

Legal Aid Agency

cc President of the First Tier Tribunal M. Clements
Law Society
OISC
ILPA
Bar Council

22nd May 2020

Dear Sirs

Re: The Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020

We write as a collective group of practitioners (individuals and organisations comprising of solicitors and OISC practitioners) regarding the Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020¹ (“the Regulations”) as a result of the implementation of the online reform pilot, “CCD” by the First Tier Tribunal Immigration & Asylum Chamber (FTT).

The directions issued by the Tribunal now require practitioners to “frontload” preparation for immigration/asylum appeals and to prepare a detailed Appeal Skeleton Argument (ASA).

Under the Regulations a new stage 2c fee (£627) has been introduced which replaces the previous Stage 2a fee (£227) for cases that are withdrawn prior to the full hearing and the previous Stage 2b fee (£567) for cases that proceed to a full hearing.

We set out our grave concerns as follows;

Insufficient Remuneration for the ASA

The Tribunal Directions set out the form, content and level of detail mandated for the ASA. Copies of the standard Directions, an example ASA from the FTT and an actual ASA drafted by a Representative are attached for your reference. As can be seen, the amount of work required in order to complete the ASA to a competent standard is very considerable.

We draw your attention to the requirements that the ASA must be:

“a summary of the appellant’s case; a schedule of issues; and the appellant’s submissions on those issues”

“3.7 An ASA must:

- be concise;*
- be set out in numbered paragraphs;*
- not include extensive quotations from documents or authorities;*
- engage expressly with the decision under challenge;*
- be cross-referenced to any relevant document in the appellant’s bundle [AB/x] or the respondent’s bundle [RB/x]*
- not generally exceed 10 pages and should certainly be no longer than 20 pages of A4.*

¹ effective from 8th June 2020

“All ASAs must contain a concise summary of the appellant’s case at the start. The purpose ... is to distil the facts upon which the appellant relies and which, in the appellant’s submission, justify the relief sought...”

In all cases, the ASA must contain a schedule of issues, the resolution of which are said by the appellant to be determinative of the appeal in his favour...

... as the factual basis upon which the appellant’s appeal is being advanced...

Having set out a summary of the appellant’s factual case and the schedule of issues, the ASA must set out the appellant’s submissions on the issues ... It is imperative that the ASA engages expressly with each of the grounds upon which the appellant’s application was refused...

In an appeal against the refusal of a protection claim, for example, the ASA must engage with questions of credibility, sufficiency of protection and internal relocation where such issues have been raised by the respondent. ...”

The level of detail required is considerable. Critically, the FTT requires “written submissions” which are very different from a traditional skeleton argument. The information and level of detail required within the ASA is significant and detailed preparation time is unavoidable. The MOJ has accepted that an ASA can take between 4-12 hours to prepare, therefore an increased fee of £60 is wholly inadequate for this work. This represents just over one hours’ worth of work at current legal aid rates.² It is less than one hours’ worth of work for practitioners accredited as Advanced Caseworkers under the Law Society’s Immigration & Asylum Accreditation Scheme.³

Practitioners regularly instruct Counsel to appear before the FTT for the final hearing and Counsel would be asked to prepare a skeleton argument. It is clear that the ASA document is 100% additional work. In addition to the preparation of the ASA itself, our clients need to be given advice about the directions and procedure, instructions need to be taken on material matters and Counsel will need to be sent a brief to Counsel. The practitioner will be required to discuss any queries with counsel and also check and approve counsel’s drafted ASA. The clients’ consent to serve the ASA will need to be obtained particularly if it contains any concessions. There may be a number of improved drafts of the ASA required. In reality the ASA document from start to completion will exceed the lower limit of 4 hours as set by the MOJ and could require more than 12 hours.

