



BEST PRACTICE IN THE PROVISION OF **IMMIGRATION LEGAL ADVICE SERVICES** IN NORTHERN IRELAND





OUR MISSION

To inspire and enable refugees and asylum seekers to break through injustice, deprivation and inequality, so they can achieve their full potential, locally, nationally, and globally.

OUR VISION

NICRAS's vision is of a vibrant, welcoming, just and inclusive society, which promotes diversity, equality and effectively respects the human rights and dignity of refugees and asylum seekers.

TABLE OF CONTENTS

1	FOREWORD.....	5
2	INTRODUCTION	6
3	THE ROLE OF A SOLICITOR.....	8
	3.1 General.....	9
	3.2 Finding a solicitor	9
	3.3 Beware of ‘rogue’ immigration advisors	9
	3.4 Relationship between solicitor and client	9
	3.5 Initial solicitor-client meeting	10
	3.6 Points for both parties to consider	11
4	INFORMATION FOR SOLICITORS.....	13
	4.1 General.....	13
	4.2 Client care	13
	4.3 Funding	15
	4.4 Interpreters.....	15
	4.5 False Documents.....	15
	4.6 Additional general points for solicitors.....	16
5	INFORMATION FOR ASYLUM SEEKERS AND REFUGEES	18
6	THE ASYLUM APPLICATION PROCESS	20
	6.1 The process	20
	6.2 Preparing for a Home Office interview	21
	6.3 General points for the interviews.....	22
7	THE DECISION.....	23
	7.1 Possible outcomes	23
	7.2 Appealing a decision.....	26
	7.3 Failed appeal.....	27
	7.4 Detention	28
8	CHANGING SOLICITORS AND COMPLAINTS	29
	8.1 Changing solicitors.....	29
	8.2 Making a complaint about your solicitor to the solicitor’s practice.....	29
	8.3 Making a complaint to The Law Society	30
9	WIDER IMMIGRATION CONTEXT	32
	9.1 Human Rights	32

	9.2 The Dublin Regulations	33
	9.3 Family reunification	33
	9.4 Brexit and the EU	33
	9.5 Citizenship.....	34
	9.6 'Life in the UK' test.....	34
	9.7 Voluntary Return Scheme	34
10	DEFINITIONS	35
11	ACKNOWLEDGEMENTS	41
12	APPENDICIES.....	42
	12.1 Appendix A	42
	12.2 Appendix B	47
	12.3 Appendix C	52
	12.4 Appendix D	58

1. FOREWORD

It is with great pleasure that I write this foreword for our new guide on 'Best Practice in the Provision of Immigration Legal Advice Services' drafted by the Northern Ireland Community of Refugees and Asylum Seekers (NICRAS) Project Coordinator, Maria McCloskey. This clear, comprehensive and accessible guide is the only one of its kind in Northern Ireland, and an important tool for both asylum seekers and solicitors alike.

As an asylum seeker myself, I understand the stress, difficulty and emotional burden the asylum process can have on oneself, and the importance of having a compassionate and educated solicitor assist with your claim. Asylum seekers come from a wide variety of backgrounds, and often don't have any understanding of the asylum process in the United Kingdom. Navigating this complex system is difficult in and of itself. However, coupled with being in a different society and community and often with limited English, it is almost impossible.

Asylum seekers are not your average client. Most are vulnerable to the support provided by the solicitor, and their cases are unique. This guide aims to assist asylum seekers in understanding the legal process and their entitlement to quality legal representation, as well as improving the quality of legal services provided to asylum seekers in Northern Ireland. This cannot be underestimated, as quality legal representation and understanding the process are paramount in assisting asylum seekers through their asylum claim, and can make a significant difference to the success of any asylum claim.

From my own personal experience, I have witnessed first-hand the dangers of misinformation being provided to asylum seekers on their cases. On being refused, I was informed by my solicitor that I did not have the right to appeal and would not be able to pursue my case further. I knew this must not be correct. After researching the asylum process by myself, I realised that I was afforded the right to appeal. At other times, solicitors have unilaterally changed the date of proceedings without informing the client, which of course can cause great distress. For many asylum seekers, they do not know they have the right to complain, they do not think to question what the solicitor tells them, and do not have access to the information within this guide.

This guide is aimed at tackling these issues, by putting the power in the hands of the asylum seeker and giving them the opportunity to educate themselves on their rights and how the asylum process works. It is also important in providing key information to solicitors, to ensure that they provide clear and informative advice, as well as understand the unique situation of asylum seekers.

I am very grateful to all those who continue to support asylum seekers in their claims. I am grateful to the asylum seekers who come to NICRAS and support the organisation and trust us with the difficulties they face. I am also grateful to the excellent legal professionals who do their utmost to help those individuals facing the difficult asylum process. Finally, I wish to extend my deepest gratitude to Mary Kerr, from the Northern Ireland Strategic Migration Partnership (NISMP), Gabrielle Doherty, Consultant, and The Race Equality Unit Policy Team.

Justin Kouame
Chairperson, NICRAS

2. INTRODUCTION

NICRAS: Northern Ireland Community of Refugees and Asylum Seekers, established in 2002, is the only refugee and asylum seeker-led organisation in Northern Ireland. It has approximately 600 members, and some 360+ young people and children, from 41 different countries. The NICRAS mission is to guarantee that asylum seekers and refugees are represented and afforded their rights, as codified by international, regional and domestic law. It does this by:

- » Providing advice and advocacy;
- » Campaigning, carrying out research and policy-writing;
- » Signposting for legal advice;
- » Providing destitution support;
- » Offering support and assistance with accommodation, benefits, education, training and employment;
- » Services for children and young people;
- » Providing orientation programmes;
- » English language classes.

The vision of NICRAS is of a vibrant, welcoming, just, and inclusive society, which promotes diversity, equality and effectively respects the human rights and dignity of refugees and asylum seekers.

About this guide: These guidelines have been produced by NICRAS, funded by the Minority Ethnic Development Fund (MEDF) of The Executive Office, as part of a project which seeks to improve the quality of legal services provided to asylum seekers and refugees in Northern Ireland. The project also aims to improve asylum seekers' and refugees' understanding of the legal process and their entitlement to quality legal representation, as well as to support those who have not received the expected level of service from their solicitor. The main objectives of the legal project are:

1. Supporting asylum seekers to make informed decisions when choosing legal representation;
2. Supporting asylum seekers and refugees in navigating the legal system, including challenging poor service, changing representation, and submitting supporting evidence;
3. Empowering asylum seekers and refugees to know their entitlement to particular services, including interpretation and legal aid;
4. Encouraging asylum seekers and refugees to participate actively in their cases, including monitoring the progress of the case and work being undertaken on their behalf;
5. Educating solicitors on the particular needs of this client group and providing a mechanism to feedback their clients' experiences.

Why has this guide been produced?

- » In recent years, concerns have been raised by NICRAS members about the quality of legal services provided to asylum seekers. Research has shown that language barriers, cultural differences, and a client group that suffers disproportionately from poor mental health and the effects of trauma, complicates the task of effective representation.¹
- » As the number of asylum seekers and refugees in Northern Ireland increases, it is not surprising that there is also a growing number of solicitors providing advice and representation in this area. It is vital, therefore, that solicitors are both fully competent in the law and receive sufficient training in relation to the particular vulnerabilities and needs of asylum seeker and refugee clients.
- » These guidelines aim to clarify what asylum seekers and refugees can reasonably expect from their solicitors. Many of those attempting to establish their right to remain in Northern Ireland do not understand the legal or governmental system through which their claim is being taken. It is hoped that this guide will provide some clarity in relation to that process.
- » The guide also seeks to reinforce the minimum standards of professional service that are required from solicitors. It is hoped that both the client (the asylum seeker or refugee) and the solicitor will gain an improved understanding of what is expected of them, and of what they can expect from the other.

Who is it for?

This guide is for asylum seekers/refugees and solicitors alike. Certain sections are directed at one group or the other, but it will allow both to consider the other's perspective in the context of exploring the rights to which asylum seekers and refugees are entitled. Ideally, this set of guidelines will form the basis for further training and will encourage those reading it to take pragmatic steps to increase their knowledge and understanding of the issues raised.

