



Independent  
Quality Assessment  
of Legal Services

## IMPROVING YOUR QUALITY

A guide to the common issues identified through peer review

# immigration

# Foreword

## Improving Your Quality

### A guide to common issues identified through Peer Review

The focus of the delivery of legal aid is firmly on the provision of consistently good quality services for clients.

The introduction of the peer review process provides a unique opportunity with access to a wealth of information directly related to the quality of legal advice and information given to clients. It allows us to identify areas of good practice and areas in need of improvement.

We are pleased to introduce 'Improving Your Quality – Immigration', which is intended to give the profession access to peer review findings and help support those wishing to achieve the highest levels of quality of legal advice and work.

The guide makes available common quality issues identified by the Immigration Peer Reviewers. Derived from the entire body of peer review reports, analysis has concentrated on those issues frequently contributing towards lower ratings at Peer Review. Each issue is divided into 3 parts:

- A brief description of why the issue has been identified as important.
- The process by which an organisation can identify if the quality concern affects their work and advice.
- Outline suggestions on activities/methods which could assist improvement.

These suggestions for making improvements are not suggesting a standard approach. Nor are they an exhaustive list; they are only some of the ways that improvements can be made. Your organisation may have other ways of resolving the issues raised in the guide, it is not our intention to invalidate those approaches.

Some of the suggestions may also lead to a more general debate concerning standard setting, and the best approaches to dealing with specific quality of advice issues for Immigration work. We would welcome the opening up of the world of legal competence to such scrutiny and debate.

**Avrom Sherr**

*Director of Institute of Advanced Legal Studies*

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# Has the client been advised of the merits of the case?

## Why does this matter?

- The client needs to be told about the strengths and weaknesses of the application.
- Weak points in a case need to be focused on; the adviser needs to explore the options available to strengthen the client's claim.
- The adviser needs to assess whether the client's application has any prospects of success.
- If not advised, the client will be unable to make informed decisions about the case.
- The client's expectations need to be clear from the outset.
- The client needs to know whether the application is the right option or whether there are more suitable alternatives.
- If the claim fails to pass the sufficient benefits test or merits test, further funding may not be justified.

## How can I check this is on my files?

- Does the file show that advice on merits was given at the earliest opportunity? For example, advice on the strengths and weaknesses of the case in the initial attendance note, client care letter or as soon as the adviser received sufficient information/documentation to be able to make an assessment of merits.
- Does the file record what the advice on merits was, rather than simply stating that advice on merits was given to the client?
- Is the merits advice clear, i.e. not vague or ambiguous such as "you have a reasonable prospect of success"?

- Does the merits advice reflect current Home Office policy and success rates for applicants from particular countries?
- Is the advice updated to reflect changes in the case or as different stages in the case are reached? For example:
  - Prior to submission of the application
  - Following a decision or determination
  - Following changes in case law
  - Following changes in the country of origin
- Is the merits test assessment for CLR recorded on file the same as the information communicated to the client?
- Is the merits advice tailored to the individual client and the case, i.e. not the same formulaic advice given to all clients?
- Does the file record a discussion of the merits with the client?
- If there are no merits in proceeding with the matter, was the client given specific reasons why this is the case?

## What will help?

- Focus on this issue in Supervision.
- Increase the number of files reviewed internally to pick up this issue and resolve it at an early stage.
- Put headings in template letters to prompt advisers to record advice on merits, strengths and weaknesses and advice on the way forward – but remove formulaic text.
- Ensure advisers are aware of the latest statistics on success rates for decisions and appeals. For example, the Quarterly Asylum Statistics published on the Home Office website gives breakdowns of success on initial decision and at appeal by nationality of the applicant.
- Ensure that merits advice is included in specific correspondence at particular stages:
  - Initial client care letter
  - Letter to the client after the substantive application is submitted
  - Letter to the client after the substantive decision or determination is received

“Does the file record a discussion of the merits with the client?”

