# SRA Guidance To Immigration & Asylum Practitioners

## The SRA's Immigration & Asylum Thematic Review

Throughout 2022, the SRA, undertook a thematic review of Immigration & Asylum work. The results of this were published in November 2022 along with two new detailed guidance notes which all Immigration practitioners need to be familiar with.

The purpose of the thematic review was for the SRA to gain a better understanding of the challenges facing the Immigration & Asylum sector and to investigate the nature, extent and impact of any concerns. The review focused on three key themes;

1. The quality of Immigration & Asylum services
2. Supervision of those proving Immigration & Asylum services, and
3. Complaints and reports of misconduct.

The thematic review was undertaken through the completion of a questionnaire which was sent out to 70 firms. The SRA then visited 38 firms onsite to speak with fee earners and to review a selection of files.

You can find the details of the SRA's thematic review and the findings here: https://www.sra.org.uk/sra/research-publications/immigration-asylum-thematic-review/

### Summary Findings

In summary, the SRA found that the quality of Immigration & Asylum services being provided by the sector is satisfactory, though a number of areas showed room for improvement.

The key findings were;

- Most clients are given the opportunity to review and amend key documentation relating to their matter, although not all files recorded this had happened.
- Firms and fee earners had a good level of understanding of what makes a client vulnerable, although few firms noted this on the file.
- The strengths and weaknesses of a client's case is not always recorded on the file.
- Firms could do more to make sure clients understand the strengths and weaknesses of their case and the options available to them.

In particular, the SRA was concerned to find that most fee earners were not aware of the SRA guidance and warning notices relating to Immigration and Asylum work. As a consequence of this, the SRA has now updated its guidance on Immigration and Asylum work and on Supervision stating; *'we expect firms to read all our warning notices and guidance, and to take steps to make sure they comply with them'.*

## Good Points

The SRA found both firms and fee-earners had a good understanding of what could make a client vulnerable.

There was evidence that vulnerable clients were supported for example by ensuring clients were not overwhelmed with too much information during appointments and by trying to keep the number of times a client had to recount a traumatic event to a minimum.

## Bad Points

*Cash Payments*

The SRA expressed concerns that some firms may be taking advantage of clients by accepting cash payments, often outside the office, without providing a receipt or with the intention of overcharging the client over the course of a matter. The SRA commented;

> *"It is important that firms keep an appropriate record of cash payments received from clients and provide clients with a receipt so they can keep an audit trail of any cash payments made by them."*

Most firms interviewed stated that they would accept payment in cash, but only when such a payment was in the office. One firm was reported for disciplinary action because it was not able to show that receipt of a cash payment from a client had been appropriately recorded.

*Evidence of Supervision*

- 47 out of 76 files reviewed by the SRA did not contain any evidence of supervision.
- 3 fee-earners and 8 heads of department received no supervision at all.
- 5 firms were referred for disciplinary action as the SRA was not satisfied with the supervision of non-SRA regulated fee-earners who were providing Immigration legal services within the firm.

*File Review*

File reviews were noted to be the most common method of supervision but the SRA identified concerns about the scope, recording and sharing of outcomes on these reviews.

*Training*

A significant number of fee-earners were unable to provide a copy of their training records.

4 firms were referred for disciplinary action due to a lack of training records.

*Complaints Handling Information*

Firms were referred for disciplinary action for failing to provide clients with any, or any adequate, complaints information. Some information provided was of poor quality and one firm referred to the possibility of clients complaining to the 'Legal Complaints Service', which has been closed for more than a decade.

*Reporting Other Firms*

The SRA review found widespread reluctance to report unacceptable advice or representation by other firms.

Only a quarter of heads of department and 37% of fee-earners said that they would be very willing to do this. Most people said they had not reported another firm in the last three years.

## Why Is This Important to All Firms Providing Immigration & Asylum Work?

The SRA has confirmed that a further thematic review will be conducted in 12-18 months in order to assess the impact of the new guidance that has been issued.

It is therefore imperative that all firms and all individual fee earners within a firm providing Immigration and Asylum services familiarise themselves with the SRA's guidance and ensure that their practices are compliant.