What does it not do?

This guide does not offer legal advice. Whilst it provides a summary of some of the processes involved in lodging an asylum/immigration application or appeal, it is not intended to provide advice on the procedure or the legal requirements. The circumstances and facts will differ from one case to another. If you require legal advice or assistance, it is vital that you speak to a solicitor.²

¹ Mary Kerr, 'Improving legal support for asylum seekers in Northern Ireland', May 2016, NISMP

² See Appendix A, attached to this guide, for a list of immigration practitioners devised by NICRAS. Alternatively, contact The Law Society of Northern Ireland on 028 9023 1614.

3. THE ROLE OF A SOLICITOR

“No one explained the asylum process. I have no experience of it. [When I arrived] I didn’t even know what the word ‘asylum seeker’ meant”.

3.1 General

Solicitors in Northern Ireland are qualified to provide legal advice and representation in accordance with regulations set down by The Law Society of Northern Ireland. Typically the solicitor will have completed a university undergraduate degree in law, and then undergone professional training at the Institute for Professional Legal Studies in Northern Ireland (or the Legal Practice Course in England or Wales). Both courses involve intensive training under the supervision of a fully qualified and experienced practitioner.

Those courses involve training in core subjects, such as County Court practice and procedure, or conveyancing. At the time of writing, the professional bodies in Northern Ireland have not made immigration law a compulsory module of any of these courses, either at undergraduate or postgraduate level, including during the professional training course. Those who have an interest in the area may undertake additional study in immigration if they so choose (if optional modules are on offer) or in their spare time. For the vast majority of practitioners here in Northern Ireland they have ‘learned by doing’, as well as by attending Continuing Professional Development (CPD) courses. This is often the case with a lot of specialist areas of law. Many solicitors focus their practice almost exclusively on immigration and asylum law. Others may spend equal amounts of time on this area of law as on others.

The only requirement to practice in immigration and asylum law is that a solicitor must be on the ‘roll’ of solicitors in Northern Ireland. The roll is held and controlled by The Law Society. Anyone on the roll will have been issued with a practicing certificate by The Law Society. These are administered on an annual basis and solicitors must fulfil certain requirements to maintain their practicing certificate.

Ultimately, The Law Society of Northern Ireland has the ability to administer and revoke practicing certificates. Complaints about solicitors can be investigated by The Law Society and there is further information on how to complain at section 8.2 below.

The situation in England and Wales is different, where there is an Asylum Accreditation Scheme. This accreditation is a requirement for any immigration or asylum practitioner who applies for public funding (legal aid) before they can act in any immigration related matter.

However, part of the requirement of solicitors in Northern Ireland, to maintain their practicing certificate, is that they must complete a minimum number of hours of CPD training. Many practitioners chose to go to courses which are relevant to their areas of practice. The Law Society of Northern Ireland has recently introduced a number of new courses on immigration and asylum topics, and this trend is likely to continue in the future, given the increase in these types of cases, and in light of the ever-changing nature of this area of law. In 2017, The Law Society of Northern Ireland established an Immigration Practitioners’ Group, the purposes of which include the promotion, organisation and conduction of lectures, seminars, meetings and events in the area of immigration and asylum law.

3.2 Finding a solicitor

NICRAS has produced a list of asylum and immigration law practitioners, the current version of which is attached to these guidelines.³ The list is not exhaustive and there are undoubtedly other solicitors in Northern Ireland working in immigration law. The Law Society of Northern Ireland can provide a comprehensive list of all solicitors who provide services in this area. You should ask your solicitor at the outset if they are able to deal with your case, after giving them an overview of the circumstances.

Solicitors should provide advice on the law, and guidance on the process involved, depending on the case, which may include advice on funding and the merits of an appeal if an application has been refused. In all dealings with officials, including the Home Office and members of the legal profession, asylum seekers and refugees should absolutely be treated with dignity and respect. Furthermore, clients are entitled to a certain standard of professionalism from solicitors. If a client is not happy with how a case has been handled, she or he has the right to change solicitors and/or make a complaint about how a solicitor has acted.⁴

3.3 Beware of 'rogue' immigration advisors

Although not as much of a problem in Northern Ireland as in England and Wales, everyone should beware of people who claim to be 'immigration advisors' who are not regulated by a body such as The Law Society of Northern Ireland or the Office of the Immigration Services Commissioner (OISC). It is an offence under Section 84 of the Immigration and Asylum Act 1999 for anyone who is not a qualified solicitor, or OISC accredited and regulated, to give advice on immigration matters. Those who are in breach of this law can be prosecuted and could be sentenced to a jail term if found guilty. Many people in England have been duped into paying for advice which has not been accurate and which, in some cases, was detrimental to an asylum or immigration claim. Solicitors in this jurisdiction should confirm to their clients that they are regulated by The Law Society of Northern Ireland. It is illegal for trainee solicitors to give immigration law advice.

3.4 Relationship between solicitor and client

A solicitor provides a service to her or his clients. The client is therefore the 'customer' and should expect to be treated as such. The client should not be afraid to complain or change solicitors if they are not satisfied with the service provided. After deciding to 'instruct' a solicitor, or engage their services, a client should expect to have a meeting with the solicitor to provide instructions, or, in other words, information as to the legal issue with which they require assistance. The solicitor should then follow the meeting up in writing, outlining what it is they are going to do for the client and other important details. For further information on the initial solicitor-client meeting, see section 3.5 below. It is important to remember that, whilst the solicitor will complete the legal work required, the client must provide the information and evidence, in the form of documents, statements and witnesses where available and relevant. Ultimately, it is the client's case and it will only be as good as the supporting evidence which, for the most part, the solicitor cannot provide.

³See Appendix A ⁴See Section 8 below

3.5 Initial solicitor-client meeting

In discharging their duties, solicitors must ensure that none of their clients are disadvantaged during the course of their legal case. This includes making sure that appropriate and properly trained interpreters are provided where necessary, particularly at solicitor-client meetings, during the course of Home Office interviews, and at court tribunals or hearings.

Clients are encouraged to be active participants in their legal case: by knowing what it is their solicitor is doing for them, ensuring they are clear about the process, and being fully informed in relation to any time scales or limits. If in doubt, ask!

An initial meeting between a solicitor and a client should involve the following steps:

- » Information gathering by the solicitor of the client's personal data, situation, and background, as well as the timeline of events which has led to the client being in the solicitor's office.
- » An explanation of what the solicitor can do for the client, and how the matter will be financed, explaining how legal aid works if the client is likely to qualify, and providing a detailed breakdown of the likely professional costs and expenses if the client is paying privately.
- » A summary of the options available for progressing the matter through the legal system in Northern Ireland. This should include an explanation of the complex nature of the asylum process, the different avenues that can be explored, and ensuring that the client understands what will be happening with her or his case.
- » If there is a particularly complicated legal issue, it is reasonable and appropriate for the solicitor to take a detailed account of the client's case and background at the meeting, and then agrees to provide further advice, after carrying out research or instructing Counsel. This should include an indication as to when that additional advice will be furnished and in what format (e.g. a further meeting or in writing).
- » Clear, comprehensive advice should be given as to what will be required to apply for asylum or immigration status, in terms of documents and other written or oral evidence. This should be confirmed in writing.
- » The client should be advised of any time limits (for submission of applications and documents) as well as the likely timescale involved in bringing the matter before the courts, including whether a full hearing is likely and what this will entail. Timescales should be made clear, and the solicitor and client should agree upon a communication protocol, including how often the solicitor will update the client, how the client can get in touch with the solicitor, and emergency contact details if necessary.
- » The solicitor should inform the client that they have a complaints procedure and briefly outline what it is, should a problem arise. It must be explained that complaints will not have any impact on an asylum or immigration application. For more information on changing solicitors and complaints, see chapter 8.