However, in light of the additional requirement for submissions and the considerable additional work now mandated by the FTT for the ASA, coupled with the lack of adequate funding, the vast majority of Barristers have confirmed that they will not accept instructions to undertake this work. The Bar Council, Law Society and ILPA have all raised serious concerns regarding the lack of engagement/consultation from the LAA and the inadequacy of funding. The knock on effect has serious repercussions to the Applicants’ right to a fair hearing, effective remedy, and the right to access to Justice. Instructed solicitors’ offices are overworked and underfunded already under the current Legal Aid system. Many solicitors’ offices will struggle to cope with the demands upon them if they cannot instruct Counsel.

The funding arrangements have profound practical implications for the administration of appeals. Where practitioners seek to instruct Counsel to prepare the ASA, any fee for the ASA would have to be deducted from the Stage 2c payment.

² Legal Aid Rates at Table 8a of the Civil Legal Aid (Remuneration) Regulations 2013, as amended – London Rate: £57.83 and Non-London Rate: £54.09

³ Advanced Accredited Caseworkers are entitled to claim a 5% uplift on matters paid at hourly rates

It is not financially viable for practitioners to pay Counsel from this payment as they are undertaking more work in preparation for the appeal themselves in connection with the ASA, and would have to suffer an additional financial loss in order to pay Counsel.

Any suggestion that practitioners undertake the drafting of the ASA themselves, fails to deal with the lack of funding for it, and fails to observe the need to instruct experienced counsel where the practitioner lacks drafting and or advocacy skills, or simply where the practitioner does not have the time in their diary to do it themselves. Routinely legal aid solicitors and accredited caseworkers have to run a large caseload of asylum matters due to the funding restrictions and difficulty to anticipate when a case will be the subject of decisions.

Increased Stage 2c will make it more difficult for practitioners' cases to reach the Escape Fee threshold.

The decision to introduce a new Stage 2c which is £400 higher than the stage 2a fee and £60 higher than the stage 2b fee, means it will now be more difficult for practitioners to make their cases reach the escape fee threshold, of three times over the fixed fee, and therefore have their cases paid at hourly rates.

The types of cases which become escape fee cases are multifaceted and complex, with clients presenting as extremely vulnerable. A significant amount of work is required in order to bring these cases to the point where they are ready for hearing.

This is notwithstanding that the Legal Help stage of the case needs to escape the three times the value of the fixed fee also. We have consulted practitioners who across the board confirm that the majority of cases do not reach the escape threshold. In fact, only a small proportion of cases do.

Cases which do not proceed to a full hearing (Stage 2a cases)

At present, cases where the Home Office withdraw prior to full hearing are funded under Stage 2a (£227). Those cases will now be funded under Stage 2c (£627). At first glance, this appears to be an increase of £400.

There has been an assumption that appeals conducted under CCD are more likely to result in the Home Office withdrawing their decision, rather than proceeding to a full hearing. However, this is based entirely on the incomplete pilot study, where firms were selected by the Tribunal to participate and the Home Office dedicated specific resources to the scheme.

Consequently, the number of withdrawals by the Home Office is unlikely to be mirrored when the system is fully implemented because the Home Office lacks the resources to reconsider/remake decisions on the scale the Tribunal envisages.

Currently, a case remunerated under Stage 2a (i.e. one in which the Home Office withdraw their decision prior to the full hearing) would have to reach a value of £1920⁴ or higher in order to reach the escape threshold and be paid at hourly rates. Now, under the new Regulations, such a case would have to reach a value of £3120⁵ or higher in order to reach the escape threshold and be paid at hourly rates.

⁴ E.g. £413 + £227 = £640 x 3

⁵ E.g. £413 + £627 = £1040 x 3

This is an increase of £1200 worth of work which would be required in order for the matter to meet the escape fee threshold. Clearly, this would be exceptionally difficult to achieve and will mean that practitioners are more likely to receive the Stage 2c fixed fee of £627, irrespective of how much work is undertaken prior to the Home Office withdrawal.

The consequences of this are clear; fewer practitioners will be willing to undertake more complex cases because the financial risks have significantly increased, meaning such cases are not cost-effective.

This will have a direct impact on access to justice for these extremely vulnerable clients.

