

**Unified Contract**

**Civil Specification**

**Section 11 Immigration Category of Law Specific Provisions**

**Contents**

**Part A – Fee Levels and Payment Provisions**

11.1	Controlled Work
11.2 – 11.4	Controlled Work Paid at Hourly Rates
11.5 – 11.19	The Graduated Fee Scheme
11.20 – 11.31	Provisions Applying to Graduated Fees
11.32 – 11.53	Provisions Applying to Hourly Rate Cases
11.54 – 11.65	Provisions Applying to Proceedings Under S103 NIA 2002

**Part B – General Rules for Suppliers**

11.66 – 11.69	Applying to Extend Financial Limits
11.70 – 11.72	Claiming
11.73 – 11.79	Accreditation
11.80 – 11.83	Applications for Contract Work
11.84 – 11.87	Applications
11.88 – 11.89	Means Assessment
11.90 – 11.92	Licensed Work
11.93 – 11.97	Cases Subject to Exclusive Contracting
11.98- 11.101	Legal Advice in Relation to Form Filling
11.102 – 11.104	Attendance at Interviews
11.105 – 11.107	Detained Cases
11.108	Levels of Service
11.109 – 11.115	Instructing Counsel before AIT
11.116 – 11.127	Separate Matters
11.128 – 11.140	Granting and Refusing CLR
11.141 – 11.146	Refusing or Withdrawing CLR
11.147 – 11.151	Review by the Independent Funding Adjudicator
11.152	Funding of Immigration asylum appeals under CLR in Scotland and N. Ireland

## Section 11 Immigration Category of Law Specific Provisions

### Overview of Contract Work in the Immigration Category of Law

The Immigration Category of Law has a number of significant variations from other Categories of Law to accommodate the particular requirements of this type of work. It is important that Suppliers familiarise themselves with the Immigration scheme and the detailed provisions set out in this section, as well as the general provisions set out in sections 1 – 9 of the General Specification and Annex B.

#### Levels of Service

Work in the Immigration Category of Law can be carried out at 3 different Levels of Service:

Level of Service	Funded As
Legal Help	Controlled Work
Controlled Legal Representation (CLR)	Controlled Work
Legal Representation	Licensed Work

The grant of each Level of Service is subject to all relevant Funding Code Criteria and Guidance in Volume 3 of the LSC Manual (or as published on our website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk).)

#### Work covered by Exclusive Contracting

It is important to note that Suppliers cannot carry out certain sorts of immigration work unless they have a specific contract (known as Exclusive Contracting) with us entitling them to do it, even if it is otherwise within the terms of the Funding Code and this Contract. Further detail as to Contract Work, which is subject to Exclusive Contracting can be found at Paragraph 11.93.

### Part A Fee Levels and Payment Provisions

#### Controlled Work

11.1 Immigration Controlled Work is remunerated under the Graduated Fee Scheme (see Paragraphs 11.5 to 11.30 below) or by Hourly Rates as set out in the Payment Annex to this Specification.

For the purposes of Controlled work a case should proceed and be reported as an asylum matter where it is:

- (a) a claim, including a fresh claim, under the 1951 Convention Relating to the Status of Refugees and/or Article 3 of The European Convention for the protection of Human Rights and Fundamental Freedoms 1950 that falls to be recorded by the Home Office (whether or not it has yet been so recorded) as a claim for 'asylum' within the meaning of the Immigration Act 1999 and the Nationality, Immigration and Asylum Act 2002; or

- (b) an application for further leave to remain by a former asylum seeker who was granted a form of limited leave to remain either as a Refugee (on or after 30 August 2005) or Humanitarian Protection or Discretionary Leave (whenever granted) and the case is now proceeding as either an active review by the Home office or the applicant is making or has made an application for further leave to remain and the basis of that is the 1951 Convention Relating to the Status of Refugees and/or Article 3 of The European Convention for the protection of Human Rights and Fundamental Freedoms 1950.

### **Controlled Work paid at Hourly Rates**

11.2. The following Controlled Work is paid at Hourly Rates:

- (a) Work in relation to an asylum application (including 'NAM' or 'Legacy'), which was made to the Home Office prior to the 1 October 2007;
- (b) A fresh asylum application made to the Home Office after 1 October 2007 where an original asylum application was lodged, whether concluded or not, prior to 1 October 2007;
- (c) Work in relation to an Immigration Non-Asylum matter opened by you before 1 October 2007;
- (d) Advice in relation to the merits of lodging an application under sections 103A (where advice has not been received under Stage 2 of the Graduated Fee Scheme), 103B and 103E of the Nationality Immigration and Asylum Act 2002 (as amended by the section 81 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004);
- (e) Controlled Legal Representation in relation to applications under section 103A NIA 2002 for review by the High Court or reconsideration by the Asylum and Immigration Tribunal (AIT);
- (f) Bail applications;
- (g) Advice solely in relation to form filling as permitted by Paragraph 11.98 to 11.99;
- (h) Advice and applying for a Certificate for Licensed Work, including complying with the pre-action protocol;
- (i) Initial advice in relation to an Asylum application prior to attendance at the Asylum Screening Unit (ASU) where you then cease to be instructed;
- (j) Advice and representation for unaccompanied asylum seeking children ("UASC"); and
- (k) Exceptional Cases under the Graduated Fee Scheme.

- 11.3 All other Immigration Controlled Work, not subject to Exclusive Contracting, is paid under the Graduated Fee Scheme.
- 11.4 Work subject to Exclusive Contracting under Paragraph 11.93 is remunerated under separate payment arrangements.

## **Fee Levels**

### **The Graduated Fee Scheme**

#### *General*

- 11.5 The Graduated Fee Scheme is defined at Paragraphs 11.6 to 11.30 together with the Payment Annex of this Specification.
- 11.6 A single Graduated Fee is payable at each Controlled Work stage (Legal Help and Controlled Legal Representation).
- 11.7 Additional payments may also be claimable in addition to the Graduated Fee (as set out at Paragraphs 11.20 to 11.25).

