."*

The text appears incomplete and it is difficult to distinguish the drafter's comments from the proposed text. See comments above; we can envisage scenarios where the Home Office concedes the case at the hearing centre, but without a hearing. In those circumstances a stage 2b claim would be correct.

7. Bolt-ons to Fixed Fees

The text states:

"Legal Help:

a) *Attendance at the Home Office Substantive Interview (£296 pre Oct 11). This is only allowed in certain circumstances (8.53 Immigration Specification) and where claimed should be verified. You would never expect to see a Home Office interview claimed on a non-asylum matter. It would be most unusual, where allowed, to see more than 1 HO interview on any matter, except UASC where the provider can also attend at the screening interview."*

This is incorrect. Section 8.53 of the current specification sets out the situations in which attendance at a non-asylum interview will be permitted. They will not be common but they are permitted. In the cases where attendance at interview is permitted there is very often more than one interview.

We ask that the term unaccompanied children seeking asylum be used rather than the acronym 'UASC' which is demeaning and dehumanising.

The text continues:

"CLR

a) *Attendance at CMRH (£184 oral / £100 tel – pre Oct 11). This is a numeric value and the number entered will generate multiple payments of the respective value. Where claimed these should be checked – have they actually taken place and does the file evidence this? What was discussed and were there any directions?"*

The final sentence is not appropriate. It does not matter what was discussed and whether there were any directions. If the Tribunal lists a Case Management Review Hearing then the representative has to attend, as one member puts it "whether the immigration judge wants to discuss weather, cricket or the substance of the case". Sometimes there are Case Management Review hearings where the Home Office or Tribunal does not have the file so nothing is discussed at all and the case is simply listed for another Case Management Review Hearing. Nonetheless, the representative has had to attend.

8. Form Filling

The text says

"Here we should adopt the approach we would to the Social Welfare Category of law in relation to completion of DLA applications."

This reference is opaque to us and will be opaque to immigration lawyers who do not also practice in welfare benefits law. It would be helpful if the Commission were to spell out the approach in question.

9. Other Things to review at a Providers Office:

The text states:

> *"The supervisor must also meet the contract requirement of being employed by the firm. On review check to see if supervisor is full time and if not what kind of a contract / agreement they are working under. Check document for compliance."*

The first sentence is not technically correct. As written it would exclude all partners who are self-employed.

As to the second sentence, there is no requirement to be full-time so it is not appropriate to mention this. What matters is the ratio of one full time equivalent supervisor to every six full time equivalent caseworkers.

ILPA

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