

New Immigration Specification – Frequently Asked Questions 4 April 2005:

First Edition – 7 April 2005

1. ACCREDITATION

How do I obtain my pin number as I need to specify it on forms: CW1; CW2 (Imm); CW3 (Imm)?

- Accreditation Pin Number Rule 12.2.3
Rule 13.2.3

You may contact the Legal Services Commission on 0207 759 1474 or alternatively you may write to:

Legal Services Commission
Immigration Services Team
1st Floor
12 Roger Street
London WC1N 2JL
DX 328 London/Chancery Lane

The Accreditation Pin Number (which is between 1-4 digits) should be distinguished from the CLT Delegate ID number. Law Society Panel Members should contact the Commission if they do not have an Accreditation Pin number.

If I undertake NASS related work would I need to be accredited?

- Accreditation and NASS related work Rule 12.2.7
Rule 13.2.6

There is no need for an advisor to be accredited if he/she is undertaking NASS related work under the Franchise Category of Welfare Benefits, Housing or Community Care.

With regard to undertaking NASS related work under the Immigration Category, the Immigration Specification allows NASS work to be undertaken under the Immigration Category 'within the asylum matter' if it is less than 30 minutes, beyond that a 'new matter start' should be opened as a non-asylum immigration matter. If a new matter start is opened (i.e. beyond 30 minutes outside of the Asylum matter) and the new matter start relates solely to NASS work then accreditation is not required even if this new matter start is opened within the Immigration Category. A non-accredited advisor can continue with the NASS work under the Immigration Category even though he/she is not accredited/not going to be accredited. On any request for an extension of costs under Legal Help to the LSC please clearly indicate this to explain the absence of a Pin Number.

2. DISBURSEMENTS

The specification states that I must apply for a remission or exemption of the fee when applying to the High Court for a section 103A NIA 2002 review. How do I do this?

- Disbursements and Court Fees Rule 12.2.9
Rule 13.2.8

You **must** apply for a remission or exemption where it is apparent that your client will be entitled to such. Where a fee, or part thereof, is payable, it can be claimed as a disbursement. In relation to the application fee to the High Court, the fee or any part of the fee should **only** be claimed as a disbursement where the client has been refused an exemption or remission. This will be monitored on audit and fees claimed where an exemption or remission was available may be disallowed. Please refer to the Court Service website and form and guidance EX160.

3. APPLYING TO EXTEND THE COSTS LIMIT

Do I need to apply to the Commission for a cost limit where I am pursuing an application for Review or Reconsideration?

- Cost Limit Review/Reconsideration applications Rule 12.2.12
Rule 12.4.2

No. Following the substantive appeal hearing before the AIT you may claim additional costs (inclusive of counsel fees) of up to three hours exclusive of VAT to consider the merits of an application for review and reconsideration under section 103A of the NIA 2002. This sum is in addition to the Upper Cost Limit.

Where you require a S103D NIA 2002 Public Funding order from the appropriate court your ability to obtain your 'profit costs and counsel disbursements' will be dependant upon you obtaining that Funding Order. You do not need to apply for extensions for any of the work that you do where payment is dependant on securing a S103D NIA 2002 order.

However, work done in connection with a Review and Reconsideration in the following areas are outside the new S103 regime and will continue to be paid at the **standard CLR rates**. These areas are listed at Rule 12.4.2 and 13.4.2 as follows:

- (a) An application for review made by the Home Office
- (b) Application where the appeal is being dealt with under detained Fast Track processes
- (c) Where an application for permission to appeal to the IAT has been made before 4 April 2005 but has not been **determined** by that date or under the provisions contained in the Community Legal Service (Asylum and Immigration) Regulations 2005.

This includes situations where permission to appeal was granted by the IAT prior to 4 April 2005 but the appeal has not yet been **determined** by that date.

You do not need to apply for extensions after 4 April 2005 and you may claim reasonable costs for associated work in the above scenarios.

Therefore, Rule 12.2.12 applying to extend the costs limit does not apply to applications for Review and Reconsideration. Please also see Rule 12.4.2, Rule 12.4.3, Rule 12.4.4, Rule 12.4.5 and Rule 12.4.6 and corresponding NFP specification provisions.

4. LEGAL HELP COST LIMIT

Can I utilise any remaining limit under Legal Help to prepare/draft an application for review?