### **Graduated Fees – Immigration - Asylum**

#### **Stage 1: Legal Help – Initial Advice**

11.8 This stage is Legal Help and the fee covers, but is not limited to, the following services:

1. Initial advice, drafting of statement and representations;
  2. Consideration of Home Office decision, advice to Client about that decision and carrying out any necessary work;
  3. Applying the merits test for appeal; and
  4. Grant of Controlled Legal Representation or completion of an application for a review of refusal of Controlled Legal Representation to the Independent Funding Adjudicator (in accordance with Paragraph 11.144).
- 11.9 Stage 1 will end at the point that Controlled Legal Representation is granted or refused (including the completion of any review application form to an Independent Funding Adjudicator (IFA)) or when the matter does not proceed to Controlled Legal Representation and all other necessary work has been completed or where the matter otherwise ends earlier.

#### **Stage 2: Controlled Legal Representation**

11.10 This stage is Controlled Legal Representation and is split into two sub-stages. The fee for **either** Stage 2a **or** Stage 2b will be claimed depending on where the case concludes. You may not claim payments for both Stage 2a and Stage 2b in relation to the same matter.

## **Stage 2a: Asylum**

11.11 This is for cases in which Controlled Legal Representation is granted but the case concludes prior to the substantive hearing. The fee covers, but is not limited to, the following services:

1. Drafting and lodging an appeal;
2. Preparation of an appeal;
3. Re-application of the merits test;
4. Where Controlled Legal Representation is withdrawn, explaining the decision and assisting with IFA review process and carrying out any necessary work; and
5. Any post appeal advice and assistance.

## **Stage 2b: Asylum**

11.12 This is for cases that the Supplier takes on to the substantive hearing. The fee covers, but is not limited to, the following services:

1. Drafting and lodging an appeal;
2. Preparation of an appeal;
3. Consideration of determination and advice to Client about the determination;
4. Applying the merits test for application for reconsideration;
5. Where the appeal is dismissed and an application for a review under section 103A NIA 2002 is not being pursued, explaining the consequences of the decision and carrying out any necessary work;
6. Where the appeal is allowed, explaining the consequences of the decision including rights and entitlements;
7. Any post appeal advice and assistance

11.13 Stage 2 will end at the point that Controlled Legal Representation is granted or refused in relation to the lodging an application for a Review of the Asylum and Immigration Tribunal decision under s.103A of the NIA 2002 or where the matter otherwise ends earlier.

## **Graduated Fees – Immigration Non-Asylum**

### *Stage 1: Legal Help: Initial Advice*

11.14 This stage is Legal Help and the fee covers, but is not limited, to the following services:

1. Initial advice and completion of the application form for leave to enter/ remain where appropriate;
2. Consideration of the Home Office decision and advice to the Client about that decision and carrying out any necessary work;
3. Applying the merits test for appeal; and
4. Grant of Controlled Legal Representation or completion of an application for a review of refusal of Controlled Legal Representation to the Independent Funding Adjudicator (in accordance with Paragraph 11.144).

11.15 Stage 1 will end at the point that Controlled Legal Representation is granted or refused (including the completion of any review application form to an Independent Funding Adjudicator (IFA)) or when the matter does not proceed to Controlled Legal Representation and all other necessary work has been completed or where the matter otherwise ends earlier.

### *Stage 2: Controlled Legal Representation*

11.16 This stage is Controlled Legal Representation and is split into two sub-stages. The fee for **either** Stage 2a **or** Stage 2b will be claimed depending on where the case concludes. You may not claim payments for both Stage 2a and Stage 2b in relation to the same matter.

#### *Stage 2a: Immigration - Non Asylum*

11.17 This is for cases in which Controlled Legal Representation is granted but the case concludes prior to the substantive hearing. The fee covers, but is not limited to, the following services:

1. Drafting and lodging an appeal;
2. Preparation of an appeal;
3. Re-application of the merits test;
4. Where Controlled Legal Representation is withdrawn, explaining the decision and assisting with an IFA Review and carrying out any necessary work; and
5. Any post appeal advice and assistance.

## Stage 2b: CLR: Immigration Non Asylum

11.18 This is for cases that the Supplier takes on to the substantive hearing. The fee covers but is not limited to the following services:

1. Drafting and lodging an appeal;
2. Preparation of an appeal;
3. Consideration of determination and advice to Client about the determination and carrying out any necessary work;
4. Applying the merits test for application for reconsideration;
5. Where the appeal is dismissed and an application for a review under section 103A NIA 2002 is not being pursued, explaining the consequences of the decision and carrying out any necessary work;
6. Where the appeal is allowed, explaining the consequences of the decision including rights and entitlements;
7. Any post-appeal advice and assistance

11.19 Stage 2 will end at the point that Controlled Legal Representation is granted or refused in relation to the lodging an application for a Review of the Asylum and Immigration Tribunal decision under section 103A of the NIA 2002 or where the matter otherwise ends earlier.

## **Provisions applying to Graduated Fees**

### **Additional Payments (Table 4 (b) of the Payment Annex)**

#### **Advocacy Services**

11.20 Where applicable the advocacy fees set out at Table 4 (b) of the Payment Annex are payable in addition to the appropriate Graduated Fee for each relevant attendance:

- (a) The advocacy fee is payable whether the relevant advocacy services are carried out by you or counsel. Where counsel is instructed, you are responsible for negotiating counsel's fee and making payment from the total payment to you under the Scheme.
- (b) The advocacy fee is inclusive of time for travel and waiting.

## **Disbursements**

11.21 Disbursements reasonably incurred are payable in addition to the Graduated Fee subject to the Disbursement Limits (as defined below) for different stages of the case as set out in Paragraph 11.22.

## **Disbursement Limits**

11.22 (a) The Stage 1 Legal Help Disbursement Limit is the maximum sum we will pay for the total of all the disbursements for the Stage 1: Legal Help stage of any matter; and

(b) The Controlled Legal Representation Disbursement Limit is the maximum sum we will pay for the total of all disbursements for the Controlled Legal Representation stage of any matter.

11.23 The Disbursements Limits are as follows:

- (a) £400 for Stage 1: Legal Help, and
- (b) £600 for Controlled Legal Representation.

All of these Disbursement Limits are exclusive of VAT.