# Have detailed and comprehensive instructions been taken from the client?

## Why does this matter?

- Detailed instructions form the foundation of the case.
- The client's immigration status should be diagnosed at the outset.
- The adviser needs to identify who the client is. In some cases, there may be more than one client in the same matter (for example, husband and wife, applicant and sponsor).
- Biographical information (for example, details of the client's ancestry, a spouse/partner's nationality) can have a significant impact on the type of application that may be submitted on the client's behalf.
- The adviser needs to have a full understanding of the client's background as factors relating to the client's personal circumstances (for example, medical issues, details of the client's family in the UK, details of the client's education and employment history) may be relevant to the application and may have a bearing on its success.
- Failure to take full and detailed instructions may mean that an important aspect of the client's case is overlooked.
- Detailed instructions will identify whether the client needs referral in relation to another legal matter.
- In asylum cases, details such as the way the client left their country of origin and their route to the UK can influence perception of their credibility and determine whether other countries have responsibility for the client's application.

- If a full and detailed statement is not taken on behalf of an asylum applicant, the application is more likely to be refused on the basis that credibility is doubted.
- In immigration cases, details of previous applications are relevant to the prospects of success of future applications.
- If a complex immigration application is accompanied by a covering letter explaining how the application meets the requirements of the immigration rules, the application is more likely to succeed.

## How can I check this is on my files?

- Is basic information (the client's nationality, date of arrival, route to the UK, purpose of coming to the UK, level of education and other background details) recorded on the file?
- Where another solicitor has referred the client to the adviser, does the file show that all papers received from the previous solicitor have been considered?
- Does the file show that any inconsistencies or gaps in the client's instructions were identified and dealt with?
- Are details of the client's spouse/partner and children recorded on the file?
- Are details of the client's medical condition, treatment history, GP and hospital details on the file?
- Was a supporting statement submitted with the Statement of Evidence Form (SEF)?
- Did the adviser meet with the client before and after a SEF interview?

- Does the Statement submitted in asylum cases deal with internal flight options and reasons for not seeking state protection?
- Does the Statement provide specific and detailed information regarding any harm suffered by the client (i.e. not vague and generalised statements that say that the client was "tortured" without specifying how)?
- Were instructions taken at the start of the case and at every subsequent key stage of the case?

## What will help?

- Use checklists to prompt advisers to take instructions on particular issues – but ensure that any questioning is tailored to the individual client (i.e. ask supplementary questions where necessary).
- In asylum cases, refer to country objective material when taking instructions.
- Compile and refer to chronologies of key events in the client's case.
- If it is the client who is failing to give instructions, record this on the file. Consider why the client is reticent and work out strategies to help the client give instructions.
- Retain copies of drafts of the documents and keep them on the correspondence section of the file in chronological order. This will make it easier to see how instructions and the case have progressed.
- When acting for children who are too young to give instructions, ensure that the sources of information about the client and the claim are clearly stated on the file.

- Ensure that the client in rape or sexual abuse cases is offered the option of a suitable adviser and interpreter (for example, a female adviser for a female client).
- Ensure that the client provides any documents that show immigration status (passports, visas) and that these are photocopied and kept on the file and cross-referenced in attendance notes.

“Failure to take full and detailed instructions may mean that an important aspect of the client's case is overlooked.”

# Was the advice given to the client adequate and correct?

## Why does this matter?

- If the client does not receive adequate and correct advice he or she will be unable to make informed decisions about the case.
- If inadequate and/or incorrect advice is given, the client's case may be prejudiced.
- An adviser who fails to give proper advice to the client may have provided an inadequate professional service.
- If incorrect advice is given, the client may be unable to progress the case.

## How can I check this is on my files?

- Has the client's immigration status been correctly diagnosed?
- Has the client's application been submitted on the correct form and with the required supporting documentation?
- Has the client been correctly advised about whether he or she meets the requirements of a particular immigration rule?
- Has the client been fully advised of any complications with the case?
- Has the advice to the client been confirmed in writing?
- Is written advice to the client expressed clearly, avoiding legal jargon that may cause confusion?
- Are standard letters of advice tailored to the individual client?
- Do standard letters contain up-to-date information i.e. are letters updated to reflect changes in law, policy or procedure?

## What will help?

- Ensure that advisers have access to:
  - The up-to-date immigration rules. The Home Office website has the fully consolidated and current version of the rules.
  - Home Office and UK Visas policy guidance on interpretation of the rules in the Asylum Policy Instructions, Immigration Directorate Instructions, Nationality Instructions, European Casework Directorate Instructions, Operational Enforcement Manual and Diplomatic Service Procedures.
  - The latest country of origin resources including Home Office CIPU/COI reports and Operational Guidance Notes.
  - Objective reports such as the US State Department Country Reports, Human Rights Watch Reports and Amnesty International Reports.
  - Country Guidance cases (which are on the AIT website).
  - The Asylum Gender Guidelines and are aware of the possible relevance to the client's claim.
  - Legal updating resources such as the Electronic Immigration Network and Immigration Law Practitioner's Association bulletin.
- Ensure that general advice is provided in the client's own language. For example, the Refugee Council publishes leaflets in many languages on the asylum process, the appeals process, asylum support, benefits and housing issues. All leaflets give practical advice in the client's language and are updated regularly.
- Update standard letters of advice on a regular basis to reflect changes in law, policy and procedure.