It is clear that the SRA is willing to refer individuals and firms for disciplinary action where they are not satisfied that appropriate quality systems are in place which are compliant with the Standards & Regulations and the newly issued guidance. 10 out of the 40 firms in the thematic review were referred for disciplinary action.

## What Can We Do To Ensure Compliance?

We strongly recommend that firms review all of your quality and supervision systems immediately to ascertain whether they are sufficiently robust, effective and in keeping with the SRA's requirements. Where improvements are required, these should be implemented.

DG Legal can offer advice and tailored support to ensure that you are able to evidence a strong and effective supervision system within your firm. Please contact us at admin@dglegal.co.uk to discuss your needs.

# The New SRA Guidance on Immigration & Asylum Work

The SRA's updated guidance on Immigration work can be found here: https://www.sra.org.uk/solicitors/guidance/immigration-work-guidance

Whilst we recommend that all those practising in Immigration and Asylum law read the full guidance note, we hope that this provides a useful summary.

In summary, the purpose of the guidance is to help Immigration firms and fee earners to understand;

1. Where you can work if you wish to undertake immigration work
2. How the SRA supervision rules apply in the delivery of immigration work
3. How your obligation to provide a proper standard of service applies in the delivery of immigration work, and
4. Your obligations to support the effective administration of justice when undertaking or supervising immigration work.

The guidance applies to all Solicitors but also to everyone who is supervised by a Solicitor to undertake Immigration and Asylum work. It is therefore important that all staff providing Immigration and Asylum work are familiar with the guidance.

## 1. Where You Can Work

Solicitors regulated by the SRA can provide immigration advice and immigration services through the following organisations:

- An SRA-authorised body
- An authorised non-SRA firm that is a qualified person under the Immigration & Asylum Act 1999, such as a firm regulated by the Bar Standards Board or CILEx Regulation to provide immigration work
- As an employee, for your employer or work colleagues
- Through a non-commercial service such as a law centre which is registered with the Office of the Immigration Services Commissioner (OISC) or is otherwise a qualified person under the Immigration & Asylum Act 1999.

Please note that SRA freelance solicitors cannot undertake immigration work in that capacity.

*Solicitors Working In OISC Regulated Organisations*

There are two types of OISC regulated organisations; those which are commercial, i.e. fee earning organisations and those who are non-commercial, i.e. not for profit.

*Commercial OISC Regulated Organisations*

A solicitor working in a commercial OISC regulated organisation must be regulated as an individual by the OISC or be otherwise qualified to provide Immigration services under the Immigration & Asylum Act 1999. E.g. by being authorised by another regulator such as the Bar Standards Board.

*Non-Commercial OISC Regulated Organisations*

A solicitor working in a non-commercial OISC-regulated organisation does not need to be regulated as an individual by OISC. However, they may only supervise other people working in the non-commercial OISC regulated organisation if they are also qualified people under the Immigration & Asylum Act 1999. In these circumstances, they are not considered to be 'qualified' solely by virtue of being supervised by you. In certain circumstances OISC can give consent in writing to a named individual being supervised by you where they are not 'qualified', e.g. where you are supervising trainee solicitors or those undertaking qualifying work experience.

You can read the OISC's guidance OISC regulation and solicitors which sets out what you need to do when you are working in an OISC-regulated organisation and requirements that you will need to meet.

If you are working from an OISC-regulated organisation and there is a conflict between the OISC and the SRA regulatory arrangements, the OISC's requirements prevail.

## 2. Supervision Arrangements For The Delivery of Immigration Work

In summary, if you are a supervising solicitor, you must effectively supervise the work being done for clients. Under Rule 3.5 of the SRA's Code of Conduct for Solicitors, you are accountable for work being carried out through those you supervise or manage to provide legal services.

In respect of supervision in an SRA regulated firm, the Code of Conduct for Firms says you must make sure that:

- The service you provide to clients is competent and delivered in a timely manner, and takes account of your client's attributes, needs and circumstances.
- Your managers and employees are competent to carry out their role, and keep their professional knowledge and skills up to date – as well as understanding of their legal, ethical and regulatory obligations.
- You have an effective system for supervising clients' matters.
- A supervisor is expected to communicate directly with each person they supervise often enough to ensure that the supervisor:
- Has clear oversight of work being done while it is live, at all key stages,
- Is readily available to support the person doing the work, and
- Can provide robust assurance that legal and regulatory requirements are being met.