- » The initial meeting should be followed up with a detailed 'client care' letter in accordance with The Law Society regulations, including: setting out what was discussed; what the client's options are; what was agreed as a way forward; any information on fees; and the fact that there is a complaints procedure as well as how this can be invoked, or started, if necessary. It may also be helpful, where relevant, to outline what the solicitor will not do as part of the case (e.g. the solicitor will not be contacting the National Asylum Support Service – unless that has been agreed – or will not be in a position to ensure that housing is provided/sufficient if, for example, the client has talked about housing at length during the initial meeting).

3.6 Points for both parties to consider:

- » A detailed immigration history will need to be given/taken. Clients must be honest with their solicitors. If there is a history of a criminal offence or offences, for example, the advice given by the solicitor will be tailored to that situation and may differ from the advice that would otherwise have been given. Not disclosing such information to a solicitor is likely to affect the asylum or immigration claim later in the process.
- » Interpreter services may be required even when an individual demonstrates a reasonable level of spoken English. The need for an interpreter should be assessed by the solicitor, but clients should also indicate if they are not happy with the interpreter provided. Solicitors and clients should be aware of the potential for a 'conflict'. For example, if an interpreter is assigned who was involved in previous proceedings with the client, solicitors should consider whether there is a conflict. Clients should let their solicitors know if this is the case. It may not be appropriate to have family members interpreting.
- » Immigration and asylum clients are unlikely to have much, if any, experience of the legal system in Northern Ireland or the UK. Terminology should be adapted to reflect this.
- » Clients should be made to feel comfortable and advised that the information they provide will be treated with complete confidentiality.
- » Every application will be different, and one person's success or failure should not be taken as an indication of how another application will be considered.
- » Solicitors cannot control and have no influence over the Home Office. Delays by the Home Office are not due to anything done or not done by the solicitor. A lot of patience will be required. Solicitors are duty bound to contact their clients when there has been any development in their client's case. They are unlikely to contact their clients more than once every three months if nothing has happened on a file.
- » Everyone is entitled to be treated with dignity and respect.

- » There are a number of organisations who can assist asylum seekers and refugees with other aspects of life in Northern Ireland, such as housing, food, education, etc. Please refer to 'Refugees and Asylum Seekers in Northern Ireland: An Essential Guide' produced by NICRAS.

KEY POINTS

Solicitors should:

- » Take a detailed history
- » Provide an interpreter if necessary
- » Explain how the case will be financed
- » Agree a communication protocol
- » Explain the complaints process
- » Provide a client care letter
- » Confirm any documentation required
- » Clarify time limits

Clients should:

- » Provide a full, honest, detailed history
 - » Participate actively
 - » Raise any interpreter/ interpretation issues
 - » Ask questions if anything is unclear
-

4. INFORMATION FOR SOLICITORS

“I would like to see training for solicitors...so that they know what we are going through.”

4.1 General

Immigration law is a growing area and is likely to continue to expand as an avenue of work in the coming years. Anyone on the roll of solicitors in Northern Ireland is licensed to practice in immigration and asylum law. However, before accepting instructions in an asylum or immigration case, solicitors should first consider that there have been thousands of changes to the immigration rules in recent years. Given that the implications for would-be clients are so significant, solicitors should honestly decide whether or not they have sufficient knowledge and expertise. If not, they are encouraged to refer enquiries to another firm of solicitors practising in the area.

In any event, it is imperative that solicitors attend courses and keep up to date with changes in legislation, Home Office rules, and case law developments.

OISC training is not required for solicitors but it is one form of accreditation which will give considerable background and grounding to anyone planning to work or working in this area.

Solicitors in Northern Ireland may be interested to know that, to receive legal aid for immigration-related cases in England and Wales, solicitors require an additional accreditation from the Solicitors Regulation Authority. There is no such requirement in Northern Ireland at present. However, it is noteworthy that the Statutory Registration Scheme will soon be implemented by the Department of Justice and the Legal Services Agency and it will require solicitors in receipt of legal aid funding to commit to a Code of Practice. Through the scheme, complaints can be lodged and investigated.⁵ It is possible that some form of compulsory accreditation for immigration practitioners will be introduced in the future.

4.2 Client care

Solicitors owe all clients the same duty of care, which can be summarised as follows:

- ✓ to act professionally;
- ✓ to ensure that their accounts are kept in order and comply with industry standards;
- ✓ to provide legal services which meet minimum standards in terms of competency.

In order to protect clients, and themselves, from claims or allegations that they have acted negligently or inappropriately, there are certain requirements and obligations for solicitors to fulfil in meeting those standards. The Solicitor's Code of Conduct should be referred to in this regard but, in the context of immigration and asylum claims, some of the most important obligations are as follows:

⁵For definitions of 'legal aid' and 'Statutory Registration Scheme', see section 10 below.

- » Taking attendance notes;
- » Providing interpreters;
- » Meeting face to face with clients where possible (the only real exception being where the client is not in Northern Ireland);
- » Explaining the process and any cost implications for the client;
- » Following this up with a 'client care' letter⁶, in which the position is set out in clear, easy-to-understand (i.e. non-legalistic) language;
- » Attending hearings;
- » Making representations on the client's behalf in accordance with their client's instructions;
- » Advising clients on the law;
- » Seeking the advice/assistance of Counsel where appropriate;
- » Informing clients immediately of any developments in their case;
- » Ensuring there are no delays generally, aware of the impact this could have on an asylum seeker (including the very short time frame that clients have to leave their NASS accommodation after a decision has been made, and the risk of destitution);
- » Responding to telephone calls and correspondence within a reasonable time frame. The Solicitors' Practice Regulations 1987 require that solicitors 'answer, with reasonable promptness, any enquiry by a client or the client's authorised agent as to the progress of that client's business';
- » Keeping files under review (in other words, carrying out a review of every file at least once every three months);
- » Keeping in contact with their client on a regular basis (ideally at least once every three months, even if this is to say that nothing has happened);
- » At the end of a process, explaining the outcome to the client and giving advice on the options that they have going forward;
- » Advising the client of any deadlines for ongoing or potential future claims or applications;
- » If they are unable to act on the client's behalf any further, notifying the client of that fact and setting out the reasons why (e.g. lack of funding, lack of expertise) and providing recommendations of other firms/organisations who might be able to help;
- » Passing papers to newly appointed solicitors without delay (unless there is a lien in existence), and ensure certificates for legal aid transferred to the successor solicitor.

⁶The client care letter should, generally speaking, set out what was discussed; what the client's options are; what was agreed as a way forward; any information on fees; and the fact that there is a complaints procedure, as well as a brief description of the complaints process.

4.3 Funding

In cases where clients are entitled to funding, applications to the Legal Services Agency must be submitted in a timely fashion. The source and scope of the funding should be properly explained to clients from the outset, both in terms of what it allows for and in relation to what is required from the client in order to submit the application.

Solicitors are reminded that they must provide appropriate documentation to the Legal Services Agency for funding for FLEX interpreters and that they are required to inform the Legal Services Agency if Counsel is being instructed, even though many immigration application fees are fixed.⁷

If clients wish to change solicitor, for whatever reason, practitioners should collaborate and agree any outstanding fee issues in 'set fee' cases, as well as seeking to transfer the legal aid certificate without delay.

4.4 Interpreters

Simply put, poor interpretation services can prevent access to justice, which could have life-changing consequences for asylum and immigration law clients. It is vital to establish with clients what their interpretation needs are, including any issues of dialects within a language and any conflict that may arise. This involves taking instructions from clients as to their language and interpretation needs, as well as any previous experience/involvement of a particular interpreter. Even though some asylum seekers and refugees may speak English reasonably well, if they do not fully understand what is being discussed, an interpreter should be sought. Ensure that a client's needs are also being met at Home Office interviews and during any court process. All problems or issues raised should be properly addressed. FLEX Language Services are the approved and contracted provider of interpreter services by the Legal Services Agency. Solicitors are required to use FLEX in all legally-aided cases. In all other cases, solicitors should ascertain the qualifications of the proposed interpreter to ensure that they have sufficient expertise and competencies. It is also appropriate to instruct interpreters in relation to the background of the client's claim and the nature of any interview or tribunal hearing taking place, reinforcing the importance of 'word-for-word', precise interpretation.