11.24 These Disbursement Limits may be extended on application to us (see Paragraphs 11.66 to 11.69). However, disbursements are only payable within the Disbursement Limits that applied at the point they were incurred. Disbursement Limits cannot be amended retrospectively.

11.25 We may vary the Disbursement Limits from time to time by giving you written notice of the new Disbursement Limits. We may vary the Disbursement Limits for all Suppliers or for individual Suppliers.

## **Exceptional Cases**

11.26 Cases will be treated as an 'Exceptional Case' where the value of the work covered by the Stage 1/Stage 2 Graduated Fee(s), when calculated as if it were paid at the appropriate Hourly Rates, exceeds three times the value of the Graduated Fee payable under the scheme.

11.27 Additional payments under the Graduated Fee Scheme will be excluded from the Exceptional Case calculation.

11.28 The Exceptional Case calculation applies only at the conclusion of the case. This will usually be at the conclusion of Stage 2 unless the case concludes earlier.

11.29 The total payment due in respect of the Exceptional Case is the total value, calculated at the appropriate Hourly Rate, of the parts of the case covered by the Graduated Fee together with any additional payments due.

11.30 Any previous Claims allowed in respect of the case will be reconciled against this

total payment.

**For example:**

In the following asylum case, the fees for Stage 1 and Stage 2b have been claimed under the Graduated Fee Scheme along with additional payments for representation at the Home Office Interview, representation at an oral CMRH and representation at the substantive AIT hearing. The case then progressed to the review and reconsideration stage.

The total profit costs for the work covered by the Graduated Fee Scheme, work up to the application of the merits test in relation to review and reconsideration is, based on hourly rates, is **£4,025**.

Under the Graduated Fee Scheme a fee of **£450** has been claimed for Stage 1 and a further fee of **£600** for Stage 2b, totalling **£1,050**.

An additional payments of **£290** has been claimed for representation at the Home Office Interview plus **£175** for the CMRH & **£320** for the substantive AIT hearing, totalling **£785**.

Method of calculating an Exceptional Case:

T (total Profit costs) – AS (additional Payments claimed) > 3\* GFS (Graduated Fees claimed)

$$£4025 - £785 = £3240 > £3150 (£1050 \times 3)$$

Therefore, an exceptional payment is due. This is calculated as follows:

Total Profit costs incurred: (excluding disbursements)	£4,025
Profit costs used in calculation	£3,240 (£4025 – £785)
Exceptional threshold:	£3,150 (£1,050 x 3)
Graduated payments made:	£1,050
Additional payments made:	£785
Total payments claimed:	£1,835
Exceptional payment due:	£2,190 (£4,025 -£1835)
Total payments made:	£4,025

11.31 Exceptional Cases will be subject to cost Assessment.

**Provisions applying to Hourly Rates Cases**

Paragraphs 11.32 to 11.69 apply to work paid at Hourly Rates

11.32 The rates for Legal Help and Controlled Legal Representation are set out at Tables 7 (a), 8 (a) and 8 (b) the Payment Annex to this Specification

11.33 In Paragraphs 11.34 to 11.69 where counsel is instructed under Controlled Legal Representation you should claim for the time they have incurred at the

appropriate Controlled Legal Representation Hourly Rates.

### **Legal Help 'Cost Limit'**

- 11.34 The Legal Help 'Cost Limit' is the maximum amount of costs that we will pay for the Legal Help stage of any matter as specified by and subject to Paragraphs 11.35 to 11.40.
- 11.35 We may vary the Costs Limits from time to time by giving you written notice of the new limits. We may vary the limits for all Suppliers or for individual Suppliers.
- 11.36 Unless otherwise varied by us in writing, the Legal Help Cost Limit, excluding VAT is as follows:
- (a) £800 in Immigration Asylum matters, (where the matter progresses beyond initial advice see (c));
  - (b) £500 in Immigration Non Asylum matters; and
  - (c) £100 inclusive of disbursements where:
    - (i) You provide initial advice in relation to an Asylum application prior to attendance at the ASU, and following your Client's attendance you cease to be instructed; or
    - (ii) You provide advice in relation to the merits of an application for a review under section 103A NIA 2002.
- 11.37 Other than as specified in Paragraph 11.36(c), disbursements are not subject to the Cost Limit but may be paid in addition to this Cost Limit subject to Paragraphs 11.41 to 11.44.
- 11.38 In very limited circumstances where Counsel is instructed under the provision of Legal Help the fees, where payable, are subject to the Legal Help Disbursement Limit.
- 11.39 The Cost Limits set out in 11.36 (a) or (b) may be extended on application to us (see Paragraphs 11.66 to 11.69). However, costs are only payable within the limit that applied at the point they were incurred. The Cost Limit set out in 11.36 (c) is not extendable.
- 11.40 The Cost Limits set out in 11.36(a) or (b) are exclusive of the costs incurred under 11.103. You can claim your reasonable costs in addition to the Cost Limit set out in 11.36(a) or (b) for time spent, including travel and waiting, in accompanying a Client to an interview under 11.103.

### **Legal Help Disbursement Limit**

- 11.41 The Legal Help Disbursement Limit is the maximum sum we will pay for the total of all the disbursements for the Legal Help stage of any Matter, as specified by Paragraphs 11.42 to 11.44.
- 11.42 We may vary the Legal Help Disbursement Limit from time to time by giving you written notice of the new limit. We may vary the limit for all Suppliers or for individual Suppliers.
- 11.43 Unless otherwise notified by us in writing the Legal Help Disbursement Limit is £400. This figure is exclusive of VAT.
- 11.44 This limit may be extended on application to the Commission (see 11.66 to 11.69). However, disbursements are only payable within the limit that applied at the point they were incurred. Disbursement Limits cannot be amended retrospectively.

### **Upper Financial Limit – Controlled Legal Representation**

- 11.45 The Controlled Legal Representation Upper Financial Limit is the maximum sum that we will pay for the Controlled Legal Representation stage of any matter, other than for work undertaken in connection with an application for review and reconsideration under section 103A of the NIA 2002 (see Paragraphs 11.54 to 11.65), as specified by and subject to Paragraphs 11.46 to 11.53.
- 11.46 We may vary the Controlled Legal Representation Upper Financial Limits from time to time by giving you written notice of the new limits. We may vary the limits for all Suppliers or for individual Suppliers.
- 11.47 Unless otherwise varied by us in writing, the Controlled Legal Representation Upper Financial Limit is as follows:
- (a) £1600 in Immigration Asylum matters;
  - (b) £1200 in Immigration Non Asylum matters; and
  - (c) £500 in relation to bail only matters.

