January 2005

Passport to nowhere: the new immigration contract

The practical impact of the new Immigration Specification on service delivery to bureau clients

Introduction

As the number of people claiming asylum in England and Wales increased so too did the Legal Services Commission's (LSC) expenditure on immigration and asylum work.

The LSC responded to financial pressures on its budget and anticipated changes in Immigration law and procedure by introducing a number of changes into the General Civil Contract effective from 1 April 2004. The changes included:

- the use of a unique file number for each case, which would be the same as the Home Office reference number
- a new and compulsory accreditation scheme for immigration advisers
- the introduction of different time limits for advice given at different stages of a case
- previous legal advice to count against the time limit if the client approaches a new adviser
- the removal of devolved powers (although it is now possible to apply for these to be reinstated)
- adviser attendance at Home Office interviews only allowed in exceptional circumstances.

Twenty three Citizens Advice bureaux provide immigration and asylum advice under LSC contracts. In July 2004, Citizens Advice facilitated a meeting of these bureaux to discuss their experiences of operating under the new Immigration Specification. This report summarises the key points arising out of that meeting.

1. Training

Finding the time to read and understand the new specification was difficult particularly given the pressure to produce contract hours. It would have been helpful if the LSC had offered some training on a regional basis. If significant changes are introduced in the future, training in addition to written guidance would be helpful.

2. Previous Legal Advice

The rule as regards previous legal advice is seen as a 'really flawed aspect' of the new Specification. It has created reluctance amongst caseworkers to take on cases where there has been previous legal advice.

The problem is that getting cost details from previous representatives can prove time consuming and difficult. We understand the LSC's advice is to divide the private practice costs by £50.00 to get an equivalent in hours; but this is not accurate as there are different hourly rates for travel and waiting which are paid at half the rate for preparation, attendance, etc. However, all the initial limit time is usually used up anyway, so an extension is needed immediately.

Cases where a previous adviser has said there are no merits are particularly difficult. The LSC often wants to know why the new representative's advice is different before granting an extension but often an extension is required in order to obtain and consider the previous papers and reach an independent view of the merits. Sometimes urgent work needs to be done, e.g. to put in a holding appeal pending receipt of the previous representative's file, and bureaux do this at risk as to their ability to count the time spent against their contract.

The LSC should grant extensions promptly in these cases. This is difficult work and the first adviser does not always get things right. One bureau had a case where the adviser spotted a flaw in the previous solicitors' reasoning and obtained a grant of Controlled Legal Representation (CLR) from the LSC. Clients should not be jeopardised by inadequate initial advice.

We suggest that there should be a 3 hour initial limit in all cases where there has been previous legal advice. This would enable advisers to take initial instructions, obtain the file from the previous representatives, read the file and see the client again to explain what if anything can be done and if necessary to take any urgent action.

There seems to be some reluctance to take cases on at the appeal stage partly because of the removal of devolved powers and partly because there is not much time between listing and the hearing. This means there is a lot of work to do early on and there are difficulties obtaining extensions. If the LSC does not agree your initial extension application an amended application can go to and from their offices until an amount is agreed. Extensions are not always backdated to the date of the initial application but sometimes only to the date of the version that was finally agreed, so leaving a gap in time when urgent work had to be done but cannot be counted against a bureau's contract.

We would ask the LSC to ensure that all successful extension applications are backdated to the date the application is signed. Bureau should not be placed in a position where they have to carry out work for clients that is properly required and within scope but which cannot count against their contract targets.

3. Applying for CLR

We understand that all decisions on a case are taken by the same LSC caseworker, for the sake of consistency. However this can cause problems as sometimes the individual concerned is not available. It is very difficult to get the right person at the London LSC regional office on the phone and even when they are in the office it often takes a minimum of 30 minutes before bureaux are put through to them.

Bureaux reported that it is possible for the review of refusal of CLR to be carried out by the same LSC caseworker who refused the initial application. In our view reviews of refusal should be carried out by a different LSC caseworker in order to bring an element of independent peer review to the

process. Otherwise the value of having a review process is undermined.

When applying for CLR the LSC is sometimes more demanding than a tribunal in terms of the standard of proof it requires; effectively you have to include your skeleton argument. In addition, immigration caseworkers in bureaux are finding that it is not enough to just complete the CLR form they also have to produce a covering letter as well otherwise their application fails. This is wasting time because it duplicates what is in the form.