4.5 False documents

Article 31 of the Refugee Convention, and the corresponding provision in UK law – Section 31 of the Immigration and Asylum Act 1999 – provide that refugees have a defence to any criminal charge of using false documents to enter the UK. It requires an individual, seeking to rely on the provisions, to:

1. Prove that they travelled to the country of refuge directly from the territory where they fear persecution;
2. Present themselves to the domestic authorities without delay; and
3. Show good cause for their illegal entry or presence.

⁷ There is no separate/additional amount allowed for the instruction of Counsel – the apportionment is agreed between the solicitor and Counsel.

There have been many instances in Northern Ireland (and in the rest of the UK) where such cases have, nevertheless, been prosecuted, and where criminal-law solicitors, who appear to be unaware of the provisions, have advised their clients to plead guilty. Both the refugee/asylum community and solicitors alike are encouraged to be vigilant of this practice, and to inform and educate their colleagues and friends about the defence available.⁸

4.6 Additional general points for solicitors

- » It is illegal for trainee solicitors to give immigration law advice. It is advisable to confirm your qualification in the initial 'client care' letter and indicate that you are regulated by The Law Society of Northern Ireland, mindful of the offence under section 84 of the Immigration and Asylum Act 1999.
- » See clients individually, at least initially, and verify their identity to ensure that they are giving instructions freely, conscious of the risks of human trafficking.
- » Where possible, you should consider how written communications with your clients can be adapted to recognise any language barriers.
- » Original documents must be kept in a safe and should be retained for no longer than absolutely necessary, before they are securely returned to the client.
- » Monitor and address your own ongoing training needs, and attend relevant courses regularly. This should include some training for receptionists and administrative staff to handle general enquiries when you are not available.
- » Solicitors should build in a process of client feedback throughout the handling of the case, as well as at its conclusion.
- » Many asylum seekers and refugees are new to 'western' ways of life. In particular you should remember that your client may be totally unfamiliar with the immigration system in the UK. Dealing with this group of client may require a certain element of tailoring of your practice, so as to respond to the particular sensitivities, and vulnerabilities of these clients. For example, an asylum seeker may never have heard terms such as 'asylum claim', 'solicitor' and 'legal aid'.
- » Cultural differences may require specific sensitivities to what might otherwise seem very common every-day acts in Western Europe. For example, did you know Muslim women are prohibited from shaking hands with non-Muslim men? If you are a male solicitor, offering your hand to a female Muslim client may cause embarrassment and perhaps offence. A quick internet search in relation to a prospective client's country or religious background will help deal with greetings and formalities. **There are more onerous requirements in relation to research, where country-background information is vital to the client's claim. Solicitors should engage experts where appropriate. There are also free, voluntary research organisations, such as Asylos, that can assist where time or resources are limited.**

⁸See Appendix D

- » Whilst general client care is vital, many of the issues around the provision of legal services in this area would be avoided with the introduction of simple language, as well as clear communication about what can and cannot be done within the 'lawyer-client' arrangement. Solicitors are also encouraged to familiarise themselves with the countries of origin of their clients, as well as the specific issues their clients may have faced.
- » Solicitors should educate themselves in relation to the other support agencies that exist in the sector, and engage with them as required. You should refer clients in need of further support, such as for housing, welfare, education and health needs, to the 'Essential Guide' booklet published by NICRAS. It also contains details of the many support organisations to which new arrivals can go for assistance and is a useful resource to have to hand if clients have issues in relation to which you, in your role, cannot offer assistance.
- » Claiming asylum is a daunting, intimidating and unpleasant experience. Those who are doing so have often made dangerous journeys and may have lived through traumatic experiences, both in transit and whilst in their country of origin. Solicitors are ultimately engaged to assist in the process, by ensuring that the correct procedures are followed and that asylum seekers and refugees are **treated fairly and in accordance with the law.**

KEY POINTS

For solicitors:

- » Comply with client care, and the Code of Conduct, obligations
 - » Contact clients at least once every three months
 - » Contact clients and arrange to meet them as soon as there has been a development
 - » Apply for funding in a timely fashion and provide all documentation required
 - » Be aware of and comply with Home Office and court time limits
 - » Ensure that clients' interpretation needs are met
 - » Be aware of, and adapt to, clients' cultural backgrounds
 - » Keep abreast of developments in the law and attend relevant courses
-

5. INFORMATION FOR ASYLUM SEEKERS AND REFUGEES

**“After we lost at the First Tier Tribunal, we were told to go home.
But I learned myself. Now it is going to further submissions.
We collected the information ourselves.”**

- » Immigration laws in the UK are extremely complicated. This document provides only very basic and brief summaries of some of the provisions. The Home Office website contains all of the rules, the application forms, and guidance documents on the various provisions. It will also have the most up to date point of reference for any changes to the rules, particularly as the UK continues to negotiate over the rights and responsibilities of EU and non-EU citizens, post-Brexit.
- » You are strongly advised to keep all your personal documents safe. You should also keep a copy of any correspondence to and from your legal representative(s) and any government department, such as the Home Office and NASS.
- » Solicitors should not have control of original documents, such as your passport, for any considerable length of time. If it is required in respect of a particular application, ask that it be kept in a safe, and ask when it will be returned to you. This should be no longer than a matter of months, usually six or less. If you require access to certain documents, such as to apply for benefits, ask your solicitor for them to be returned for the period required.
- » Inform your solicitor immediately about any changes to your address or telephone number.
- » If you are feeling too stressed to deal with matters, you can ask a friend to speak to your solicitor on your behalf but you must provide confirmation in writing of the fact that you allow that person to do so.
- » Do not delay in seeking and providing evidence to the Home Office and your solicitor.
- » If there is something you do not understand during the course of the legal process, tell someone that you don't understand and ask them to explain it to you. If an interpreter is not communicating properly, tell your solicitor or the Home Office.
- » If waiting to hear from the Home Office is causing stress or anxiety, individuals should consider taking up or practicing a hobby or becoming involved in a local community group. Please refer to the 'Essential Guide' produced by NICRAS for details of different friendship clubs and community groups. If the stress and anxiety is affecting your health, you should go and see a doctor.
- » There are many support groups in Northern Ireland for asylum seekers and refugees. This wide network of organisations has the skills and capabilities to support and assist you through the immigration process and to help you become accustomed to life in Northern Ireland.
- » Volunteering and becoming an active member of the community may be of assistance to you in any future application.

- » Learn about the legal process with easy-to-use resources, such as the Right to Remain Toolkit which is available online and in print.⁹ Keep up to date with any legal developments. It is often said that knowledge is power. If you are, at least in some way, knowledgeable about the process, you are unlikely to feel as frustrated and anxious as you would if you knew nothing. Do not be afraid to ask for help, guidance, and support.

KEY POINTS

For clients:

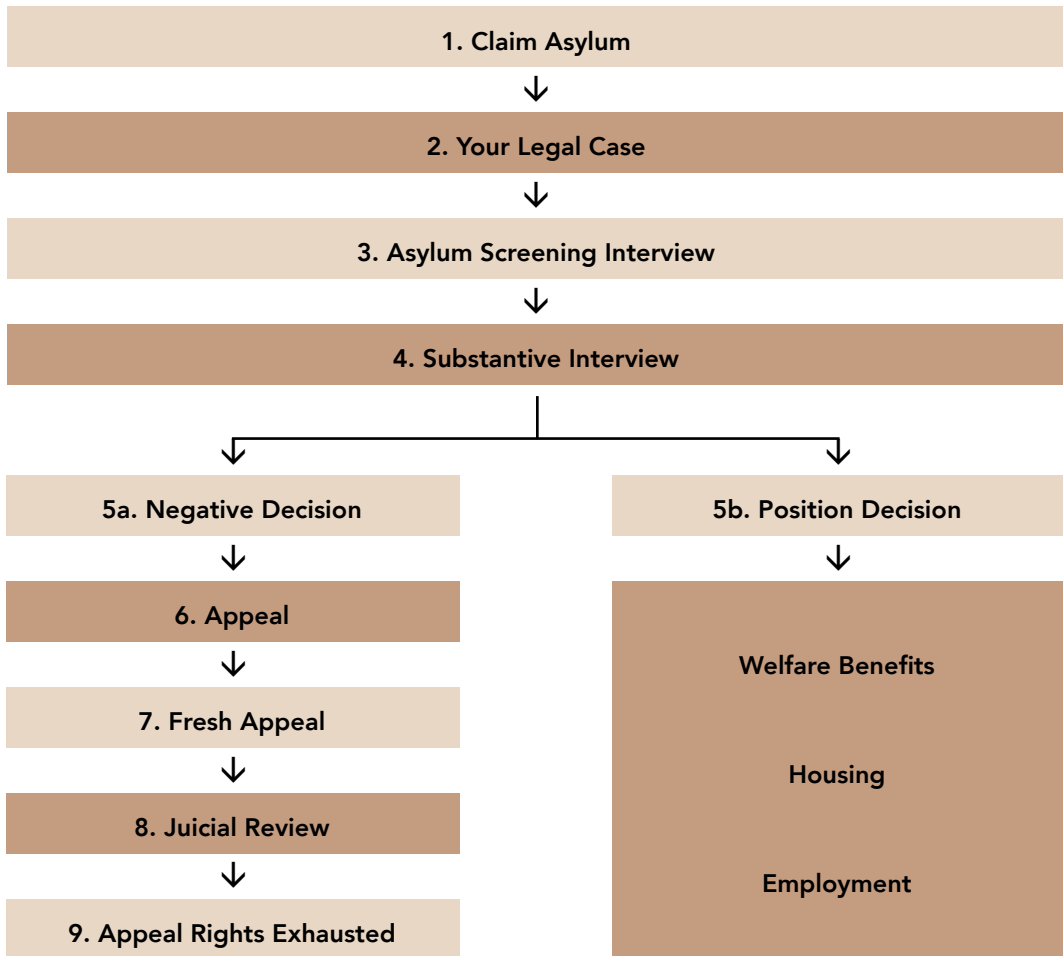
- » This is an extremely complicated area of law – always seek advice from a qualified solicitor
 - » Gather as much information and documentation as possible
 - » Keep documents safe
 - » Do not delay when required to provide information or documentation
 - » Ask questions and keep up to date with developments
 - » Seek support from community organisations such as NICRAS
-

⁹Go to: <https://www.righttoremain.org.uk/toolkit/>

6. THE ASYLUM APPLICATION PROCESS

“I would have liked him to give us the options and the information, and then let us decide.”

6.1 The process



6.2 Preparing for a Home Office interview

The screening interview

- » An application, or claim, will have to be lodged with the Home Office as soon as possible following arrival in Northern Ireland. There will be an initial interview, called a screening interview, during which an individual will be required to provide basic details in relation to personal circumstances, which may include how she or he has come to be in Northern Ireland. Although in this interview the questions are brief, the applicant will be asked to explain why she or he has come to the UK. The reasons given will be used to categorise a case and it is important therefore to be well prepared, even at this stage. If possible, solicitors should meet their clients before the screening interview to advise the applicant what to expect and get a sense of the case and the client's statement.
- » Solicitors can attend the screening interview with their clients and can assist them in preparing for the next stage, the 'substantive' interview.

The substantive interview

- » The claimant will be invited to a 'substantive' or main interview with the Home Office in the weeks or months after the screening interview. At the substantive interview the Home Office will go into much greater detail.
- » If there is sufficient funding (from a private paying client or through legal aid), a solicitor may be able to attend the substantive interview with their client, although this is not common.
- » **From April 2018, The Home Office will be rolling out the introduction of the Preliminary Information Questionnaire (PIQ). This will require a witness statement to be prepared in advance of the substantive interview. The PIQ, sometimes referred to as the Preliminary Information Form, will be provided to all those claiming asylum, except minors.** It is hoped that this process will ensure that the interviewer has more knowledge about the claim, and the country in question, in advance of the interview. This should ensure a more focused approach by the interviewer, reducing interview times and avoiding the need for asylum seekers to relive traumatic experiences.
- » It is good practice to submit a client statement, in support of a case, in advance of a substantive interview. Solicitors may advise clients not to submit a statement if there is anything in it which they think would disadvantage the case. In that event, solicitors should give clear reasons for their advice.
- » Solicitors can inform their clients about what to expect during the substantive interview and can advise what documents are required to support an application. They can also explain the level of detail that is required and how to deal with a repeated line of questioning.
- » Asylum seekers are entitled to obtain an audio recording of their interview. They are advised therefore to ask their solicitor to request an audio recording of the substantive interview and that a transcript be sent to the solicitor in the aftermath

(regardless of whether or not the solicitor is in attendance). The recording provides a more accurate reflection of the interview than a typed transcript.

6.3 General points for the interviews

- » Asylum seekers are in the best position to provide the best evidence for their claim. Asylum seekers themselves will need to do their own research relevant to their case, and gather evidence to build the best case possible and prepare for the client statement. Solicitors should help clients prepare for the process of giving a statement but it is the asylum seeker who is the person most familiar with the case. They must not rely on the solicitor to be able to represent them without having provided the right information and evidence from the very beginning. For asylum seekers from non-commonwealth countries this can be particularly important, as information and evidence may be more difficult for the solicitor to research subsequently.
- » If at any stage during either of the interviews a claimant is not fit or well she or he can request a break.
- » If the applicant feels there is a problem with interpreter services at the interview, for example due to a dialectal difference or misunderstanding, it is important to tell the Home Office official in attendance, and the solicitor in the aftermath.
- » After reading the transcript of the interview, the solicitor can help their client to decide whether there have been any errors which are likely to affect the claim. An example would be if the interpreter has failed to properly relay an important part of the client's evidence. If so, the solicitor can write to the Home Office within 5 days of receiving a copy of the transcript to clarify aspects or make further representations on behalf of the client. It is also possible to submit additional supporting documents, but there is a limited time frame for doing so.
- » A solicitor should ask their client to check and verify all documents that are being submitted to the Home Office, including any corrections to the interview.

KEY POINTS

Solicitors should:

- » Explain the process to clients
- » Review transcripts and correct errors

Clients should:

- » Prepare for each interview
 - » Complete a client statement or Preliminary Information Questionnaire
 - » Provide all information and documentation relevant to the case
 - » Request an audio recording
-

7. THE DECISION

**“All my children talk about is ‘refugee status’;
not about their future or their education.”**

7.1 Possible outcomes

Positive decision

There are three main types of status that the Home Office may grant:

- *Refugee status*: when a person is recognised as a refugee, in accordance with the Refugee Convention, and is granted leave to remain for 5 years, after which she or he may apply for Indefinite Leave to Remain.
- *Humanitarian Protection*: when a person is not considered to be a refugee, in accordance with the Refugee Convention, but it is accepted that, for humanitarian reasons, she or he should not be returned to her or his country of origin. This may be due to a threat of torture or inhuman or degrading treatment, or some other similar reason. After 5 years, she or he may apply for Indefinite Leave to Remain.
- *Discretionary Leave to Remain*: when a person does not meet the criteria for refugee status under the Refugee Convention, nor is considered as requiring humanitarian protection, but there are other exceptional reasons to justify leave to remain being granted. This is usually granted for a period of 2½ years and, after 10 years, she or he may be able to apply for Indefinite Leave to Remain.

Once status has been granted, under the rules at present, individuals must have a Biometric card to prove their right to stay in the UK, and will require a National Insurance number which is used in the administration of national insurance and social security (that is, for jobs and benefits). The Biometric card will be issued to those granted status, containing relevant identify and status information. Individuals must apply for a National Insurance number. For further information, contact NICRAS.

Once refugee status or leave to remain has been granted, individuals should be aware of any dates by which they will need to have applied for renewal or extension of status. At present, applications for renewal can only be applied for 28 days before the present grant of stay is due to expire. Applicants are advised to speak to a solicitor to ensure that the correct time limits are adhered to and the correct procedure is followed.