These figures are exclusive of VAT.

- 11.48 For the avoidance of doubt where Controlled Legal Representation is granted in relation to an appeal then any subsequent bail application will be part of the Controlled Legal Representation Upper Financial Limit as stated in 11.47(a) or (b). Where Controlled Legal Representation is granted in relation to a bail only matter and Controlled Legal Representation is subsequently extended to cover an appeal then the Controlled Legal Representation Upper Financial Limit as stated in 11.47(a) or (b) will apply.
- 11.49 Within Controlled Legal Representation we may prescribe in writing specific Upper Financial Limits for different stages of the appeal including preparation, disbursements and attendance at the appeal hearing on a individual Supplier or

case basis.

- 11.50 The costs of all disbursements form part of the Controlled Legal Representation Upper Financial Limit.
- 11.51 The Controlled Legal Representation Upper Financial Limit may be extended on application to us (see Paragraphs 11.66 to 11.69). However, costs and disbursements are only payable within the limit that applied at the point they were incurred, save for the costs of waiting time where there is a significant delay on the day of a hearing, which is no fault of yours or your Client, provided you apply for an extension to the Upper Financial Limit as soon as practicable thereafter.
- 11.52 Work involved in advising the Client and taking further instructions regarding a substantive appeal to an Immigration Judge is subject to the Controlled Legal Representation Upper Financial Limit. However, you may claim additional costs (including counsel fees/disbursements) of up to £100 exclusive of VAT to consider the merits of an application for review and reconsideration under section 103A of the NIA 2002. This sum is in addition to the Upper Financial Limit and is not extendable.
- 11.53 Disbursements are subject to the Controlled Legal Representation Upper Financial Limit set out in Paragraph 11.45. There are no specific maximum disbursement limits for Controlled Legal Representation.

#### **Provisions applying to proceedings under section 103 NIA**

##### **Application for Review under section 103A NIA 2002 (including review applications which are considered by a member of the Tribunal in accordance with paragraph 30 of Schedule 2 to the 2004 Act)**

##### **Work undertaken in connection with applications for review which are not subject to an order under section 103 D of the NIA 2002**

- 11.54 In relation to applications:
- a) For review by the Home Office;
  - b) Where the appeal is being dealt with under detained 'Fast Track' processes;  
or
  - c) Where an application for permission to appeal to the IAT was made before 4 April 2005 but has not been determined by that date or under the provisions contained in the Community Legal Service (Asylum and Immigration) Regulations 2005 (as Amended)

You may claim reasonable costs for work associated with the application for review and reconsideration, including any further hearings at the AIT.

**Applications for review which are subject to an order under section 103 D of the NIA 2002**

- 11.55 You may undertake reasonable work in connection with an application for review to the High Court under section 103A that is subject to an order under section 103 D NIA, where justified under the relevant merits test as applied by the appropriate court.
- 11.56 However, no Claim may be made in respect of any work undertaken under Paragraph 11.58 until one of the following has occurred:
- a) An order for costs is made by the AIT under section 103 D of the NIA 2002;
  - b) An order for costs is made by the appropriate Court under the circumstances set out in the Community Legal Service (Asylum and Immigration) Regulations 2005 (as Amended); or
  - c) Following a successful review against the decision to refuse costs under the Community Legal Service (Asylum and Immigration) Regulations 2005 (as Amended).

If no order is made under section 103 D then no Claim for the costs of these proceedings can be made to us.

You will need to reconsider the relevant merits of the case at each stage of the proceedings.

**Work undertaken in connection with AIT reconsideration hearings under section 103A of the NIA 2002**

**Applications for reconsideration by the AIT which are not subject to an order under section 103 D of NIA 2002**

11.57 Where an application in the circumstances of Paragraph 11.54 has been successful or under the filter system the AIT has ordered a reconsideration then the further reasonable costs for the preparation of, travel to, waiting and representation at the AIT hearing, (including any counsel's fees and disbursements) may be claimed.

**Applications for reconsideration by the AIT which are subject to an order under section 103 D of the NIA 2002**

11.58 Where an application in the circumstances of Paragraph 11.55 has been successful or under the filter system the AIT has ordered a reconsideration then the further reasonable costs for the preparation of, travel to, waiting and representation at the AIT hearing, (including any counsel's fees and disbursements) may be claimed.

11.59 However, no Claim may be made in respect of any work undertaken under Paragraph 11.58 unless the circumstances specified in Paragraph 11.56 are satisfied.

### **Orders granted under Section 103 D**

11.60 In cases where the appropriate court has made a section 103 D order the Hourly Rate set out in Table 8(6) of the Payment Annex applies.

### **Disbursements**

11.61 The application fee to the High Court for an application under section 103A NIA is payable as a disbursement if and only if a fee exemption is not available or remission of the fee has been refused, subject to a section 103 D order being made.

11.62 The costs of interpreters and experts instructed in connection with the preparation of an application for review and a reconsideration hearing under section 103A of the NIA 2002 are not subject to a section 103 D order being granted.

### **Costs of a review of an AIT decision not to make a section 103 D order**

11.63 Where an application for review of a decision not to make a section 103 D order under the Community Legal Service (Asylum and Immigration) Regulations 2005 (as Amended) is successful then you may claim your reasonable costs for the review application.

11.64 You may claim the Hourly Rates set out in Table 8(6) of the Payment Annex in respect of work under Paragraph 11.63.

### **Controlled Legal Representation Upper Financial Limit**

11.65 The Controlled Legal Representation Upper Financial Limit does not apply in respect of Claims for work under Paragraphs 11.54 to 11.64.

## **PART B      General Rules for Suppliers**

### **Applying to extend Financial Limits**

11.66. You may apply to us for an extension to the Legal Help Cost Limit (other than in respect of matters referred to at Paragraph 11.36(c)), or Controlled Legal Representation Upper Financial Limit, or Disbursement Limit(s) where, having regard to the particular circumstances of the case, the further work and time proposed is both reasonable and necessary.