# Is the level of record keeping adequate/appropriate?

## Why does this matter?

- Poor record keeping makes it more likely that mistakes will happen (for example, if the client's contact details are not updated important correspondence will not reach the client) and key dates will be missed.
- If relevant information is not clearly recorded on the file, the file will not pass the "pick up" test.
- The adviser/firm/organisation is more vulnerable to complaints from clients regarding lack of advice/incorrect advice or failure of communication if not all work on the matter is recorded on the file.

## How can I check this is on my files?

- Are the client's contact details and other key information (Home Office reference numbers, appeal reference numbers and important dates etc) clearly recorded on the file?
- Are all letters to the client and attendance notes dated? Do they record who was present and who was responsible for drafting them?
- Do actions recorded on file follow a logical sequence or do they indicate that some activity has taken place, which has not been recorded? For example, if a letter states that a meeting has taken place, is there a record of the meeting on the file?
- Have all forms/applications (for example, Legal Help or CLR Forms) been completed properly?
- Are handwritten attendance notes legible?

- Does the file contain fax receipt records and recorded delivery/special delivery details?
- Does the file state the reasons for closing a file in the file-closing letter?
- Have original client documents been returned to the client after the file was closed?

## What will help?

- Ensure that Legal Help and CLR Forms are completed and evidenced before work on the case starts.
- Type any illegible handwritten attendance notes.
- Ensure there is frequent communication with the client (for example, every six weeks) to prevent breakdown in communication.
- If the client does not reply to letter(s), try telephone contact.
- Use the file cover for displaying key information and devise a Key Information template.
- There are five key aspects to the progression of a case:
  - Instructions
  - Advice
  - Merits assessment
  - Action agreed (strategy)
  - Time scale
- Think about these at each stage in a case and record your thinking.
- Ensure that any difficulties in taking instructions are explained in the attendance note.
- Record all advice given to the client – positive and negative.

## Has the client's personal information been recorded on the file?

### Why does this matter?

- Immigration clients are typically mobile and asylum clients may be dispersed. Keeping the client's address and telephone number up-to-date is fundamental to providing a service to the client as important documentation may be sent by the Home Office or Asylum and Immigration Tribunal to the wrong address and the client's case may be refused or appeal dismissed for a failure to act on the correspondence.
- It is important that all information about the client on Legal Aid forms is correct to ensure that the client is genuinely eligible for free legal advice and assistance.

### How can I check this is on my files?

- Are letters to the client sent to the correct address?
- Are the client's address and telephone number clearly written on the file?
- Are the client's full name, nationality, date of birth and reference number stated on correspondence sent to the Home Office or Asylum and Immigration Tribunal?
- Do Legal Help and CLR forms contain evidence of means?

### What will help?

- Get contact details of the client and the client's relatives and/or friends.
- If the client fails to attend for an appointment, investigate the file to see whether a change of address was missed.
- Have a clear office procedure for recording change of contact details.
- Check letters from third parties (for example, Social Services) for notification of a change of address.
- Ensure that a Supervisor checks all Legal Aid forms.

“Have a clear office procedure for recording change of contact details.”

## Has the adviser obtained reports from Experts to assist the client's case?

### Why does this matter?

To achieve a successful outcome in an immigration/ asylum case, it may be necessary to obtain medical reports, DNA evidence or evidence on a particular issue in the client's country of origin.

### How can I check this is on my files?

- Does the file show that the possible need for expert evidence was considered?
- Does the letter of instruction to the expert set out why they are being instructed and what they are being asked to express an opinion on?
- Have Social Services age assessments been requested in cases involving minors whose age may be disputed?
- Is the medical evidence on file up-to-date?
- Are expert reports accepted unquestioningly? Has the adviser requested clarification of information in the expert reports?
- Are medical reports verified by the client?
- Does the file show that the expert's report was discussed with the client?