Cases which proceed to a full hearing (Old Stage 2b / new Stage 2c)

Similarly, a typical case remunerated currently under stage 2b (i.e. one which proceeds to a full hearing) would have to reach a value of £2940⁶ or higher in order to reach the escape threshold and be paid at hourly rates.

Now, under the new Regulations, a typical case remunerated under stage 2c would also have to reach a value of £3120.⁷

This change also highlights the unfairness in the disparity between practitioners based in London who are paid at a higher rate than regionally based practitioners. The former will be able to reach the escape fee threshold slightly more easily.⁸

Any suggestion that practitioners can rely on the possibility of a case reaching the escape fee threshold is no solution as such cases are far less common than “typical” cases and escape fee claims are all subject to individual assessment.

Consultation

The LAA will be aware that FTT President Clements has acknowledged issues surrounding funding on 17th April 2020:

“I am aware that there is continuing concern that current public funding or legal aid arrangements are not well suited to CCD or other examples of “front loading” work”

Moreover, we set out in our letter dated 24th April 2020 our serious concerns regarding the lack of meaningful consultation or engagement. We are disappointed at the lack of response and engagement.

The Regulations should not be implemented without full and meaningful consultation with all practitioners and court users. We endorse the concerns of the Chair of the Bar Council on 18th May 2020:

⁶ E.g. £413 + £567 = £980 x 3

⁷ These examples show a typical case where a practitioner has assisted a client under the Legal Help scheme and Controlled Legal Representation. No bolt-on fees are considered in the examples for ease of reference

⁸ Legal Aid Rates at Table 8a of the Civil Legal Aid (Remuneration) Regulations 2013, as amended – London Rate: £57.83 and Non-London Rate: £54.09

“... these measures ought not to be implemented. The LAA must properly hear and consider the views of those immigration practitioners actually doing the work. So far this obvious step has not been taken.”

We note that the Regulations are said to be “temporary” and in effect until 8th June 2021. However, it is our position that the Regulations must be urgently reviewed so that satisfactory funding is put in place to enable practitioners to survive financially.

In the meantime, our position is that these cases should be funded at hourly rates at least until a further appropriate consultation has been conducted. This seems sensible to enable the LAA to monitor the claims of providers to determine what is the average time spent on the preparation of the ASA. This will allow the LAA to determine what is a viable fixed fee which will enable practitioners to conduct appeals properly. A mixed GFS and hourly rate scenario will not cause any problems to the LAA’s proceedings, indeed pre action work is paid at hourly rates in addition to the GFS fixed fee.

Practitioners deserve to be appropriately remunerated for the work they do which is of critical importance to some of the most vulnerable people in our society.

We request that the funding position is reviewed and that all practitioners are properly consulted regarding this.

In view of the serious issues raised above, we would be grateful to receive a response within 14 days.

We regret to inform you that some members of this group are considering a potential claim for judicial review. Whilst there is no commencement of the pre action protocol, it is only right that we put you on notice of the seriousness of this issue and the need for a quick response.

Yours faithfully

UK Immigration Practitioners Working Group

1. Aisha Noor	Director/Solicitor	ABN Solicitors
2. Habib Rahman	Chairman	Alison Law Solicitors
3. Talat Jabin	Solicitor	Alison Law Solicitors
4. Annie Stirton Thomas	Director	All Nations Legal Services
5. Neelam Banaris	Caseworker	Alsaahimi Immigration Consultancy
6. Neveen Galal	Director/Solicitor	Amnesty Solicitors
7. Muhammad Zahab Jamali	Head of Private Imm	Ashton Ross Law
8. Kolade Jegede	Solicitor	Ashton Ross Law
9. Samiyah Ashraf	Director	B A Chambers
10. Ish Ahmed	Director/Solicitor	Bankfield Heath Solicitors
11. Steve Foley	Director/Solicitor	Bankfield Heath Solicitors
12. Amie Higgins	Consultant	Bankfield Heath Solicitors
13. Tahseen Amir Choudhry	Principal Solicitor	Brilliance Solicitors
14. Sian Pearce	Solicitor	Bristol Law Centre
15. Naila Khan	Senior Caseworker	Buckingham Legal Associates
16. Mohammed Mahruf	Director	Burton & Burton Solicitors
17. Gail Lyle		Bury & Bolton Citizens Advice