11.67. An application for authority to exceed the relevant Limit must be made to the London Regional Office on the Contract Report Form specified by us.

11.68 You may claim a reasonable period for time spent completing the form (normally up to 30 minutes) for applying to extend the Disbursement or Upper Financial Limit, where the extension is being sought for a case that commenced before 1<sup>st</sup> October 2007 and where the application is granted. For avoidance of doubt these are cases which fall under 11.2(a) and (c). The increased limit will apply from the date upon which we received the properly completed application

### **Previous Controlled Work**

11.69 Unless permitted to do so under a contract Controlled Work may not be provided to a Client who has received Controlled Work for the same matter from another Supplier within the six months preceding the application, except where:

- (a) there is a gap in time, and circumstances have changed materially between the first and second occasions when the Controlled Work was sought, e.g. a reconciliation which has failed; or
- (b) the Client has reasonable cause to be dissatisfied with the service provided by the first Supplier; or
- (b) the Client has moved a distance away from the first Supplier and communication is difficult; or
- (d) the first Supplier has confirmed that they will be making no Claim for payment for the Controlled Work.

### **Claiming**

#### **Claiming for Graduated Fees**

11.70 You must submit a Controlled Work Claim within three months of the end of each of the following stages of the case citing the correct Unique Client Number (see Paragraph 11.80 to 11.83):

- (a) Legal Help – at the end of Stage 1.

Where incurred you should also claim any relevant additional payments including disbursements.

- (b) Controlled Legal Representation - at the end of Stage 2.

Where incurred you should also claim any relevant additional payments including disbursements.

You must submit either a Stage 2a or Stage 2b Claim. Only one Stage 2 Claim will be claimable.

#### **Claiming for cases paid at Hourly Rates**

11.71 You must submit a Controlled Work Claim within three months of the end of each of the following stages of the case citing the correct Unique Client Number (see Paragraph 11.80 to 11.83):

(a) Legal Help:

- (i) The date that Controlled Legal Representation is granted or refused in relation to the Home Office decision;
- (ii) Following the submission of a fresh application for asylum to the Home Office (See 11.120); or
- (iii) When you have completed work under Legal Help, if earlier.

You should ensure that any advice/assistance in relation to an Independent Funding Adjudicator Review against the decision to refuse to grant Controlled Legal Representation, is provided as part of this Claim.

(b) Controlled Legal Representation:

- (i) The date you have applied the appropriate Controlled Legal Representation merits test to making a section 103A NIA 2002 review application (and advised the Client appropriately as to their options); or
- (ii) When you have completed work under Controlled Legal Representation if earlier.

11.72 In each Claim you must only submit your costs in relation to the work relevant at that stage.

#### *Accreditation*

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

The IAAS provides for 5 levels of accreditation:

- Level 1 Probationer
- Level 1 Accredited Caseworker
- Level 2 Probationer
- Level 2 Senior Caseworker
- Level 3 Advanced Caseworker

11.74 An Immigration Category Supervisor must both:

- (a) Be IAAS Level 2 Senior Caseworker or Level 3 Advanced Caseworker

accredited; and

- (b) Meet the Supervisor criteria of the SQM and have passed the IAAS Supervisor Level Assessment.
- 11.75 Only advisers who are fully accredited at Level 1 Accredited Caseworker, Level 2 Senior Caseworker or Level 3 Advanced Caseworker may have day-to-day responsibility for their own case files. Level 1 Probationers may not have day-to-day responsibility for their own case files.
- 11.76 Only advisers who are fully accredited at Level 2 Senior Caseworker or Level 3 Advanced Caseworker may have conduct of Controlled Legal Representation files.
- 11.77 Advisors engaged by you to perform Contract Work must only perform work appropriate to their level of accreditation as set out in the IAAS Work Restrictions. These Work Restrictions may be amended from time to time.
- 11.78 You may not make any Claim for Contract Work, which is:
- (a) Carried out by a non-accredited advisor;
  - (b) Carried out by an advisor not registered with the relevant regulatory body for inclusion on their respective lists of accredited advisers (SRA register and the OISC list of regulated advisers); or
  - (c) Carried out by an accredited individual but which is restricted (through the IAAS Work Restrictions) to a higher level of accreditation.
- 11.79 A 5% uplift is claimable on all Controlled Work personally undertaken by Level 3 Advanced Caseworkers.

## **Applications for Contract Work**

### *Unique Client Numbers*

- 11.80 Each Client in the Immigration Category of Law must be identified by you on all documentation by means of a Unique Client Number. This should be the same number as the reference number which is allocated by the Home Office to each individual when they make an immigration application. The number consists of a letter followed by a series of numbers (usually 7). The Home Office reference number will be allocated on the decision letter at the latest. You should not use any separate reference number allocated, for example, by the Immigration Service at ports or the Asylum and Immigration Tribunal.
- 11.81 We may change the Unique Client Number or its format by written notice to you in order to take into account any changes in practice.
- 11.82 If a single Client requires advice on more than one issue or application (as part of the same, or a different, matter) then the same Unique Client Number should

be used. In such circumstances, the Client should use the first Home Office reference number allocated. For example: if a Client applies for asylum and later applies to remain in the UK on the basis of marriage, the number allocated in the asylum case will be used for both applications.

- 11.83 The Client's Unique Client Number must always be noted on the Client's file and used in all Claims and correspondence with us relating to that Client. We will be unable to process Claims for costs that do not use the Client's Unique Client Number and Claims will be rejected until the correct reference number is supplied. Where a Client has not been allocated a Home Office reference number the Client's case should be reported to us using the default Unique Client Number A0000000. However, this will only be in very rare cases, and we will monitor your use of the default number. For example: a Client may not have a Home Office reference number where following initial advice the Client decides not to proceed with an application to the Home Office.

