

SRA BOARD
7 December 2016

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Asylum Thematic Review Project

Purpose

- 1 This paper provides a summary of the background to, and the findings and recommendations of, the Asylum Thematic review project that was undertaken as part of our ongoing thematic review programme.

Recommendations

- 2 The Board is asked to note:
 - a) the next steps resulting from the project (paragraph 13)
 - b) the publication of the full report of the project which is attached at Annex 1, the summary report which is attached at Annex 2 and the guidance note which is attached at Annex 3 (paragraphs 7 and 14).

If you have any questions about this paper please contact: Robert Loughlin, Executive Director - Operations & Quality robert.loughlin@sra.org.uk; 0121 329 6576

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Asylum Thematic Review Project

Background

- 3 In August 2014, we commissioned a consortium led by Migration Work Community to undertake research assessing the quality of legal advice available to asylum seekers. The focus of the research was the assessment of solicitor behaviours and competence, together with a review of good and bad practice, rather than a critique of the asylum legal process. The research paper was published in January 2016.
- 4 The research identified a number of examples where solicitor competence could be called into question and where behaviours and practices may have regulatory implications and justify more targeted engagement with firms
- 5 In response to the findings of the research, we decided to undertake a review of the legal services provided to asylum seekers and commissioned our Regulatory Management Thematic Team to deliver the project. Our Regulatory Management Thematic Team undertakes proactive project-based work that considers and responds to risks that are identified through our wider risk profiling work. This is a key part of our regulatory approach which aims to reduce the likelihood of such risks occurring in the future by highlighting good and poor practice, and where appropriate, by taking regulatory action.
- 6 The objectives of the review were to:
 - Review the practices and behaviours of sample firms by testing their systems and processes to identify risk. This would provide evidence to us of the level of risk posed.
 - Test the extent, and raise awareness, of best practice and ethical conduct.
 - Challenge poor behaviours and practices by firms with a view to encouraging process change and improvement.
 - Identify whether any firms have breached the SRA Handbook and, where appropriate, take regulatory action.

Discussion

- 7 Annex 1 details the outcome of the thematic project. This is a full report which summarises the approach taken, key findings and recommendations (including examples of good and poor behaviours). A summary report has also been prepared (Annex 2) which lists key findings and examples of good and poor behaviours only. In addition, a new guidance note (Annex 3) has been drafted, providing guidance to those advising asylum seekers, on costs information for clients, the conduct of judicial review applications and firms' systems and procedures. Both reports and the new guidance will be published as part of our response to the issues identified.

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Approach

- 8 We identified a sample of 52 firms made up of the largest asylum firms by turnover. Each firm was visited by one of our Regulatory Managers for approximately four hours. They interviewed the firm's manager or supervisor responsible for the asylum practice and one of the fee earners involved in asylum advice work. Two files were also randomly selected and reviewed as part of the visit.
- 9 The results of the 52 visits were then collated and analysed. In a limited number of cases immediate steps were taken to tackle regulatory concerns. This included referral to Supervision to undertake a more formal investigation. These matters included evidence of potential overcharging and poor case preparation.

Key findings

- 10 The overall picture was broadly positive. The majority of firms that we visited appreciated the vulnerability of their clients and many showed dedication in supporting their clients. This support included examples where guidance and advice had been provided in addition to the immediate advice regarding asylum. Examples of good behaviour included:
 - a. Client introduction: a clear audit trail of how clients were introduced to the firm
 - b. Client care communication: information presented in clear, jargon free language and confirmed in person
 - c. Vulnerable clients: taking appropriate steps when dealing with vulnerable clients such as females, minors or those with mental health difficulties
 - d. Third parties: ensuring clients feel comfortable with supporting third parties such as relatives, religious leaders or friends, and are able to give full instructions
 - e. Costs: clear information explaining what is and is not covered by the retainer and clarity about whether fees are "fixed", "agreed" or charged at an hourly rate
 - f. Complaints: having a clear and concise complaints policy and explaining that raising a complaint will not adversely affect the conduct of the case
 - g. Legal process: ensure clients receive appropriate support during relevant stages of the process
 - h. Appeals: preparing detailed proofs of evidence and all supporting documentation required for appeals
 - i. Interpreters: considering the clients cultural and social background to ensure an appropriate interpreter is selected
 - j. Judicial review: providing evidence of "exceptional" circumstances in support of the application
 - k. Supervision: dedicated and experienced supervisors to manage teams

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- I. Qualifications and Training: regular updates of relevant training