Refusal

If an application is refused, the Home Office letter must stipulate the reasons for the refusal and provide details of any right to appeal. This is outlined in some further detail in the next section. If issued with a ‘Certified Refusal’, there is usually no right to appeal but there may

be grounds to apply for a 'Judicial Review'. Solicitors should take clients through the decision letter and provide further advice in relation to a potential appeal or Judicial Review. If neither option is available, refused applicants may wish to avail of the Assisted Voluntary Return Scheme run by the Home Office.

Points to remember:

- » The Home Office can take several months, sometimes more than one year, to issue a decision. This is a frustrating and worrying time and the impact on the lives and health of asylum seekers in particular should not be underestimated or belittled.
- » During this time, whilst the application is being considered by the Home Office, clients are unlikely to hear from their solicitor in any substantial way. The client should however be provided with an update at least once every three months, even if this is simply to say that the solicitor has not heard from the Home Office.
- » If clients call their solicitor on a regular basis during this time, whilst it might seem reasonable to expect solicitors to return calls they are unlikely to do so if there have not been any developments in the case. Solicitors are often dealing with a large caseload and are usually busy dealing with many other claims. As detailed in section 4.2 above, solicitors should explain during the initial meeting with their client, confirmed in writing in the 'client care' letter, how often they will be in contact with the client.
- » In any case, solicitors should, without fail, contact their clients on the day they receive notice of the outcome of a claim, and arrange a meeting with the client to discuss the decision.
- » In the event of the refusal of an asylum claim, this meeting should be arranged as soon as possible, usually within three working days, to discuss the reasons for the refusal and options for challenging the decision.
- » The decision letter for any asylum or visa application claim must include details of the rights of appeal as well as the grounds on which the appeal can be brought.
- » If there is no right of appeal, there may be scope to bring a Judicial Review Application. Judicial Review is a different legal process, through which a decision by any public body, such as the Home Office, can be challenged. The judicial review procedure is not covered in any detail in this document, but solicitors can advise if it is an option in a particular case and about the process involved.
- » Clients should be aware that there is a territorial limit to the terms under which they may be granted humanitarian protection or refugee status. It is limited to the geographic borders of the UK and Northern Ireland and is particularly important for those residing in Northern Ireland, due to the land border with the Republic of Ireland. It is important for parents to let schools and hospitals know in case, for example, a school trip is planned to somewhere in the Republic of Ireland. Anyone who transports an individual with humanitarian protection or refugee status across the border from Northern Ireland to the Republic of Ireland could be committing a crime and thereby liable to prosecution. If there is a doubt or potential issue, a solicitor should be consulted.

KEY POINTS

Solicitors should:

- » Review files at least once every three months
- » Chase up the Home Office where appropriate
- » Contact clients immediately following a development
- » Provide advice to clients on options available if an application has been refused

Clients should:

- » Expect the Home Office to take several months to consider the claim
 - » Be issued with a Biometric card and apply for a National Insurance number if status is granted
 - » Be aware of any limits/restrictions
 - » Speak to a solicitor as soon as possible following a refusal
-

7.2 Appealing a decision

- » Solicitors should advise clients if appealing a decision is the best option and, if so, outline the appeals process.
- » If legal aid funding has been available up to this point, a further application will need to be submitted to the Legal Services Agency for the purposes of bringing an appeal. There is no guarantee that this application for funding will be successful, even if an individual has already been 'means-tested'. At this stage, the Legal Services Agency will also look at the merits of the appeal or, in other words, the likelihood of it being successful.
- » The time limit for lodging a Notice of Appeal is **14 days** after the Home Office has issued its notice of the decision (or 28 days after a claimant's departure from the UK if they are no longer in the UK).
- » Time limits are crucial when lodging appeals and solicitors should advise clients of key dates and anything the client is required to do before those dates.
- » The First Tier Tribunal¹⁰ (FTT) will notify solicitors in relation to any actions to be taken, any documents which are required, and appoint a date for the hearing. If the Legal Services Agency has not reached a decision on an application for legal aid, the case may have to be 'adjourned' or put back until it is known whether or not a case will be funded.
- » If legal aid is refused, funding will have to be sourced from elsewhere, such as support from family or friends or through another source (for example, some community groups may be willing to provide financial support for legal cases). It may also be possible to appeal the decision to refuse legal aid, which is a separate process and focuses on the right to funding only.
- » Solicitors should prepare clients for an appeal hearing by consulting with them and the barrister (if one has been instructed) in advance. This will help the client to understand the procedure (for example, where the hearing will take place and when, who is likely to be in the room and other things to expect). It should also prepare the client for the issues which will be central to the appeal and the line of questioning that the solicitor or barrister will focus on, as well as the likely 'cross-examination' (or the line of questioning) by the Home Office lawyers.
- » During this time, if required, solicitors can inform the Home Office that an appeal has been lodged in relation to their decision, which should prevent any issues from arising when a person is 'signing on' at Drumkeen House.¹¹

¹⁰ After the Home Office considers an application, the First Tier Tribunal (FTT) is the judicial body which will initially consider an appeal against a decision refusing refugee status (unless there is no right of appeal, and it is possible to commence Judicial Review proceedings, in which case the Judicial Review Court will consider the matter). If the decision to refuse status is upheld by the FTT, the case may be capable of appeal to the Upper Tribunal.

¹¹ Any person in Northern Ireland who does not have permission to stay in the UK, but who is pursuing an application for asylum or an appeal, will have to attend regularly at an Immigration Reporting Centre, which, in Northern Ireland, is at Drumkeen House, in Upper Galwally, Belfast.

7.3 Failed appeal

- » If an appeal is unsuccessful, a further appeal of the First Tier Tribunal (FTT) decision can be lodged with the Upper Tribunal (UT). It is a two-stage process: applying for permission to appeal, known as 'leave to appeal'; and the appeal itself.
- » An appeal to the UT is usually based on the papers alone, which means that there is unlikely to be an oral hearing (where the parties attend to give evidence).
- » There are even tighter time frames for lodging a Notice of Appeal to the UT – 12 days from the decision that you have a right to appeal (or 7 if the applicant is in detention, and 38 days if the person is outside the UK at that time).
- » The UT can remake the decision or refer it back to the FTT.
- » If the appeal to the UT is unsuccessful, an appeal on a point of law can be brought in the Court of Appeal in Northern Ireland within 14 days. Again, permission or 'leave to appeal' must be granted, in this instance by the UT or the Court of Appeal itself.
- » If an application has failed any or all of these stages, it may be possible to submit a 'fresh claim' if new evidence can be produced.
- » An applicant who is refused asylum can apply for short-term support under Section 4 of the Immigration and Asylum Act 1999. Section 4 support takes the form of accommodation and a pre-paid 'payment card' to cover food and essential toiletries. It does not provide cash payments. Solicitors can assist in making a Section 4 application, or help can be sought from other organisations such as Bryson Intercultural.
- » If an application and the appeals associated with it have failed, and there is no legal process pending, asylum seekers and refugees are at risk of being detained and possibly removed from the UK.

KEY POINTS

Solicitors should:

- » Advise clients about their appeal rights
- » Consider whether a Judicial Review is possible, if an appeal is not possible
- » Be aware of and comply with any time limits
- » Prepare clients for hearings

Clients should:

- » Know that there may be a right to appeal a refusal decision
- » Be aware that, if an appeal fails, the next stage is twofold: applying for 'leave' (permission) to appeal to a higher court, then the appeal itself
- » Remember that 'leave' is also required to bring a Judicial Review
- » Lodge a 'fresh claim' if there is new evidence to support your claim for asylum

7.4 Detention

Anyone detained has a right to apply for bail, or, in other words, to be released.

Legal aid is available for all bail applications, regardless of 'means' or the ability to pay for legal expenses.

A bail application can run alongside any pending immigration or asylum application, but the immigration court (or tribunal as it is called) may not wait for a detained person's release from detention before considering the application. The immigration detention facilities in Northern Ireland, based in Larne House, only detain individuals for a short time. In most cases, anyone to be held in detention for longer than 7 days will be transferred to one of the larger immigration removal centres in the rest of the UK, such as Dungavel in Scotland, or Yarl's Wood, Colnbrook or Brook House in England. The detention in Larne House could, however, be as brief as a matter of days. It is vital therefore that anyone detained in Larne House contacts a solicitor immediately.