Sometimes time is wasted when the application form goes backwards and forwards between a bureau and the LSC, with the LSC asking obvious questions where the answers are already clear from the face of the original application form, e.g. 'where is the wife?' when reference to her and her location was already included on the form.

The time allowed for completing the form is 'normally' up to 30 minutes which, given that so much detail is required for a CLR application including a draft skeleton argument, is not an adequate reflection of the actual time required. It is in the interests of both the LSC and clients for applications to be better thought through and well presented; the time spent and associated skill involved in this should be allowed. The actual time spent should be allowed in full. The LSC may wish to reconsider the amount of detail required to accompany these applications.

LSC caseworkers also second guess issues relating to a client's credibility when they are not equipped to do so. For example, in one case, the IAT remitted a case (indicating that they thought there was an issue that should have been dealt with by the adjudicator) but the LSC caseworker did not appreciate this and refused CLR.

4. Extensions to casework limits

Bureaux were very concerned that the LSC should determine urgent applications for extensions more quickly than at present. Where an appeal needs to be submitted

within 5 working days, 3 of those days can be taken up with waiting for the extension to be granted. This has led to an increase in non claimable work being done by caseworkers often in their own time. Immigration caseworkers are spending too much time on obtaining extensions and this is demoralising.

Resubmitting an application (whether for an extension or CLR) takes time and administrative resources. The LSC does not keep any paperwork, so each time you go back to them, you have to copy everything and send it in again.

Often the extension is less than what was applied for and insufficient to carry out the task(s) it was supposed to cover. LSC decision makers seriously under-estimate the time required to carry out a task properly as part of preparing a case in the client's best interests. One bureau gave an example where they were allowed a 2 hour extension to take a witness statement. This was not long enough to do the job properly. The LSC's knowledge of what such interviews involve appears limited. The assumption seems to be that the more experienced a caseworker, the less time they will require to carry out the task. Whilst this may be true in respect of some tasks, the reverse is often the case in respect of taking a witness statement. An experienced caseworker knows how and when to go into more depth to get a better statement. The failure to take a sufficiently in depth statement, by probing the client for dates, exact locations, sequence of events, names and relationship to the client of those involved etc, can rebound on a client with disastrous consequences. Appeals can and do fail because adjudicators interpret lack of detail as implying lack of weight and this in turn undermines the client's credibility.

Extensions that are part granted affect bureaux in other ways. When applying for the restoration of devolved powers one of the benchmarks relates to the number of extensions granted in full. Extension applications that are only part granted often result in another extension application being made later but also make it difficult for some bureaux to meet the required benchmark.

Where the extension application is granted the LSC will 'normally' allow up to 30 minutes for completing the form. This is unrealistic because of the amount of detail required. Up to 1 hour should be allowed for extension applications.

We would ask the LSC to consider allowing organisations with an immigration contract to self grant legal help extensions subject to a review system whereby the completed application was sent to the LSC within 5 working days for checking and endorsement. This would help avoid situations where an interview has to be terminated because an extension is required and give a better service to clients.

5. Quality of decision making by LSC staff

Some bureaux expressed concern about the inexperience of LSC staff which sometimes led them to look at things that were of no relevance. On one occasion the LSC asked for a full bundle to support an application for CLR for an Article 8 application when the birth certificate of the child should have been sufficient. The bureau was trying to get approval for DNA testing because the Home Office would not accept the birth certificate. The LSC queried why DNA testing was necessary. The bureau felt that any caseworker with sufficient experience in the field should know that the Home Office would refuse to accept the birth certificate. Given current casework limits, clients deserve not to have their precious time allowance wasted on unnecessary tasks brought about by the inexperience of LSC staff.

On another occasion the LSC wanted to know how the client was going to prove he was at a particular demonstration. The bureau had to explain that adjudicators constantly deal with situations where there is no ultimate proof of an assertion. The client can only say he was there, giving what detail he can; the adjudicator has to decide whether s/he thinks it is true. In another case, the LSC wanted to know how the bureau was going to overcome the problem that the Home Office did not believe their client. The LSC decision maker did not seem to understand that this was part of the adjudicator's task and indeed why the case needed to get before an adjudicator: so that the

evidence could be weighed up and a decision made. We understand that the UN Handbook specifically states that refugees cannot be expected to provide corroborative evidence.