*What does this mean in practice?*

Ultimately, this means that solicitors supervising immigration work should have some knowledge of each matter being progressed by the person doing the work and/or should monitor a meaningful sample of their work.

This can be evidenced through a thorough and regular file review process and regular supervision meetings, including notes of any ad hoc supervision/advice provided.

It is important to note that the SRA says this applies even where the person you are supervising does not have a contract of employment with you or your firm, i.e. Consultants and Agents.

*What Is Suitable Supervision?*

The SRA states that it is open to firms to determine how to best supervise legal services but firms need to be aware of the risk factors that should be considered when making supervision decisions.

These risk factors are set out in the SRA's Effective Supervision Guidance which can be found here: https://www.sra.org.uk/solicitors/guidance/effective-supervision-guidance/

The risk factors are;

- the risks involved for clients and others if legal services are defective
- for example, in immigration cases, is there is a risk of loss of life or liberty through imprisonment or deportation, or of other serious detriment with limited scope for redress?
- whether there is a specific legal or regulatory requirement for those carrying out the work to be supervised by an individual with particular qualifications and what any such requirement involves
- (for example work which includes reserved activities under the Legal Services Act 2007 carried out by unauthorised persons, or is immigration or claims management work),
- the nature of the inherent risks involved in the work being supervised
- for example, work involving the use of a high degree of judgement will usually carry more risk of errors or failure than routine or primarily administrative work
- the circumstances of clients and whether there are particular vulnerabilities that should be taken into account
- the experience, competence and workload of those carrying out the work and the level and kind of support they need
- the capacity of the supervisor and the other demands on their time
- for example, a supervisor with their own fee-earning caseload will have less time available to supervise the work of others
- whether those carrying out the work are in the same location as their supervisor, in another office, working remotely or in a hybrid or agile arrangement
- the nature of, and ease of access to, other support available to those carrying out the work, which might include help from other colleagues (whether legally qualified professionals or not), guidance, and tools or standardised processes.

When applying the risk factors to supervising Immigration and Asylum work, you should consider the following challenges that are usually faced by immigration and asylum clients such as;

- language barriers,
- vulnerability and
- lack of financial means.

Solicitors and firms should also consider the significant impact that poor or defective advice can have in this area, for example deportation with limited scope for redress.

*How Many People Can I Supervise?*

When supervising immigration work, these risks will impact on areas such as how many people individual solicitors can supervise. Where work is high risk, such as asylum, a supervisor might need to have some awareness of every file.

The risks involved in delivering Immigration and Asylum work will also impact on when supervisors should check work, and what checks should involve. For example, where work is complex the supervisor should consider if they need to have sight of the whole course of a matter.

If you are supervising immigration work in an organisation regulated by another approved regulator or by the OISC, you will need to make sure you comply with any requirements or restrictions on supervision that are placed on that organisation by those regulators.

*Legal Aid Agency Requirements*

The 2018 Standard Civil Contract at paragraphs 2.10-2.28 sets out specific and detailed legal aid supervisor requirements. Although it specifies that, for legal aid purposes, the supervisor/fee earner ratio is 1:4, firms will need to consider whether this is appropriate to meet the SRA's guidance or whether a higher level of supervision is required, either because of the complexity of the case work or the experience of the individuals who are being supervised.

*Checking The Regulatory History Of People To Be Supervised*

Principle 2 of the SRA Standards & Regulations requires a solicitor to act in a way that upholds public trust and confidence in the profession and in legal services provided by authorised persons.

As solicitors and firms are accountable for those they supervise or manage in the provision of legal services, it is important that checks are carried out to verify the suitability of anyone providing legal services within the firm.