## **Applications**

- 11.84 A sponsor cannot sign a form on behalf of an individual not resident in or yet arrived in the European Union (Rule B3 Funding Code Procedures).
- 11.85 However, in the Immigration Category of Law a sponsor or family member may sign the application for Legal Help or Controlled Legal Representation where they have sufficient interest in the application to act as the Client.
- 11.86 Under no circumstances may Legal Help forms be signed by both a sponsor or family member and applicant/appellant to take forward the same application.
- 11.87 It is permitted for a sponsor or family member to sign the Legal Help form for initial advice and the appellant to sign the Controlled Legal Representation form for the appeal for the same matter.

## **Means assessment**

### *Eligibility*

- 11.88 Where the sponsor or family member signs an application form as the Client, it is that person's means that are assessed.
- 11.89 Any resources provided to a Client by a sponsor or family member must be included in the assessment of the Client's means.

## **Licensed Work**

- 11.90 Representation of a Client in an application for judicial review or an appeal to the Court of Appeal or House of Lords, including any application to the Court for permission, is funded as Licensed Work and cannot be carried out under Controlled Work.
- 11.91 However, where an application for permission to appeal to the Court of Appeal is made to the AIT, the grounds of appeal, whether drafted by you or counsel, may be claimed as part of Controlled Work.
- 11.92 Preparation and consideration for a Certificate for Licensed Work including complying with the pre-action protocol can be undertaken under a Controlled Work matter, at the Controlled Work stage at which the decision to be challenged or appealed arises.

## **Cases subject to Exclusive Contracting**

- 11.93 You may not provide Controlled Work to a Client where the Client's case is subject to a pilot or scheme specified by us as work to be carried out under our Exclusive Contracting arrangements. Work covered by Exclusive Contracting shall be set out:
- (i) in this Specification;
  - (ii) in your Office Schedule; or
  - (iii) by notice in writing to you;
- 11.94 Unless otherwise notified in writing the following work is subject to Exclusive Contracting:
- (i) all cases subject to the New Asylum Model Early Legal Advice Pilot at Solihull from 23 October 2006;
  - (ii) all cases subject to the detained Home Office fast track process at Oakington, Harmondsworth or Yarl's Wood and cases subject to that process where the Client is detained elsewhere in England or Wales; and
  - (iii) all detained fast track process for potentially non-suspensive appeal cases at locations and from dates to be specified.
- 11.95 We may add further types of Immigration work to Exclusive Contracting from time to time, and we will notify you in writing of this. You will not be entitled to undertake work added to our Exclusive Contracting arrangements from the date stated.

For example, the following may be subject to Exclusive Contracting arrangements in the future:

- (i) Information, advice and representation at the Asylum Screening Unit (ASU);
- (ii) Advice and representation for those held in detention in relation to an immigration matter (including those held in Immigration Removal Centres and Police Stations); or

- (iii) Advice and representation for unaccompanied asylum seeking children.

11.96 Paragraph 11.93 does not apply to cases:

- (a) Where you were performing Contract Work on the Client's case before any date specified for the commencement of the application (of that Paragraph) to a specified location, pilot or services relevant to the case; or
- (b) Once a Client has left, or been removed from any specified location, pilot or other arrangements subject to Exclusive Contracting.

**Exceptions:**

11.97 You may provide Controlled Work under Paragraph 11.93 to 11.96 where:

- (a) A Supplier contracted to provide Controlled Work under 11.93 above refers the Client to you. You must keep a record of the referral, including the date and the name of the Supplier who made the referral, on your file;
- (b) The Client is a close family member of an existing Client and knowledge of the family's circumstances is material to the new Client's case (A close family member for the purpose of this rule is a member of the family who is the Client's spouse, partner, child, sibling, parent, grandparent or grandchild.); or
- (c) The Client is an existing Client on whom you have attended in the UK and carried out at least five hours work (excluding travel and waiting) prior to the case being subject to one of the advice services outlined above.

**Legal advice in relation to "Form filling"**

11.98 We will not pay for assistance with form filling in Immigration Non Asylum or Asylum Matters, which does not require legal advice. This prohibition will include, but is not limited to:

- (a) The filling in of travel document forms for persons accepted as refugees under the 1951 UN Convention; or
- (b) Passport applications and citizenship applications.

11.99 It may, however, be reasonable for you to provide advice regarding the completion of these forms in limited circumstances where an issue of law arises.

11.100 Where advice is given under Paragraph 11.99 the following applies:

- (a) If a substantive controlled work matter is open and advice is subsequently provided then you should claim your costs as part of that Controlled Work Matter ; or
- (b) If it is a new matter opened solely in relation to 11.99 then the Legal Help

Cost Limit for Immigration Non Asylum matters will apply (see Paragraph 11.34).

11.101 Paragraphs 11.98 and 11.100 do not apply to filling in appeal forms or completion of self-evidence forms in asylum cases, or applications for leave or extension of leave to remain in the UK, which will require legal advice. This is not an exhaustive list.

### **Attendance at Interviews**

11.102 We will not pay for attendance at interviews conducted by the Home Office by you or any agent of yours unless you are authorised by us or we have granted you prior authority to claim such costs.

11.103 You are authorised, subject to the appropriate Funding Code Criteria being satisfied, to accompany a Client to a substantive interview where:

- (a) The Client is subject to a Home Office detained fast track process;
- (b) The Client is to be interviewed by an Immigration Officer under PACE (usually in relation to offences connected with illegal entry);
- (c) It is alleged that the Client may pose a threat to national security;
- (d) The Client is subject to the New Asylum Model Early Legal Advice Pilot at Solihull from 23 October 2006 (see Paragraph 11.93 (i) above);
- (e) The Client is to be interviewed in relation to a Immigration Non Asylum matter and, having regard to the particular circumstances of the case, it is both reasonable and necessary for a representative to attend the interview with the Client given the nature of the interview and the representative's role within the interview;
- (f) The Client is a minor or claims on reasonable grounds to be a minor; or
- (g) The Client suffers or appears to suffer from a "mental incapacity" as defined by the Mental Health Act 2001.

In relation to 11.103(f) you are also authorised in addition to attend a screening interview.

11.104 If a representative is authorised to attend an interview conducted by the Home Office then that representative must be an accredited caseworker from your Approved Personnel (see the relevant criteria in Paragraphs 11.73 to 11.79 above). However, you may use an agent to attend a distant interview conducted by the Home Office in which case you must use an accredited caseworker from the Approved Personnel of a Supplier permitted under their Contract to carry out work in the Immigration Category of Law.