- 11 Although the overall picture was generally positive, a number of areas were identified as being of concern or in need of improvement. Poor behaviours identified included:
- a. Client introduction: accepting referrals from interpreters, who are then automatically allocated to that client's case
 - b. Client care communication: assuming the client can understand client care information recorded in English
 - c. Vulnerable clients: absence of training or guidance to address the unique needs of vulnerable clients
 - d. Third parties: relying on clients to request assistance rather than anticipating and offering it
 - e. Costs: failure to keep clients informed as to their current level of costs and future liability
 - f. Complaints: assuming that all clients will feel able to complain if dissatisfied
 - g. Legal process: using templates that are too general and contain insignificant or irrelevant information
 - h. Appeals: the client is not prepared for the oral hearing
 - i. Interpreters: allowing additional payments to be made direct to the interpreter
 - j. Judicial review: formulaic applications supported by vague and generic grounds
 - k. Supervision: use of unsupervised trainees
 - l. Qualifications and Training: out of date training and training not evaluated.
- 12 In some cases, the poor practice raised regulatory concerns and we are undertaking formal investigation.

Next steps

- 13 As a result of our findings, we plan to:
- a) Raise awareness of both good and poor practice, through publishing a range of resources.
 - b) Publish a report of our findings (Annex1), together with a summary report (Annex 2), and a new toolkit of relevant resources and links to support lawyers in this field.
 - c) Proactively circulate of the full report to key stakeholders including:
 - i. the Legal Aid Agency, The Home Office, The Law Society (Immigration Law Committee), The Bar Standards Board, The Legal Ombudsman (LeO) and CILEx
 - ii. representative groups and appropriate community groups

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- iii. the public via the Legal Choices website
- d) establish a rolling schedule of meetings with the Legal Aid Agency, the Legal Ombudsman and the Home Office to consider and share related information, including areas of concern
- e) publish specific guidance for solicitors providing advice to asylum seekers on three issues identified in the full report. The guidance note (Annex 3) provides detailed guidance on the topics of costs information for clients, the conduct of judicial review applications and firms' systems and procedures, particularly those related to competence and supervision of fee earners
- f) review our assessment process for complaints from asylum clients to ensure that they are given appropriate weighting
- g) continue to closely monitor developments in this area.

Recommendation: the Board is asked to note the next steps resulting from the project

Publication

- 14 The two reports will be published on our website in December 2016, alongside a supporting tool kit including links to the new guidance note and other relevant resources to support solicitors working in this area.

Recommendation: the Board is asked to note the publication of the full report which is attached at Annex 1, the summary report which is attached at Annex 2 and the guidance note which is attached at Annex 3.

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Supporting information

Links to the Strategic Plan and / or Business Plan

- 15 This work links directly to strategic objective two in the Corporate Strategy, to work with solicitors and firms to raise standards and uphold core professional principles. The report highlights both good and poor practices and gives details of areas of concerns and the behaviours we expect firms to demonstrate.

How the issues support the regulatory objectives and best regulatory practice

- 16 The project reflects the principles of proportionality and transparency where we have made sure that we engage with the profession to understand the challenges being faced within this sector.
- 17 By communicating with solicitors about the risks and providing examples of good and poor practice, we are able to be transparent about when regulatory intervention is and isn't necessary.
- 18 The asylum legal market is vital in ensuring access to justice to potentially very vulnerable clients. By providing independent and objective information we are demonstrating our commitment to making regulation user friendly and easy to follow.

Public/Consumer impact

- 19 The main purpose of publishing the reports is to make sure that we improve the level of legal services to vulnerable clients. We are publishing reports in a full and summary format to improve access to the information.
- 20 The reports will also be supplemented with additional links and information to support both solicitors and the public/consumers.
- 21 We are working with the consumer affairs team to make sure that the reports are proactively distributed to other relevant charities and bodies that support asylum clients.
- 22 The reports are also being shared with the Home Office and Legal Aid Agency.

What equality and diversity considerations relate to this issue

- 23 Our regulation has a specific requirement on solicitors to meet the service needs of vulnerable clients.
- 24 The recommendations will result in further work being done to support, educate and empower vulnerable clients and all those that assist them, including the regulated firms.

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How the work will be evaluated

25 The implementation and effectiveness of the recommendations are scheduled for internal review in March.

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Annexes

Annex 1 : Asylum Report

Annex 2: Asylum Summary Report

Annex 3: Guidance note for those advising asylum seekers