Where the Home Office has discretion to make a particular decision, the LSC is loathe to accept that it is worth trying to get this discretion exercised, e.g. to allow a relative to visit family members in the UK, where most members of the family work in the NHS providing a service to this country. Typically the LSC will take the view there is no merit to such an application.

Are the decisions of LSC staff independently peer reviewed either within the LSC or by non LSC peers? If not it might be a useful tool to improve the quality of decision making and we hope the LSC is prepared to examine this idea.

6. Form filling

The guidance at para 13.2.7 of the Immigration Specification should differentiate between travel document forms and applications for Certificates of Identity. The latter are for people who have leave to remain but are not refugees. They are more complicated and require legal advice.

7. Country of origin bundles

Although time spent compiling the original country of origin bundle cannot be claimed, the new guidance specifically allows time reasonably spent to be claimed for 'considering its relevance to a particular case and/or updating it for the purposes of the case.'

However, the LSC appears not to understand or accept how much time it takes to do this and that when political change is happening quickly the contents of the bundle may need to change frequently. There have been occasions when the LSC has not allowed bureaux to claim for the time taken to track down a particular piece of information even where the result of the asylum application turns on it.

8. Casework limits

These are very rarely enough. In a move to see off the worst immigration practitioners the LSC imposed casework limits which have severely curtailed the service that the best advisers can give and which a vulnerable client group deserve. We propose a 10 hour initial limit for non asylum work and 20 hours for asylum at the Legal Help level.

Some of this additional time would enable bureaux to prepare Statement of Evidence Forms (SEF) fully. These interviews take more time where an interpreter is used. One bureau reported having to stop preparation of a SEF, mid interview, in order to get an extension. Stopping and then continuing such an interview at a later date can be very difficult for clients and is not a cost effective way to run a case. Interpreters have to be re-booked and inevitably, clients are going to cover some ground twice. It is unreasonable to make clients re-live traumatic experiences more often than strictly necessary.

If you fail to get an extension, the initial decision is based on an incomplete SEF and therefore has to go to appeal. Refusal letters can run to 23 paragraphs, all of which have to be explained to the client.

If the Legal Help casework limit was raised then less time and money would be spent on extension applications and instead applied to the client's case.

9. Home Office interviews

Bureaux felt very strongly about the removal of their ability to attend Home Office interviews with their client unless authorised to do so by the LSC. In many ways this is turning out to be a false economy. Caseworkers now have to spend extra time after the interview checking what was said with the client because they were not present.

Where appropriate, given that some clients are not literate in any language, caseworkers should be able to claim for time spent verbally translating Home Office interview notes to enable the client to understand what has been recorded

as their answers to the questions.

Bureaux reported having to write letters of complaint about the quality and conduct of Home Office interviews. One bureau was complaining about roughly one interview out of the 10-12 they attended each month prior to April 2004.

One area of complaint involves the standard of Home Office interpreters which is very variable. It is a very specialist job for which more and better training is needed. Bureaux reported having to intervene at interviews because it was clear the interpreter was inadequate or at cross purposes with the client or was not speaking the same version of the language spoken by the client. On one occasion the question asked was 'how old are you?' and the answer was 'Guyana'. Another adviser realised that her client was being interviewed in an inappropriate version of Creole, which used different words for key concepts. In another example, the interviewing officer wanted the client to do an interview in Shona even though the client wanted to do it in English. The adviser and the client eventually had no option other than to leave.

One bureau complained in writing after a 19 yr old female client, who had been raped, was shouted at by the interviewing officer. The same officer threw her pen across the room in the course of the interview. When the bureau adviser intervened they were told in no uncertain terms to shut up and sit down and that if they didn't they would be excluded.

We can see no reason to assume the standard of interview has improved since April 2004. The poor interviews described above are now mostly undetected because attendance by the client's representative is no longer allowed. Clients are the ones suffering the consequent injustice.

It seems that, in practice, attempting to get an extension to cover attendance at a Home Office interview on the grounds of your client's 'mental incapacity' is a difficult hurdle to climb. One bureau reported failing to get an

interview allowed for an elderly client who was confused. It is inhumane for people in such circumstances to be expected to attend an interview without professional representation and the Specification needs to be more flexible to allow it.