18. Adarsh Girijadevi	Director	City Legal Services
19. Susan Liew	Director/Solicitor	Collingwood Immigration
20. Penny Edgar	Caseworker	Collingwood Immigration
21. Ansar Shaikh		Countrywide Law Associates Ltd
22. Arooj S Ahmed		Countrywide Law Associates
23. Amer Zaman	Solicitor	Cranbrook Legal
24. David Mariampillai	Solicitor	David Benson Solicitors
25. Paris Sazida	Director	E2W (UK) Ltd
26. Nancy Katambala	Solicitor	Finsbury Law Solicitors
27. Karin Oliver	Director/Solicitor	Fisher Stone Solicitors
28. Ramzan Sharif	Director	Fountain Solicitors
29. James Howard	Head of Immigration	Fountain Solicitors
30. Keerum Akhtar	Solicitor	Fountain Solicitors
31. Abu Islam	Solicitor	Fountain Solicitors
32. Shuhel Hussain	Solicitor	Fountain Solicitors
33. Natalia Garcia	Solicitor	Fountain Solicitors
34. Lauren Franchina	Solicitor	Fountain Solicitors
35. Faysal Yaqoob	Solicitor	Fountain Solicitors
36. Ameera Nosheen	Solicitor	Fountain Solicitors
37. Asya Chaudhry	Solicitor	Fountain Solicitors
38. Salma Rafiq	Solicitor	Fountain Solicitors
39. Mariam Bhatti	Solicitor	Fountain Solicitors
40. Lauren Butler	Senior Caseworker	Fountain Solicitors
41. Evaristo Da Silva	Senior Caseworker	Fountain Solicitors
42. Anna Maria Sepulveda	Senior Caseworker	Fountain Solicitors
43. Jangeer Bostan		Global Immigration Ltd
44. Mohammed Shabir		Global Immigration Ltd
45. Alice Muzira	Solicitor	Greystone Solicitors
46. Javaid Bostan		Harris & Green Solicitors
47. Ammar Haq		Haq Solicitors
48. Robert Sparks	Consultant	Henry Hyams
49. Sajjad Khan Malik		HUMD Solicitors
50. Tariq Hussain	Solicitor	Hussain Immigration Law
51. Valerie Jones	Senior Caseworker	IAS
52. Ono Okoregha	Director	IAS
53. Kristian Wood	Caseworker	IAS
54. Abigail Solomon	Caseworker	IAS
55. Houri Zahedi	Caseworker	IAS
56. John Cahill	Caseworker	IAS
57. Clare Dunne	Caseworker	IAS
58. David Gering-Hasthorpe	Caseworker	IAS
59. Saimah Razzaq	Caseworker	IAS
60. Kurshida Begum	Caseworker	IAS
61. Ade Adejumobi	Caseworker	IAS
62. Ruth Mullen	Caseworker	IAS
63. Victoria Idia-Aina	Caseworker	IAS
64. Helene Santamera	Caseworker	IAS
65. Joanne Russell	Caseworker	IAS
66. Zeenat Karim	Caseworker	IAS
67. Geoff Harding	Caseworker	IAS
68. John Oborn	Caseworker	IAS