## **Detained cases**

11.105 You may only provide advice and representation to individuals in detention if you have been granted an Office Schedule to do so. However, you may provide advice where:

- (a) There are no Exclusive Contracting arrangements in operation where the Client is detained; or
- (b) You are permitted to act under Paragraphs 11.96 or 11.97.

11.106 Where you act for a Client under Paragraph 11.105, you may:

- (a) In addition to the costs claimable (either under the Graduated Fee Scheme or Hourly Rates) you may claim, your reasonable additional costs for travel (including travel disbursements) to the place of detention up to a maximum of three hours for a return journey; and your actual waiting time at the place of detention;
- (b) Claim the reasonable costs of any bail application(s) you make (subject to the Controlled Legal Representation Upper Financial Limit - see Paragraphs 11.45 and 11.47); or
- (c) Where you are representing a Client in relation to an application under section 103A NIA 2002 any bail application(s) should be claimed in accordance with 11.106(b).

11.107 Where you are representing a Client under the Graduated Fee Scheme who is subsequently detained in a place where Exclusive Contracting arrangements or Hourly Rates are in operation, you should continue to act for the Client until you reach the completion of the next Graduated Fee Scheme stage. At this point you should decide whether it is in the best interest of the Client to refer the matter to a Supplier authorised to do the work under our Exclusive Contracting arrangements or to continue to represent the Client yourself.

## **Carrying out Controlled Work**

### **Level of Service**

11.108 You must carry out work under the Level of Service, Legal Help or Controlled Legal Representation, as is appropriate to the stage of the matter:

- (a) Under Legal Help you may provide help and advice on matters within the Immigration Category of Law but excluding issuing and conducting proceedings in a court/tribunal and advocacy.
- (b) Under Controlled Legal Representation you can provide representation for

Clients before the AIT and in connection with an application for review to the High Court and a subsequent reconsideration by the AIT under section 103A of the NIA 2002.

- (c) Where Controlled Legal Representation has been granted you may not continue to provide Legal Help in the same matter.

### **Instructing Counsel before the AIT**

11.109 Counsel cannot be instructed before the AIT as part of the provision of Legal Help but may be instructed if Controlled Legal Representation is granted.

11.110 If counsel is instructed on a private basis, preparation of a brief to counsel to represent on an appeal will be outside the scope of Legal Help.

11.111 If you instruct counsel on your Client's behalf as part of Controlled Legal Representation before the Immigration Judge or AIT you are free to negotiate the amount you pay counsel but we will only pay you in accordance with this Specification.

11.112 You may not make any Claim for time spent accompanying counsel at the hearing.

11.113 When instructing counsel you should inform them of the payment rates and ensure that their fee note will contain a breakdown of the time claimed at the appropriate rates.

11.114 In relation to section 103 D NIA 2002 applications you must inform counsel that payment is conditional on a section 103 D cost order being made by the appropriate court or where there has been a successful review of a decision to refuse funding.

11.115 Subject to agreement by us the rates set out above may be exceeded in any case before the appropriate court which either:

- (a) raises an exceptionally complex or novel point of law; or

- (b) raises a matter of Significant Wider Public Interest (as defined in the Funding Code).

Cases before a 3 person legally qualified panel of the AIT may come within the exceptions set out above. When one of the exceptions applies, you should contact the London Regional Office to discuss and negotiate rates.

### **Separate Matters**

#### **Asylum**

11.116 An asylum application and any asylum appeal under Controlled Legal Representation will constitute one matter only. The appropriate Unique Client

Number will be that of the principal asylum applicant.

- 11.117 An associated application on human rights grounds e.g. an application on the basis of Article 3 of the Human Rights Act will also form part of the same asylum Matter Start.
- 11.118 Where a Client has been granted refugee status, discretionary leave or humanitarian protection and the Home Office are reviewing the Client's status; any work undertaken in relation to this review may constitute a separate asylum Matter Start.
- 11.119 In family reunion cases following grant of refugee status the application will form a separate Matter Start under the Immigration Non-Asylum category and will be subject to the Immigration Non Asylum stage fee.
- 11.120 Where a Client has made or wishes to make a fresh application for asylum then this new application would constitute a new Matter Start.
- 11.121 Work undertaken in relation to the preparation and consideration for a Certificate for Licensed Work will constitute a separate Matter Start.

### **Immigration Non Asylum**

- 11.122 An Immigration Non Asylum application, such as an application for settlement in the UK from abroad and any subsequent appeal, constitutes one Matter Start only.
- 11.123 In the case of an application for settlement of a family member, the Matter Start would also cover any advice regarding a human rights application under Article 8 of the Human Rights Act.

### **Concurrent applications**

- 11.124 Where a Client applies to enter or remain in the UK under more than one category or if the Client applies to switch status while the first application remains pending, this will constitute one Matter Start and therefore will be subject to one stage fee.

### **Generally**

- 11.125 Only one Matter Start should be opened for any single case, proceeding or application.
- 11.126 A proceeding or application is a single case if treated by the Home Office as one application or where they are heard together or consecutively.
- 11.127 Proceedings treated by the court as a single set of proceeding are to be regarded as a single case.

**Examples:**

1. An applicant making a claim for asylum under the 1951 Refugee Convention and a claim under the 1950 ECHR is to be regarded as a single application or proceeding for the purposes of the relevant fee.
2. You are instructed by the main applicant and you determine that his/her partner, family member or dependent may in fact have a genuinely separate claim for asylum and it is reasonable to believe that the Home Office and the AIT will deal with this as a separate claim. These cases will be rare and such cases where they are split by you will be closely monitored on audit and assessment.