### What will help?

- Record on the file the thinking process in connection with any decision made about expert and medical evidence. For example, explain the decision not to obtain medical evidence in a case where on the face of the instructions it appears to be helpful.
- Ensure the client is advised of any decision made about expert and medical evidence. Record the client's comments on the decision on the file.

“Does the file show that the expert's report was discussed with the client?”

## Has Counsel been instructed properly?

### Why does this matter?

Counsel will be more effective if they have been briefed thoroughly and if they have had a conference with the client prior to a hearing (where appropriate).

### How can I check this is on my files?

- Do Briefs to Counsel show that the adviser has a good understanding of the issues involved in the case?

### What will help?

- Arrange conferences with Counsel, if possible, prior to the day of the hearing.

“Counsel will be more effective if they have been briefed thoroughly and if they have had a conference with the client prior to a hearing (where appropriate).”

## Have any errors in taking witness statements been made?

### Why does this matter?

A good witness can provide evidence that helps to win a case; a poor witness can damage a case – it is essential that potential witnesses are assessed and their immigration history/asylum claims crosschecked.

### How can I check this is on my files?

- Does the file show that the witnesses' immigration papers were considered before submitting their witness statement?
- Was the Home Office file of a potential witness obtained under Data Protection Act or Freedom of Information Act?
- Did a witness attend court without a witness statement?
- Was the appeal dismissed because of contradictions between the client and witness?
- Were potential witnesses contacted at an early stage of the case?
- Were letters from community organisations submitted as evidence when they had little or no knowledge of the client?

### What will help?

- Ensure that potential witnesses are identified early in the application.
- Make an effort to obtain the witnesses' immigration documents.
- Thoroughly prepare witnesses: explain to witnesses why their evidence is important to the client's case.
- Focus on the issues that the witness is being called on to address.
- Send the witness statement to the witness for approval.

“Thoroughly prepare witnesses: explain to witnesses why their evidence is important to the client's case.”

## Does the adviser have sufficient experience to deal with the case?

### Why does this matter?

- The inappropriate use of inexperienced advisers on complex cases raises concerns about the suitability of the advice and assistance given.
- The inappropriate use of inexperienced advisers in case preparation raises concerns that the case may be inadequately prepared.

### How can I check this is on my files?

- Does the file show that the advice given to the client was specific and correct?
- Is there analysis of the evidence?
- Has the client's problem been diagnosed correctly?
- Has the adviser undertaken any work that goes beyond what is permitted for their level under the Immigration & Asylum Accreditation scheme?
- Is the application fully prepared and sent on the correct form?
- Has the correct supporting documentation been submitted with the client's application?
- Are less experienced staff aware of the strategies available to take the matter forward so as to avoid delay in progressing the case?
- Has the task of evaluating and advising on merits been addressed by the adviser even though Counsel has been briefed?
- Are reviews of the files conducted by less experienced staff performed regularly and thoroughly?

### What will help?

- Record supervision on the file.
- Ensure supervision checks take place at key stages of the case: before and immediately after the first meeting, when the client care letter is sent, when the application is about to be submitted, when a decision is received, when an appeal is about to be submitted etc.
- Ensure that file reviews and supervision checks are detailed and comprehensive and help guide junior advisers to better understand how to progress the matter.

“Are reviews of the files conducted by less experienced staff performed regularly and thoroughly?”

## Has there been unnecessary delay in progressing the client's matter?

### Why does this matter?

- Delay in progressing the case can amount to inadequate professional service or negligence.
- Unnecessary delay can cause anxiety for the client.
- The delay may affect the client's credibility and the outcome of the case.

### How can I check this is on my files?

- Was the asylum claim made promptly?
- Does the file show intervention before periods of inactivity become too long?
- Is there evidence on file that the adviser is aware of strategies that may help the matter progress or has received advice about such strategies?
- Has the adviser acted (for example, by telephoning the client) when there has been a break of communication with the client (for example, where the client has not replied to letters)?

### What will help?

- Maintain appropriate contact with the client (for example, every six weeks). Contact may be made in writing or by telephone depending on the nature of the case.
- Adopt strategies to progress the matter, for example, making complaints, making Data Protection Act requests, threatening Judicial Review in cases which are unnecessarily delayed.
- Consider obtaining the assistance of the client's local MP to further the case.

“The delay may affect the client's credibility and the outcome of the case.”