- Legal Help and S103A NIA 2002 applications Rule 12.3.1(7)
Rule 13.13.1 (6)

Rule 12.3.1 (7) and 13.3.1(7) states that you **must not** undertake work under Legal Help in connection with an application for Review and Reconsideration under section 103A of the NIA 2002. Additionally see further guidance below on Rule 12.2.2 (12) and Rule 13.2.2 (12)

If I take on a new client at the ‘Review or Reconsideration’ stage can I claim 3 hours (inclusive of Counsels opinion) under Legal Help to consider the merits of the case for a Review or Reconsideration or should I apply for CLR to consider the merits of the onward appeal?

- Merits of a review application Rule 12.4.1 (9)
Rule 13.4.1 (8)
- Previous Legal Advice Rule 12.2.2
Rule 13.2.2
- Counsels Opinion under Legal Help

It is unlikely that you would be able to demonstrate at point of application to the Commission for CLR that the merits test is met, due to lack of information. You should therefore complete the **Legal Help** form in order to enable you to take basic instructions from your client and then to request the file of papers from the previous supplier.

If the work is genuinely urgent there is provision at Rule 12.2.2 (12) and Rule 13.2.2 (12), for urgent work to be undertaken. This should not, however, include the **drafting** of an application for review, see Rule 12.3.1 (7) and Rule 13.3.1 (7),

It is likely that the previous instructed firm would have obtained counsels opinion (on the merits for a Review and Reconsideration) before refusing funding for a Review and Reconsideration and it is only in **exceptional circumstances** that you should obtain a second counsels opinion. Upon receipt of the previous solicitors file you should demonstrate on file any issues with the first opinion.

Rule 12.2.9 (2) states that only in ‘**exceptional cases**’ would counsel be required to advise under Legal Help. All circumstances should be considered as to whether the circumstances of the case are exceptional to warrant the provision of Counsels advice under Legal Help.

Where the previous firm **have not** obtained counsels opinion (on the merits for a Review and Reconsideration) and you are able to demonstrate the complexities of the case, it maybe then be justified to obtain counsels opinion under Legal Help.

For clarification, Rule 12.4.8 and 13.4.8 states that Counsel should not be instructed as part of a provision of Legal Help, however, that relates to instructing Counsel before the AIT.

5. CONTROLLED LEGAL REPRESENTATION

Is the £1600 limit as specified in Rule 12.4.1 inclusive of VAT?

- Upper Costs Limit and VAT Rule 12.4.1 (1)

The £1600 limit is exclusive of VAT.

Your total claim for costs for an appeal before the Immigration Judge under CLR (including preparation, counsel fees and disbursements, exclusive of VAT) should not exceed £1600.

I have an AIT hearing on the 5th April 2005 I granted CLR before the 4th April 2005. What is the available upper costs limit?

- Upper Costs Limit and AIT hearing Rule 12.4.1

The Upper Cost Limit is governed by 12.4.1 and with reference to the ‘**hearing**’. If you have a hearing before the AIT then the Upper Cost Limit is £1600. In all other circumstances, such as where you have been previously granted a higher limit by NIAT, please contact NIAT if an extension for further work is required.

After 4 April 2005 in what circumstances will I need to use a CW3 (Imm) to apply for an extension of costs?

- Upper Costs Limit Rule 12.4.1

In the following circumstances you may be required to submit a CW3 (Imm) to apply for an extension of costs:

An AIT appeal heard by a single Immigration Judge against a substantive refusal of asylum by the SSHD.

An AIT appeal heard by a Panel against a substantive refusal of asylum by the SSHD.

An AIT appeal heard by Two-person panel mixed (legal and non- legal panel) against a substantive refusal of asylum by the SSHD.

An AIT appeal heard by a Panel of three or more Judges against a substantive refusal of asylum by the SSHD.

My clients case has been referred to a panel by the AIT after the CMRH, if it is dismissed by the panel where is my clients onward appeal if there is merit in such an application?

- Onward right of appeal Rule 12.4.12
Rule 13.4.12

Please refer to the relevant procedure rules and legislation, however, the onward right of appeal can briefly be summarised as follows:

Case been heard by Single judge: **Review (filter and opt in)**
Two-person panel mixed (legal and non- legal panel): **Review (filter and opt in)**
Panel of three or more Judges: **Court of Appeal (with permission)**

See Rules 27, 34-36 of **The Asylum and Immigration Tribunal (Procedure) Rules 2005.**

My client's case (initial appeal against refusal by the SSHD) has been referred to a panel of three Judges by the AIT after the CMRH, if it is dismissed by this panel I would need to request permission to appeal to the Court of Appeal from the AIT panel itself, if I believe there is merit. Can I claim the costs of this application for permission under CLR?