If an individual has been detained and transferred to Scotland or England, their solicitor in Northern Ireland can continue to act on their behalf. The solicitor can request, if necessary, that the client be able to take part in any proceedings using 'live link' technology (where the individual can watch and listen to what is going on in the court proceedings in Northern Ireland and contribute if appropriate). Practitioners have reported that the live link facilities in Northern Ireland courts are unreliable. It is hoped that with advancement in courtroom technology these problems will be resolved in the near future.

8. CHANGING SOLICITORS AND COMPLAINTS

“Because of his mistake look at where I am today.”

8.1 Changing solicitors

In instances where clients feel that their solicitor is no longer able to represent them, they are entitled to change solicitors. However, clients are advised that this should be for good reason, as there may be difficulties in having files transferred, particularly when the claim is legally aided. This is because many immigration applications attract ‘set fees’ (that is, one set amount for the entire case). If an appeal has been commenced and a lot of work has been carried out on the file, solicitors will want to ensure that they are paid for the work to date. This would require solicitors agreeing a fee arrangement between each other – an agreed portion of the overall fee. The solicitor who dealt with the case up to that point must also arrange to have the legal aid certificate transferred to the successor solicitor. There may be delays associated with the transfer of a file as the Legal Services Agency is under an obligation to ensure that matter has been dealt with appropriately.

Where possible a solicitor should inform clients of other suitably qualified solicitors who may be able to act on the individual’s behalf.

Case files should be transferred between solicitors within three working days, unless there is a lien on a file – meaning that a private paying client owes her or his solicitor fees - or if the legal aid certificate has not been transferred to the successor solicitor’s name.

If a solicitor feels that she or he can no longer act on behalf of a particular client, they must provide three days’ notice of their intention to terminate their services. They should also provide a written statement as to why they cannot continue to represent the individual.

8.2 Making a complaint about your solicitor to the solicitor’s practice

If individuals are unhappy with the service that has been provided by their solicitor they are entitled and are encouraged to raise a complaint. Information on the firm’s complaints procedure should be contained in the client care letter.

The first step of the process is to ‘invoke’ the complaints procedure. This must be done **within 6 months** of the solicitor having completed work on the file, or from the date on which a client becomes aware that she or he has cause to complain. A copy of the firm’s complaints procedure should be requested (if it has not already been provided) and then a letter should be written to the firm, indicating that a complaint is being made and setting out what the complaint is. A pro-forma complaint document, detailing what should be contained in the letter, is available from The Law Society and a copy of it is included with these guidelines.¹² Essentially, it should contain specific information of:

1. What the complaint is.

For example, inadequate professional service such as unreasonable delay in dealing with a case, or professional misconduct such as suspected dishonesty or mishandling of client money.

¹² See Appendix B

2. It is advisable to specify dates that are relevant to the complaint.
For example, the date on which the solicitor was instructed. A copy of any letters being referred to should be enclosed (but not the originals, which should be retained).
3. Detail how the issue has affected the complainant.
For example, a deadline has been missed or the issue has caused undue stress and anxiety.
4. Indicate how the situation might be rectified.
For example, an acknowledgment of the failing, an apology, and/or a refund of some or all of fees paid (in privately funded applications) where the solicitor's failing has resulted in an application being refused.

The firm is permitted 28 days to investigate the complaint and respond. It will either uphold/accept it, or not. In the event that the complaint is upheld, the firm can offer some form of restitution. In other words it can suggest how to 'make it right'. The outcome might be something which is agreed in collaboration with the client. If the suggestion of how to 'right the wrong' is not acceptable, or indeed if the complaint is not upheld, a complaint can then be made to The Law Society.

8.3 Making a complaint to The Law Society

The Law Society cannot comment on the legal advice given and does not provide an opinion on the law. If an asylum seeker or refugee requires a second opinion on legal advice that they have received, another solicitor should be asked to provide it. If a solicitor has provided inaccurate advice which has led someone to suffer a loss, a claim to seek compensation can only be brought through separate legal proceedings, by instructing a solicitor to bring such a claim.

However, if the complaint is about the lack of professionalism or about professional misconduct, a client has 6 months from the date of the outcome of the direct complaint to the solicitor's firm within which to lodge a complaint with The Law Society.

If the solicitor about whom the complaint is lodged still has carriage of the file, the person complaining can change solicitors (see section 8.1 above).

The Law Society requires:

- » First and foremost, a formal written complaint to the firm of solicitors at which their solicitor (or former solicitor) is employed (see section 8.2 above).
- » If someone is not satisfied with the outcome of stage one, to bring the matter to The Law Society, individuals are required to complete and submit a specific form. The form is available on The Law Society's website or can be collected from Law Society House in Victoria Street, Belfast.¹³
- » The original complaint letter to the solicitor, under the in-house procedure, must be attached, together with any supporting documentation. Any information to be considered must be presented in writing and any supporting documentation

¹³ See Appendix C

should also be lodged with the complaint form. It is not possible to e-mail information or documentation relating to the complaint through to The Law Society.

- » The Law Society will acknowledge receipt of the complaint and will then usually take approximately 16 weeks to respond.
- » The process involves The Law Society sending a copy of the complaint to the solicitor concerned and asking for their comments. It will then send a copy of any reply to the complainant for their comments and will ask for suggestions on how the complaint can be progressed/resolved.
- » If the complainant is not happy with the outcome of The Law Society investigation, they can refer it to the Lay Observer in Belfast.

An Oversight Commission has recently been appointed in Northern Ireland. She is responsible for making provisions regarding the handling of complaints against members of the solicitor profession. The same person has also been appointed to the role of Lay Observer for Northern Ireland. In the Lay Observer role she is responsible for examining any written complaint about The Law Society's handling of a complaint. She can examine fairness, thoroughness and impartiality.

Non-cooperation by the solicitor may result in disciplinary proceedings by The Law Society. It may also result in referral to Solicitors' Disciplinary Tribunal that can make findings about the service provided and or recommend disciplinary action. In the worst case scenario, a solicitor may be 'struck off' the roll of solicitors in Northern Ireland and lose their practicing certificate.

It is important for asylum seekers and refugees to note that raising a complaint will not affect their claim. The Law Society is entirely separate from the Home Office and from the Courts and Tribunals Service. It is only concerned, in this context, with making sure that solicitors have fulfilled their obligations to their client. It is also worth noting that if, at a later stage of the application process, an individual seeks to argue that a particular failing was due to the actions of a previous solicitor, the fact that a formal complaint has been made may assist with that point. The Advocacy Worker in NICRAS can provide guidance and assistance throughout the complaints process. E-mail advocacy@nicras.org.uk.

KEY POINTS

Solicitors should:

- » Explain the complaints process
- » Provide clients with a copy of the firm's complaints procedure
- » Respond to all complaints in a timely fashion
- » Cooperate with the Law Society

Clients should:

- » Know when a complaint is appropriate
- » Follow the process outlined above
- » Be aware that you can change solicitors, but consider whether this is appropriate/advisable
- » Know that a complaint will not adversely affect your claim for asylum

9. WIDER IMMIGRATION CONTEXT

**“When we feel welcomed when we go in (to the solicitor’s office),
it takes the stress away.”**

9.1 Human Rights

The Universal Declaration of Human Rights (UDHR) is the cornerstone of the international community’s recognition of the right to asylum. There are other international treaties which are fundamental to the international protections afforded to refugees and asylum seekers, such as the European Charter of Fundamental Rights (Article 18), and the United Nations Convention Against Torture (Article 3), which include the right to *non-refoulement*: the right of someone not to be returned to a country where they are at risk of persecution due to race, religion, nationality, membership of a particular social group or political opinion.