Remember that it is possible that an individual wishing to carry out work under the supervision of you or your firm may have been sanctioned in this area by the SRA or another regulator. You should therefore always ensure that the regulatory history of those undertaking immigration work under your supervision, including where they are not directly employed by you or your firm, is checked at the

outset. You can do this by checking disciplinary information on the SRA, OISC, BSB or CILEx websites here;

**Solicitors Regulation Authority**
https://www.sra.org.uk/consumers/solicitor-check/

**OISC**
https://home.oisc.gov.uk/adviser_finder/finder.aspx

**Bar Standards Board**
https://www.barstandardsboard.org.uk/for-the-public/search-a-barristers-record/the-barristers-register.html

**CILEx**
https://cilexregulation.org.uk/disciplinary-records/

You should also be satisfied that standard background checks have been carried out for anyone who you intend to supervise. For example, references from previous employers should always be obtained and Disclosure and Barring Service checks should be undertaken.

## 3. Providing A Proper Standard Of Service To Clients

The SRA specifies in the Code of Conduct for Solicitors and the Standards & Regulations that Solicitors and firms must take account of client's attributes, needs and circumstances and must not abuse their position by taking unfair advantage of clients or others.

At an initial meeting with an immigration client, you should discuss;

- the legal issues,
- costs and
- what further documentation the client needs to provide.
- consider the extent to which your client might be able to engage with the information and advice you are providing and adapt your approach accordingly.

It is apparent that clients seeking immigration advice can often be vulnerable because of their personal background or situation, their personal attributes, or circumstances, such as physical and/or mental health issues, or because of limited financial means. Assessing a client's vulnerability will help identify what support a client might need.

Both the SRA and the Law Society have produced guidance on how to deal with vulnerable clients, which you may find useful. You can find this here: https://www.sra.org.uk/solicitors/guidance/accepting-instructions-vulnerable-clients/ and here: https://www.lawsociety.org.uk/topics/client-care/meeting-the-needs-of-vulnerable-clients

*Providing information in a client-centred way*

Solicitors are required to give clients information in a way they can understand and both solicitors and firms are required to make sure that clients receive the best possible information about costs, both up-front at an initial meeting with a new client and during the course of doing any work for them.

Documents should be written in plain English and be translated, or an interpreter should be used, if required. Whilst a client's family member or friend may be able to help with interpretation or translating documents in relation to administrative matters, such as costs, it would not be appropriate to use a client's family member or friend for substantive issues about a case, for example, explaining why an application has been refused.

*Being clear about your method of charging*

Solicitors and firms providing immigration work must make sure that clients receive the best possible information about:

- How their matter will be priced (both at the time of engagement and when appropriate as their matter progresses).
- The likely overall cost of the matter.
- Any other costs, such as disbursements.

*SRA Transparency Rules*

Note that where a firm undertaking immigration work (excluding asylum applications), paragraph 1.3 of the SRA Transparency Rules requires you to provide the basis and the calculation of charges, including any hourly rates or fixed fees, and VAT, on your website.

Under paragraph 1.3 (d) of the SRA Transparency Rules, you must also describe and provide costs information about disbursements.

*Cash payments*

It is possible that clients will want to pay by cash as they might not have access to a bank account. You should be sensitive to and mitigate the risks associated with cash payments. Firms should be able to demonstrate that they have appropriate records of cash payments from clients.

*Overcharging*

Solicitors and firms must not abuse their position by taking unfair advantage of clients or others.

Overcharging is always unacceptable, but it can cause particular hardship for immigration clients who might have limited funds and restricted employment rights. You must make sure that your charges

are fair. If you overcharge, you would be in breach of the Code, and your client can also seek redress from the Legal Ombudsman.

*Being Clear About Other Funding Options*

Some clients might be eligible for Legal Aid to fund their advice. You should consider this and advise clients accordingly about their options when you first contact them, even if the business you are working for does not undertake work on this basis.

*Dealing With Complaints*

Solicitors and firms are required to inform clients about their right to complain and how to go about it. The SRA's transparency rules also require firms to publish their complaints process on their website.

Some immigration services clients might be concerned that making a complaint could impact the way you are dealing with their matter or the progress of an application to the Home Office. Clients may also find it difficult to query your method of charging, your bill or raise concerns about your service because of language barriers.

You should be sensitive to these concerns by:

- Asking an interpreter, where possible, to explain the complaints process in the client's own language at an early stage of your engagement with them.
- Providing clients with reassurance that if they do make a complaint, it won't impact their case and that there will be no legal repercussions or detriment to the client or the matter
- Building trust with clients so they feel they can complain.
- Engaging in constant communication with the client to explain the process and prevent any misunderstanding.