- Upper Cost Limit Rule 12.4.1
Rule 13.4.1

The application to the Court of Appeal itself and any appeal in the Court of Appeal will continue to be funded under the current provisions for Public Funding Certificates under Part C of the Funding Code. The costs of making an application to the AIT itself for permission to appeal to the Court of Appeal can be claimed under CLR (Rule 12.4.1 and 13.4.1). Such work should be reported in accordance with 12.6 stage billing. This should be distinguished from an application at the 'Reconsideration' stage, which cannot be claimed under CLR (please see below).

Reconsideration has been ordered by the High Court (or AIT under the filter) following a successful Review. At the Reconsideration hearing the AIT dismiss the case. I want to advise my client to lodge an application to the AIT for leave to appeal to the Court of Appeal, as I believe there is merit. Can I claim the costs of this under CLR?

- Appeals to the Court of Appeal from the AIT Rule 12.4.12
Rule 12.4.12

No, such an application (where a S103D NIA order is required) for leave to appeal forms part of the retrospective regime and is a part of the same proceedings and cannot be claimed as a part of CLR **unless** you were/are successful in obtaining a funding order in the same proceedings. However, where the case falls within one of the exceptions listed in Rule 12.4.2 and 13.4.2 then the initial application for permission to appeal to the Court of Appeal, which is made to the AIT, can be claimed under CLR.

I had applied for permission to appeal to the existing IAT before 4 April 2005 and I have incurred the fixed amount of £150 under CLR but there has been no decision on the application after 4 April 2005. Do I continue under CLR and apply for extensions, i.e. if permission is granted does my limit become £750 and can I apply to extend that even though a Section 103D NIA 2002 does not apply.

- Reasonable costs Rule 12.4.2

No, Rule 12.4.2 applies and you may claim reasonable costs see Rule 12.4.2. (3).

You do not need to apply for an extension. You are permitted to do reasonable work and will be paid at the **standard rate** for CLR. The appeal will proceed as an appeal to the AIT (see SI 2005 No 565 (C.25)). This work should be reported at conclusion on the CMRF in accordance with Rule 12.6 stage billing.

I have obtained Permission to Appeal to the IAT. I have incurred £400 under the old £750 IAT portion of CLR. The appeal has been listed after 4 April 2005. Do I continue under the existing CLR? If I reach the £750 limit do I then apply for an extension?

- Reasonable costs Rule 12.4.2

See Rule 12.4.2 and you may claim reasonable costs in pursuing such an application, see also Rule 12.4.2 (3).

You do not need to apply for an extension. You are permitted to do reasonable work and will be paid at the **standard rate** for CLR. The appeal will proceed as an appeal to the AIT (see SI 2005 No 565 (C.25)). This work should be reported at conclusion on the CMRF in accordance with Rule 12.6 stage billing.

I have Permission to Appeal to the IAT granted before 4 April 2005 and the costs have been extended by the NIAT to beyond £750. The appeal is still not listed and I expect it to be listed shortly before the AIT. Do I apply for further extensions if needed?

- Reasonable costs Rule 12.4.2

See Rule 12.4.2 and you may claim reasonable costs in pursuing such an application, see also Rule 12.4.2 (3).

You do not need to apply for an extension. You are permitted to do reasonable work and will be paid at the **standard rate** for CLR. The appeal will proceed as an appeal to the AIT (see SI 2005 No 565 (C.25)). This work should be reported at conclusion on the CMRF in accordance with Rule 12.6 stage billing.

What does reasonable costs mean?

- Reasonable costs Rule 12.4.7
Rule 13.4.7

The General Civil Contract Provisions such as **Rule 2.18** apply. See also Rule 12.4.7 and Rule 13.4.7 of the Immigration Specification.

I am an NFP supplier can I utilise the 3 hours for advice on consideration to pursue a Review and Reconsideration of an AIT decision AND also utilise my normal disbursement limit of £250 – 13.4.1 (9)?

- Merits of a review application Rule 13.4.1 (8)

No, following the substantive AIT appeal hearing you may claim additional costs (inclusive of any Counsel fees) as equating/up to 3 hours to consider the merits of an application for review and reconsideration.

I have 3 hours to consider a Review of the AIT determination. Does that include drafting the application so in effect do I get £183.60 to prepare a review application.