69.	Francesca Baker	Caseworker	IAS
70.	Sarah Beswick	Caseworker	IAS
71.	Mohammed Shafiq	Director	IAS Lawyers
72.	Riffat Hussain	Director/Solicitor	IBSA Legal Ltd
73.	Joanne Russell	Caseworker	Immigration Advice Service
74.	Junaid Bhatti	Director	Immigration Hub
75.	Chris Boyle	Solicitor	Iris Law
76.	Kam Dhanjal	Solicitor	JD Spicer
77.	Sanjeev Sharma	Solicitor	JM Wilson Solicitors
78.	Mizba Shaikh	Senior Caseworker	JM Wilson Solicitors
79.	Rukeya Begum	Director/Solicitor	JM Wilson Solicitors
80.	Lakhibir Sanghera	Associate Solicitor	JM Wilson Solicitors
81.	Shahid Hussain		Khan Solicitors
82.	Navinder Kalsi	Director	Kalsi Solicitors
83.	Amardeep Singh	Solicitor	Kalsi Solicitors
84.	Alia Khan	Caseworker	Kalsi Solicitors
85.	Charlie Smythe	Solicitor	Kalsi Solicitors
86.	Kate Nickson	Supervisor	Kalsi Solicitors
87.	Reina Pathan	Caseworker	Kalsi Solicitors
88.	Stephen Medley Daley	Solicitor	Kalsi Solicitors
89.	Atiqa Gilani	Solicitor	KB Law
90.	Ilyas Bulbulia		Kingswell Watts Solicitors
91.	Ali Hussain	Solicitor	Legal Justice Solicitors
92.	Awrad Taha	Solicitor	Legal Justice Solicitors
93.	Victoria Foster	Solicitor	Liberty Solicitors
94.	Mandeep Singh	Solicitor	Markland & Co Solicitors LLP
95.	Uma Devi Rajasundram	Director/Solicitor	Milestone Solicitors
96.	Alketa Shuli	Solicitor	Milestone Solicitors
97.	Fahad Mahmood	Solicitor	Morden Solicitors LLP
98.	Shaista Hashmi	Solicitor	Morden Solicitors LLP
99.	Mohammed Hafejee	Solicitor	Muldoon Britton
100.	Louise Fenney	Solicitor	NLS Solicitors
101.	Ghulam Mohammed		Oaks Solicitors
102.	Naim Hasani	Director	Oliver & Hasani
103.	Robina Shah	Director	Optimus Law
104.	Farhan Ahmad		Optimus Law
105.	Karen Rimmer	Solicitor	Paragon Law
106.	Mubasher Khan	Director	Parkview Solicitors
107.	Raisah Ahmed		Pure Legal Solicitors
108.	Ajaz Ahmed		Pure Legal Solicitors
109.	Sikander Elmore	Solicitor	Qualified Legal Solicitors
110.	Assad Ahmed		Rahman & Co Solicitors
111.	Saghir Ahmed		Rahman & Co Solicitors
112.	Israr Rehman		Rehman Solicitors
113.	Fahad Ansari	Director	Riverway Law
114.	Shabana Ahmad	Director/Solicitor	Rochdale Legal Enterprise
115.	Shazia Ali	Solicitor	Scarsdale Solicitors
116.	Liaqat Sharif	Solicitor	Sharif & Co Solicitors
117.	Bhavesri Patel-Chandegra	Director/Solicitor	Shawstone Associates
118.	Sobia Zafar	Solicitor	Sultan Lloyd Solicitors
119.	Rizwan Shah	Director/Solicitor	Synergy Solicitors

120.	Andrew Nyamayaro	Director/Solicitor	Tann Law Solicitors
121.	Yvonne Gwashawanhu	Solicitor	Tann Law Solicitors
122.	Anas Khan	Director	Thompson & Co Solicitors
123.	Tariq Mehmood	Director	TM Immigration Lawyers
124.	Harjot Singh	Director/Solicitor	Twinwood Law Practice
125.	Sajida Habib	Director	UK Immigration Lawyers
126.	Shazia Habib	Senior Caseworker	UK Immigration Lawyers
127.	Armughan Malik	Director	Vanguard Solicitors
128.	Rehana Ahmed	Director	Vanguard Solicitors
129.	Waleed Hassan	Solicitor	WH Solicitors
130.	Zulfikar Lakdawala	Director	Victorimax Solicitors
131.	Rachana Lakdawala	Director	Victorimax Solicitors
132.	Amanda Penfold	Director	Visa Legal
133.	Raj Agarwal		Yes UK Immigration