Home Office interviews should be reinstated as work that counts against the LSC contract on condition that the person accompanying the client is their named representative, except in circumstances where this is not possible owing to pre-existing work commitments, annual or sick leave when another person accredited by either the Office of the Immigration Services Commissioner (OISC) or under the new Immigration Accreditation Scheme should be allowed to attend as a substitute.

10. The adviser/client relationship

The new rules have severely restricted the amount of time bureaux can spend with clients and when that time is spent. This in turn has had an adverse affect on client care. Immigration caseworkers have to be much more stringent about whether and when to allow client contact – they often can't speak to a client until they have got the extension they need or CLR authorised. This is not how immigration caseworkers in bureaux want to relate to their clients, many of whom are highly anxious about what is going to happen to them.

Caseworkers are sometimes unable to explain the procedures properly to clients because of the pressure to complete the job within casework limits and they end up keeping them in the dark. If the case lacks sufficient merit or an extension or CLR is refused caseworkers are often unable to meet clients in order to explain why they can't see them again. This creates pressure – clients are increasingly agitated about the difficulties they are having in getting access to their advisors.

11. Conclusion

Immigration caseworkers in bureaux recognise that the LSC had to make some changes to end poor practice where it occurred and also to protect vulnerable clients. However many of the changes put in place in April 2004 affect both poor and good quality advisers indiscriminately. They only serve to undermine the quality of service bureaux offer clients and penalise the conscientious adviser attempting to do a decent job for frightened and vulnerable people.

Citizens Advice urges the LSC to note the unintended consequences of the changes to the scope and administrative arrangements for cases funded under legal help and Controlled Legal Representation and to consider the suggestions made for improvements to the system, which would enable bureaux and other Not for Profit (NfP) providers to maintain the quality of the service they provide.

In summary these are:

- Initial casework limits should be revised. We propose a 10 hour initial limit for non Asylum work and 20 hours for asylum at Legal Help level.
- The LSC to offer training on any further significant changes to the Immigration Specification.
- There should be a 3 hour initial limit in all cases where there has been previous legal advice.
- Improved turnaround of extension applications. If urgent treatment is requested, this should be made a reality with the LSC responding by telephone or email.
- Where the LSC caseworker has questions about an (urgent) extension or CLR application they should pick up the telephone and speak to the client's representative.
- Backdating of extension applications to the date the initial application is signed in all cases.
- Allow the actual time spent in full for making CLR applications.
- Allow up to 1 hour for making extension applications and additional flexibility in complex applications.
- Reviews of refusal to be carried out by a different LSC caseworker than the one making the initial decision.
- Allow the self grant of Legal Help extensions subject to a review system.

- Amend the rules so that CLR can be granted retrospectively from the date that the form was signed. Currently suppliers without devolved powers are at an unfair disadvantage compared to those with devolved powers and so are their clients. If a supplier with devolved powers gets the CLR application signed on 4/10/04, they can claim all work done from that date. A supplier without devolved powers who gets the application signed on 4/10/04, sends it special delivery so that it is received by the LSC on 5/10/04 on which date the LSC grants the application, cannot claim for any work done on 4/10/04 as the rules do not allow the grant to operate retrospectively. The situation is made worse if the supplier without devolved powers is unable to send the application off immediately because further information is required.
- Peer review the decisions made by LSC casework staff as a tool to improve the quality of their decision making.
- LSC casework staff should be accredited via the new Immigration Accreditation Scheme.
- Amend the guidance at para 13.2.7 of the Immigration Specification to differentiate between travel document forms and applications for Certificates of Identity.
- Reinstate Home Office interviews as work that counts against the LSC contract on condition that the person accompanying the client is their named representative, except in circumstances where this is not possible owing to pre-existing work commitments, annual or sick leave when another person accredited by either the OISC or under the new Immigration Accreditation Scheme should be allowed to attend as a substitute.

Published by
Citizens Advice
National Development Team
Myddelton House
115 – 123 Pentonville Road, London, N1 9LZ
www.citizensadvice.org.uk
Reg. Charity no. 279057

Citizens Advice is an operating name of The National Association of Citizens Advice Bureaux