- Merits of a review application Rule 13.4.1 (8)

No, following the substantive AIT appeal hearing you may claim additional costs (inclusive of any Counsel fees) as equating to 3 hours to consider the 'merits' of an application for Review and Reconsideration. Any preparation undertaken for the application for review subject to a Section 103D NIA 2002 order can only be claimed on receipt of a successful funding order made by the appropriate court.

I have been successful in obtaining a S103D NIA 2002 costs order from the AIT. How do I report the matter to the Commission?

- Reporting Costs

Rule 12.6

Rule 13.6

Please refer to the Commissions correspondence dated 29th March 2005 by Paul Newell sent to all suppliers which sets out the **arrangements for reporting**.

The new reporting arrangements will include (but is not limited to) the following cases:

1. Where the Home Office had made a review/ reconsideration application;
2. The application has been dealt with under the detained Fast Track process (any section 103A application or opt-in notice where the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 apply to the Review or Reconsideration).
3. The application for leave to appeal was lodged with the Immigration Appeals Tribunal prior to the 4 April 2005;
4. A claim for interpreters, experts and court fees only. This will occur where a section 103D order was not granted. Rules 12.2.9 and 12.4.6 specifies which disbursements are claimable;
5. The appropriate court has granted a Section 103D costs order.

Individual files will be assessed and reconciled against the amount, which you have claimed on the CMRF. As these files will be individually assessed they will be excluded from any Contract Compliance Audit (CCA). They will also be excluded from any potential extrapolation / recoupment arising from a CCA.

Files should be submitted to the London Regional Office, at the address below, at the **same time** that you submit your claim (CMRF).

Mr. Ian Hollings – National Immigration and Asylum Team
Legal Services Commission
London Regional Office
29/37 Red Lion Street
London WC1R 4PP
DX 170 London/Chancery Lane
Phone: 020 7759 1591
Fax: 020 7759 1592

6. ADDITIONAL FAQ'S

Have the Community Legal Service (Asylum and Immigration) Regulations 2005 come into force?

The Community Legal Service (Asylum and Immigration) Regulations 2005 have been approved by both Houses of Parliament and came into force on the 4 April 2005. A link to the Regulations can be found below.

As a result of the Community Legal Service (Asylum and Immigration) Regulations 2005 coming into force on the 4 April 2005, which document included in the Commissions mail out of the 25 February 2005 have become obsolete?

The Notice of amendments to section 12 of the General Civil Contract (Solicitors Specification) from 4 April 2005 - an eight-page document - is now otiose.

The Immigration Specification (which is a 40 page document) came into force on the 4 April 2005.

In what circumstances will I obtain a Funding Order under S103D at a final hearing?

The relevant regulations are contained in Statutory Instrument 2005 No. 966 - The Community Legal Service (Asylum and Immigration Appeals) Regulations 2005

Where can I get access to further information on any relevant rules and regulations?

1. Immigration Specification (Solicitors):
http://www.legalservices.gov.uk/docs/civil_contracting/SolsImmigrationSpec.pdf
2. Immigration Specification (Not for Profit):
<http://www.legalservices.gov.uk/NfPspec.pdf>
3. Notice of amendments to section 5 General Civil Contract (Solicitors):
<http://www.legalservices.gov.uk/secfivesols.pdf>
4. Notice of amendments to section 8 General Civil Contract (NfP):
<http://www.legalservices.gov.uk/seceightnfp.pdf>

5. Relevant LSC Contracting Forms
<http://www.legalservices.gov.uk/civil/forms/contracting.asp>

6. Notice of amendments to Annex A payment rates General Civil Contract (Solicitors):
<http://www.legalservices.gov.uk/paymentrates.pdf>

7. Notice of amendments to the Funding Code from 04 April 2005:
<http://www.legalservices.gov.uk/Fundingcode.pdf>

8. Statutory Instrument 2005 No. 565 (C.25) - The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Commencement No. 5 and Transitional Provisions) Order 2005:
<http://www.legislation.hmso.gov.uk/si/si2005/20050565.htm>

9. Statutory Instrument 2005 No. 966 - The Community Legal Service (Asylum and Immigration Appeals) Regulations 2005:
<http://www.legislation.hmso.gov.uk/si/si2005/20050966.htm>

10. Statutory Instrument 2005 No. 230 (L.1) - The Asylum and Immigration Tribunal (Procedure) Rules 2005:
<http://www.legislation.hmso.gov.uk/si/si2005/20050230.htm>

**Immigration Services Team
1st Floor
12 Roger Street
London
WC1N 2JL**