

Guidance

Risk factors in immigration work

Updated 25 November 2019 (Date first published: 7 December 2016)

Status

This guidance is to help you understand your obligations and how to comply with them. We may have regard to it when exercising our regulatory functions.

Who is this guidance for?

All authorised firms and their employees.

Purpose of this guidance

To highlight common risks that solicitors and firms face when they provide immigration services and to help solicitors and the organisations they work for to manage those risks

Providing the right information about immigration service costs in the right way

Paragraph 8.7 of the [Code of Conduct for solicitors, RELs and RFLs](#) and Paragraph 7.1 (c) of the [Code of Conduct for Firms](#) requires you to ensure that your clients receive the best possible information about how their matter will be priced, both up-front when you first meet a new client and during the course of any work you then do for them. You also need to consider and take account of your client's attributes, needs and circumstances (Paragraph 3.4 of the Code of Conduct for solicitors, RELs and RFLs).

In many immigration cases you may be dealing with vulnerable clients whose first language may not be English. Depending on the needs of the client, and their circumstances, it may not be enough to simply provide your costs information in a standardised format. You should consider the particular needs of your client and be prepared to provide clear explanations, allowing sufficient time in which to do this, whilst properly explaining any technical terms to them.

You need to provide information to your clients in a way they can understand. If a client does not have strong spoken English, or struggles to understand English, then you may need to discuss options for translating the information into a more suitable language which the client can then clearly understand.

If the client chooses to rely on a friend or relative to translate for them, you should satisfy yourself as best you can that the translator has sufficient understanding and is providing the client with a full and accurate translation.

You should also provide your clients with a written record of the costs information you have given, even in circumstances where you have provided this information verbally to them.

Being clear about other funding options

Some clients may be eligible for legal aid to fund their immigration services. You should consider this and advise them accordingly about their options when you first contact them even if the business you are working for does not undertake work on this basis.

Being clear about your method of charging

You also need to meet the requirements of the SRA Transparency Rules which require you to provide the basis and the calculation of your charges for immigration services (excluding asylum applications), including any hourly rates or fixed fees. There are also requirements concerning the ways in which you describe and provide costs information about disbursements.

You can find out more about the requirements of the [Transparency Rules](#). There are also a number of [useful templates and tips](#) for complying with the Rules.

If you charge an agreed fee to a client, you should make sure that they clearly understand that, although you cannot increase that fee, you are unlikely to refund it to the client if you do not complete the matter for whatever reason - for example, if the client decides to use a different solicitor for the remainder of their case.

When it comes to your method of charging, you must be clear and you must act with integrity and treat your clients fairly. You will be at risk if:

- you are charging on a time basis, but you fail to keep accurate records for the purpose of time costing, or
- you fail to properly record all sums paid to you (eg on account of costs) and/or you fail to give your client a receipt for all cash sums they pay you.

Overcharging is always unacceptable, but it can cause particular hardship for immigration clients who in some cases may have limited funds and restricted employment rights.

Dealing with complaints

Paragraph 8.3 of the Code of Conduct for solicitors, RELs and RFLs, Paragraph 7.1 (c) of the Code of Conduct for Firms and the SRA Transparency Rules require you to inform clients in writing at the outset about their right to complain and how to go about it.

The Transparency Rules also require you to publish your complaints process on your firm's website. You should of course again be mindful of any language barriers and make sure that you put in place measures to make sure your clients are aware of this information and that they can understand it. This is particularly important as your clients may again find it difficult to query your method of charging, your bill or raise concerns about your service because of language barriers.

You should also be aware that some immigration services clients might be concerned that any complaint they might make could prejudice the way in which you are dealing with their matter. You should ensure that any such concerns are sensitively dealt with.

Taking care with judicial reviews

If you are involved in making judicial reviews on behalf of immigration services clients you should be particularly mindful of your duties to the court (Paragraphs 2.1 ■ 2.7 of the Code of Conduct for solicitors, RELs and RFLs and Paragraph 7.1 (a) of the Code of Conduct for Firms) as well as your overriding responsibility to act in the best interests of your client (Principle 7).

If you are considering applying for a judicial review on behalf of an immigration services client you should make sure that:

- you do not submit any application for judicial review without specific instructions to do so from your client;
- you carefully manage your client's instructions and expectations ■ for example, if your client instructs you to apply for

judicial review as a last resort in circumstances where there are no proper grounds for such an application, you should explain to them that you owe duties to the court and that you cannot act on their instructions if doing so is an abuse of process:

- you clearly explain what 'exceptional circumstances' are, if you are relying on them - failing to do so could result in your application being quashed and your client being exposed to unnecessary costs;
- you do not simply submit generic judicial review applications on behalf of your immigration clients;
- your employees have the necessary competence and legal knowledge to prepare judicial review applications - the courts have previously criticised the quality of some immigration judicial review applications. Common failings identified by the courts have included the poor use of English, a lack of detail in the statements being submitted, references being made to out-of-date cases and applications being submitted out of time.

For further information and guidance on the appropriate use of judicial reviews in immigration cases, please see our ['Balancing duties in litigation'](#) guide.

Further help

If you require further assistance, please contact the [Professional Ethics helpline](#).

Use www.sra.org.uk/immigration to link to this page.

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