**Granting and Refusing Controlled Legal Representation**

- 11.128 Controlled Legal Representation is part of Controlled Work and the general rules contained in sections 2, 3, 5, 7 and 8 of this Specification apply to Controlled Legal Representation unless otherwise stated. You should comply with these requirements before you grant funding and throughout the conduct of the case.
- 11.129 From 1 October 2007 all Suppliers authorised under their Contract to carry out Controlled Work have the Devolved Power to grant, refuse or withdraw Controlled Legal Representation in the Immigration Category must follow the provisions set out in Paragraphs 11.130 to 11.151 below.
- 11.130 The Criteria applying to Immigration Controlled Legal Representation are at sections 4 and 13.3 to 13.5 of the Funding Code Criteria. Regard should be had to the guidance on these Criteria at section 21.6 of the Funding Code Guidance.
- 11.131 Where you decide that it is inappropriate to apply the Criteria for Controlled Legal Representation, for example because your Client instructs you that they do not wish to appeal, then you should record these reasons on the file.

**Granting an application for Controlled Legal Representation using Devolved Powers**

- 11.132 Only a level 2 or 3 accredited caseworker under the IAAS (as set out in Paragraph 11.73 to 11.79) may grant the application.
- 11.133 The Client must complete and sign the Controlled Legal Representation form before you sign the form. The Client can send you the signed application by post or fax in the circumstances set out in Paragraph 2.14 of the Specification.
- 11.134 When you grant Controlled Legal Representation you must record details of the reasons justifying the exercise of the grant on the appropriate section of the application form. This includes an assessment of the means and written answers to the merits test set out on the form.

- 11.135 In the case of an application for review and reconsideration under section 103A of the NIA 2002 you should apply the appropriate merits test as set out in the Community Legal Service (Asylum & Immigration) Regulations 2005 (as amended).
- 11.136 Where a decision to grant Controlled Legal Representation is made beyond the terms of the power, or if any procedures are not followed, then costs incurred may be disallowed.
- 11.137 We will not disallow decisions to grant Controlled Legal Representation on legal merits grounds. However, Claims for costs will be subject to Assessment as to reasonableness in the usual way.
- 11.138 Where you have granted Controlled Legal Representation you must report your decision on a form specified by us. You should submit the form to us on as required each month. All grants made by you in the previous month must be reported on the form.
- 11.139 You should keep the original Controlled Legal Representation form on file for audit and assessment purposes.
- 11.140 We will monitor your overall exercise of the Devolved Power and will discuss our findings with you with a view to achieving any improvements necessary. Persistent failure to exercise the Devolved Power correctly may lead to Sanctions including suspension or removal of the Devolved Power.

### **Refusing or Withdrawing Controlled Legal Representation**

- 11.141 An initial application to grant Controlled Legal Representation should be refused where the Client fails to satisfy the means or the merits test.
- 11.142 You should cease to provide Controlled Legal Representation where the case no longer satisfies the merits test.
- 11.143 The date and reasons for the refusal or withdrawal should be recorded on the review notification form (CW4) and retained on file. A copy must also be given to the Client.
- 11.144 You must inform in writing the Client of their right of review of your (or our) decision based on the merits of the case only, advise them that they must give reasons for the application for a review and provide them with the CW4 form in all cases where you have refused Controlled Legal Representation. You must also advise the Client of the time limit in which such a review should be made under paragraph 11.147.
- 11.145 Where you have refused or withdrawn Controlled Legal Representation, you should make it clear to the Client that you are refusing or withdrawing on behalf of us and applying the Criteria set out in the Funding Code and the rules and

guidance contained in this Contract. You must complete the section on the CW4 form giving your reasons for the refusal based on the merits of the case.

11.146 Where you have refused or withdrawn Controlled Legal Representation you must report your decision on a form specified by us. You should submit the form to us on the 10<sup>th</sup> of each month. All decisions made by you in the previous month must be reported on the form.

#### **Review by the Independent Funding Adjudicator**

11.147 Where an application to grant or amend Controlled Legal Representation is refused or where Controlled Legal Representation is withdrawn, your Client may within 5 days of the date of refusal or withdrawal apply on the form specified by us to have the decision reviewed by the Independent Funding Adjudicator, and may make representations in writing in support of the application.

11.148 Where an appeal date is already set then the application should be submitted immediately and the urgency of the application should be clearly stated. You should provide your Client with the address of the London Regional Office to which the Client should appeal or you can, if you are instructed, submit the form to us on the Client's behalf.

11.149 There is no right of review of a decision based on the means of the Client.

11.150 There is no right of review of a decision to refuse or withdraw Controlled Legal Representation in connection with an application under section 103A of the NIA 2002, which is subject to a cost order under section 103 D of that Act and Paragraph 11.146 does not apply in respect of such decisions.

11.151 Subject to any modifications set out below, a review by the Independent Funding Adjudicator under this rule shall operate in the same way as a review of the refusal or withdrawal of certificated work under Part C of the Funding Code Procedures:

1. The Director will consider any representations received under this rule and may affirm, amend or reverse the earlier decision. Where the matter is not resolved, the Director will forward the representations to the Independent Funding Adjudicator for review.
2. Where the Independent Funding Adjudicator reviews a decision made under Paragraph 11.141 above, the Independent Funding Adjudicator shall consider the matter on the papers only.
3. Where, in light of a determination by the Independent Funding Adjudicator under this rule, the Independent Funding Adjudicator wishes to confirm the decision of the Director, the Independent Funding Adjudicator shall do so and ensure that the Client and you are informed.
4. If it appears to the Independent Funding Adjudicator that in light of his/her determination, the decision of the Director may not be correct or should be

reconsidered, he/she shall refer the matter back to the Director.

5. Where information comes to light, which was not before the Director at the time his decision was made and which the Independent Funding Adjudicator considers may be material to that decision, the Independent Funding Adjudicator shall ensure that such information is referred to the Director.
6. The Independent Funding Adjudicator shall give reasons for all determinations made under this rule, which are adverse to the Client and shall ensure that such reasons are made available to the Client and the Director.
7. If, following a determination by the Independent Funding Adjudicator, it appears to the Director that the criteria for granting or amending an application for Controlled Legal Representation are satisfied and the Client is financially eligible, the Director shall immediately grant or amend the application as required.

#### **Funding of immigration asylum appeals under Controlled Legal Representation in Scotland and Northern Ireland**

11.152 Community Legal Service Funding is not available in respect of Immigration Non Asylum or Immigration Asylum appeals, which have been listed to be heard before the AIT in Scotland or Northern Ireland (Section 19 (1) of the Access to Justice Act 1999).