## Has the adviser complied with all time limits?

### Why does this matter?

Failure to comply with time limits can amount to inadequate professional service or negligence.

### How can I check this is on my files?

- Is the appeal in time?

### What will help?

- Diarise appeal deadlines and other key dates.

“Failure to comply with time limits can amount to inadequate professional service or negligence.”

## Has there been adequate preparation of appeals?

### Why does this matter?

Preparation is the key to winning appeals.

### How can I check this is on my files?

- Is the appeal based on substantial grounds?
- Has the adviser identified whether a right of appeal exists in law?
- Are the grounds of appeal client-specific (i.e. not simply following a pro forma)?
- Does the file include standard Skeleton Arguments that quote case law but do not address the specific issues in the client's case?
- Have any witness statements been prepared to a high standard?
- Does the witness statement for the appellant (client) deal with the Reasons for Refusal letter?
- Is there evidence on file that the Reasons for Refusal letter has been analysed?
- Has necessary expert evidence been obtained?
- Have the client and witnesses been advised of what to expect at the appeal hearing?
- Have human rights issues been considered?
- Does the file show that the Home Office bundle has been checked to ensure that all evidence submitted has been included and that all documents are legible?
- Has any documentary evidence produced by the client been considered and the origins of each document been established?
- Where the appeal has been allowed, has the client been advised that the Home Office may still apply for reconsideration of the decision?
- After succeeding on appeal, has the adviser delayed closing the file until the decision has been implemented?

- Is there evidence on file that the Immigration Judge's determination has been analysed and explained to the client in writing?
- Does the file include detailed advice notes from Counsel or in-house advocates that conclude that there are no merits for requesting a reconsideration of the Immigration Judge's decision?
- Have directions been complied with within the time limits for doing so (for example, filing of bundles at the AIT and service on the Home Office Presenting Officer's Unit (HOPOU))?
- Has the adviser considered making representations (whenever needed) to HOPOU prior to hearing? For example, changes in the client's circumstances need to be highlighted to HOPOU and the immigration authorities, and the case may be concluded without a full hearing taking place. Failure to do this may result in a waste of time and funds.

### What will help?

- Identify the issues in the appeal and develop a client-specific strategy for resolving those issues.
- Check warrants from abroad for discrepancies before submission.
- Use chronologies to provide a good summary of all key events in the client's history.
- Ensure that following the Case Management Review Hearing (CMR) the merits of the appeal are re-considered.
- Sections 3 and 4 in "Asylum and Human Rights Appeals" by Mark Henderson, published by ILPA, deal with appeal preparation.
- ILPA and OISC's Representation at Immigration Appeals – A Best Practice Guide for preparation in Immigration (non-asylum) appeals.

# Has the adviser used the services of Interpreters where appropriate?

## Why does this matter?

Interpreters are essential to ensure accurate communication with the client.

## How can I check this is on my files?

- Do attendance notes show that an interpreter was present during the attendance?
- Do the attendance notes record the language and dialect of the interpreter?
- Have family members or friends been used as interpreters where the use of an independent interpreter would have been more appropriate due to the sensitive nature of the information, a potential conflict of interest or risk of breaching confidentiality?
- Has the client been offered a choice over the gender of the interpreter where the nature of their case indicates that this would have been appropriate?
- Was an independent interpreter arranged for the client's appeal hearing?
- Where possible, did the same interpreter who was used for previous attendances also attend the hearing?
- Where important, have the client's statements been translated into the client's own language?
- Where appropriate, have translations of relevant documents been obtained?
- Was the client asked whether he or she was happy with the official interpreter at a Home Office interview?

- Were problems with interpreting at the appeal hearing acted upon immediately by the adviser?

## What will help?

- Ensure that, where possible, interpreters have interpreting qualifications such as a Diploma in Public Service Interpreting or membership of the Institute of Linguists.
- Ensure at the outset of meetings with the client that the client and interpreter understand each other fully.
- Ensure that, where possible, the same interpreter is used for all important meetings with the client and at the appeal hearing.
- Ensure that, where possible, the client is given a choice over the gender of the interpreter.
- Ensure that interpreters understand their role and understand how to communicate to the advocate any interpreting problems with the official interpreter during appeal hearings.

“Interpreters are essential to ensure accurate communication with the client.”

## Immigration Peer Review Panel Members

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*(as of June 2006)*