You should also ensure that clients of those you are supervising (whether or not through a contract of employment) are made aware of their right to complain and how to go about it.

As with all complaints, you should try to resolve issues promptly. You should make sure that you understand the nature of the client's complaint fully and communicate your response in a way that the client can understand. You should also respond appropriately to any third-party intermediaries who the client involves in their case, such as citizens advice or a local councillor.

*Your Obligations To Report Regulatory Breaches*

If you become aware of an issue with a client's previous legal adviser you should consider your obligations under paragraph 7.7 of the Code for Individuals and your firm's obligations under paragraph 3.9 of the Code for Firms to report promptly to the SRA (or other regulators, as appropriate) any facts or matters that could amount to a serious breach of regulatory arrangements.

Our thematic review of immigration and asylum services includes a case study about reporting a previous legal adviser of an immigration client to us.

*Training And Competence*

All solicitors must be able to demonstrate the steps they have taken to maintain their competence. Where you are a solicitor who manages individuals in the provision of immigration work, you must make sure that they are competent to carry out their role and that they keep their professional knowledge and skills up to date.

Firms are also required to make sure that their managers and employees are competent and have the right knowledge and skills to carry out their role.

Immigration and asylum law can be a complex, fast-paced and politically sensitive area of law, so it is important that solicitors and firms and those they supervise meet our competence obligations by keeping professional knowledge and skills in this area up to date on an ongoing basis and by making sure that staff working in this area do the same.

For individual solicitors this means regularly reflecting on:

- the nature of your practice, the types of clients you advise and their needs.
- Any developments in and changes to immigration and asylum law.
- Any feedback, which you should seek regularly from your clients, peers and those you supervise and/or are supervised by.
- Any other indicators of the quality of your advice and services, for example feedback from file reviews of your cases.

You should then use this information to identify your learning and development needs and put in place a plan for addressing those learning and development needs. You should record and evaluate your progress in addressing your learning and development needs.

## 4. Supporting The Effective Administration Of Justice

Principle 1 of the SRA's Standards & Regulations requires solicitors and firms to act in a way that upholds the constitutional principle of the rule of law and to uphold the proper administration of justice. Paragraphs 2.1 – 2.7 of the Code for Individuals and paragraph 7.1 (a) of the Code for Firms set out duties to the courts, which include only making submissions that are properly arguable and not wasting the court's time.

Poorly drafted applications or those cases which are considered to be totally without-merit can lead to inefficiencies in the courts system, wasted court time as well as increased costs and lengthy delays for the client.

Clients should always be provided with a realistic assessment of the prospect of success of their case and you must make sure that your client fully understands the strengths and merits of their case. This

can be achieved by discussing it verbally with the client, providing a written record of your advice and keeping a copy of the record on file.

You should not charge fees to make applications that have no realistic prospect of success.

*Immigration Judicial Review Applications*

An area in which this is frequently of concern is in Immigration Judicial Review applications. Individual solicitors and firms have been heavily (and publicly) criticised by the Courts for filing applications for Judicial Review which are considered to be totally without merit. There are examples of individuals being reported to their regulator for this.

The Law Society has produced a Practice Note specifically related to issues in Immigration Judicial Review which provides useful information on the process and procedure involved in challenging immigration decisions by judicial review and advice on best practice.

You can find the Practice Note here: https://www.lawsociety.org.uk/topics/immigration/immigration-judicial-review

You should always ensure that applications for judicial review drafted by those you supervise are of sufficient quality and that cases have merit.

## How Can DG Legal Help You?

We can provide the following services to help you ensure that you have effective and robust supervision systems in place;

- Virtual meeting to discuss your systems
- Advice on the adequacy of your systems and what, if any, improvements could be made to implement a compliant Supervision System within your department/firm
- Review of your Immigration file review checklists and findings with suggestions as to how these may be improved
- Review of your template Client Care Letter, Immigration File Review Checklist, Training Records and Appraisal forms

Please contact us by emailing admin@dglegal.co.uk for a no obligation quote.