The two main sources of international legal protection for asylum seekers and refugees are the **United Nations Convention Relating to the Status of Refugees 1951** (referred to in this guide as ‘the Refugee Convention’) and the **European Convention on Human Rights 1950** (ECHR). There are currently 145 states that are parties to the Refugee Convention, and 146 that are parties to the 1967 Protocol (which removed the temporal and geographic limitations of the original Refugee Convention).

The ECHR is a ‘regional’ treaty, applicable to signatory states from Europe, and forms part of UK domestic law by virtue of the Human Rights Act 1998 (HRA). Neither the ECHR nor the Human Rights Act will be affected by Brexit (see section 9.4 below). However, there are still those in government who would like to see the Human Rights Act abolished. This would affect the ability of those living in the UK to rely on the provisions of the ECHR in UK courts. In the meantime however, it remains a vital source of legal protection for many asylum and immigration law clients.

Some of the main provisions of the ECHR, which are of relevance to asylum seekers and refugees, are:

Article 3: The right to freedom from torture, inhuman or degrading treatment.

Whilst this right is absolute – that is, it cannot be departed from in any scenario - the threshold to establish that an act, such as removal/deportation, would breach article 3 of the ECHR is very high. For example, the threshold would only be reached in that situation where the applicant is close to death and removal would hasten death.

Article 6: The right to a fair trial.

Article 8: The right to a private and family life.

As this right is not absolute, it is often weighed against the valid, but largely competing, rights of the UK to control immigration. To be successful, an argument in relation to a breach of Article 8 must establish that the applicant’s rights outweigh the rights of the UK to control immigration. Generally, this right only protects ‘partner-spouse’ and ‘parent/carer-minor child’ relationships.

For more information on human rights and asylum/immigration visit www.righttoremain.org.uk/toolkit/humanrights.html

For specialist advice, speak to a solicitor.

9.2 The Dublin Regulations

These European Union (EU) regulations determine the state that is responsible for dealing with a claim for asylum. In very general terms it will be the country of first entry, which explains in part why the states on the external borders of the EU are responsible for larger numbers of people. If, however, an asylum seeker has family in a different EU state to the one they entered first, the Dublin Regulations provide that the application may be processed in that state e.g. in the case of an unaccompanied child, if it is in the child's best interests. If a claim for asylum has been lodged in one country, any attempt to make a fresh claim in another is likely to fail and the applicant returned to the first state, unless some of the exceptions provided for under the Dublin Regulations apply. At the time of writing it is unclear how the UK's participation in the Dublin Regulations will be affected once it leaves the EU.

9.3 Family reunification

Once status, or humanitarian protection, has been granted, a refugee can apply to have a spouse (provided that they were married before the refugee left their country of origin) or children under the age of 18 (at the date of application) join them in Northern Ireland. These applications are free of charge and there is no requirement to prove a certain level of income. For unmarried partners, children over the age of 18, and all other family members, the normal immigration rules apply.

9.4 Brexit and the EU

The vote by the UK to leave the EU in June 2016 has been followed by many months of discussions between the UK and EU institutions to try and agree what format the process of leaving will take. It requires the UK to overhaul legislation that is grounded on EU law. In terms of immigration, the main changes will relate to the rights of EU nationals to live and work in the UK. The international conventions, such as the Refugee Convention will still apply, but there will be less regional scrutiny of the implementation of the rules which govern the movement of people in and out of the UK. These will become governed by national UK laws.

For EU nationals currently living in the UK 'lawfully', and who can prove 5 years continuous residence, when the UK leaves the EU, they can apply for settled status. For those who do not have evidence of 5 years residence, but who arrive in the UK before the 'cut-off date' of 29th March 2019, they will be able to apply for permission to stay until they have accumulated the 5 years continuous residence, after which they will also be able to apply for settled status. For those who arrive after the cut-off date, they will be able to apply for permission to remain, subject to immigration rules which are yet to be determined. It is likely that any permission to remain will be limited to a very short period of time, in the region of two or three years.

Once the UK leaves the EU, all EU citizens will need to apply to the Home Office for permission to stay – for 'settled status' – regardless of the date of their arrival. There will be a 'grace'

period of 2 years from the leave date to enable these applications to be submitted. Two years post-Brexit will become the 'cut off' date which, it now appears, will be strictly applied. It is up to individuals to make the application – they will not receive notification of the need to do so – and are therefore urged to seek advice from a qualified solicitor.

This information is based on proposals being discussed at the time of writing but depend on the Brexit negotiations and are therefore subject to change. Please seek advice from a solicitor in relation to individual circumstances. It is vital that clients be **proactive** in relation to these issues.

9.5 Citizenship

Currently, to apply for British citizenship, an applicant must have been resident in the UK, with no extended periods of leave from the UK, for at least five years from the date of application. They must also, at the date of application and for the 12 months prior to that, not have been subject to any immigration controls or restrictions. She or he must not have breached any immigration laws during the 5 year period prior to the date of application. There must be a demonstrable commitment to living permanently in the UK and the applicant must satisfy the Home Office of her or his knowledge of life in the UK, as well as achieving a certain standard of knowledge and use of the English language.

For an applicant who is married to or in a civil partnership with a British citizen, the stipulation is 3 years residence with the same caveats, but without the requirement to establish knowledge of British life or a commitment to living in the UK.

After the UK leaves the EU, anyone who wishes to apply for citizenship will need to have arrived in the UK before 29th March 2019. They will also, and in any event, have to apply for 'settled status', as above, if their citizenship application has been submitted but not determined. Anyone without 'settled status' or citizenship will be considered an 'undocumented person' and therefore liable to detention and removal.

9.6 'Life in the UK' test

Anyone applying for 'Leave to Remain' must pass the 'Life in the UK' test and have a minimum level of qualification in speaking English. Applicants are advised to study the corresponding handbook produced by the Home Office in preparation. It includes some questions which should be obvious to the reader if they have any knowledge of the UK, such as, 'what is the capital city of the UK?' Others may be difficult even for those who have lived in the UK all their life, for example 'What is the name of a Jane Austin novel?' Applicants are encouraged therefore to purchase the relevant text.

9.7 Voluntary Return Scheme

If your claim for asylum has been refused, and you have exhausted the appeals process, or if your leave to remain has expired, you can make arrangements to return to your country of origin. For assistance and to apply for funding to help with the cost of return, you should notify the Home Office before booking flights.

10. DEFINITIONS

Assisted party

A person who is in receipt of legal aid funding.

Asylum seeker

An asylum seeker is a person who has left her or his country of origin due to fear of persecution and has applied for protection in another country, but whose application has not yet been decided. An asylum seeker becomes a refugee when she or he has their claim for asylum accepted by the government (the Home Office).

Asylum seekers are allowed to stay in Northern Ireland whilst their claim is being determined and usually until the legal process has been exhausted.

One of the main differences between asylum seekers and refugees is that asylum seekers are generally not allowed to work in paid employment and are not entitled to most government benefits.

Bar Council of Northern Ireland

Similar to The Law Society (see below) but regulates barristers practicing in Northern Ireland.

Barrister

Generally speaking, barristers present cases, or conduct hearings/trials, in court. A barrister, sometimes referred to as 'Counsel', is a self-employed legal practitioner and usually specialises in particular areas, providing opinions on the merits of a claim or detailed advice on the legal position. She or he will also provide directions to the solicitor on how to prepare a case for hearing, such as instructing specialist reports or providing copies of documents to court and the opposing party. Individuals requiring legal advice must instruct a solicitor and cannot engage a barrister directly.

Counsel

Another term for 'barrister'.

Country policy and information reports

These are reports produced by the UK Border Agency (a branch of the Home Office) which provide some detail in relation to the situation for nationals of various countries throughout the world. They are sometimes referred to as 'Country of Origin Reports' and are used by UK Visa and Immigration officials (another branch of the Home Office) to make decisions on asylum and human rights applications.

Destitution

Asylum seekers are disproportionately vulnerable to destitution and there are a number of factors which contribute to their becoming so, including administrative delays across a number of organisations. Destitution has many adverse effects including mental health problems and an increased risk of exploitation. Some destitute asylum seekers are entitled to housing support, whilst others are not.

Entitled to support:

An asylum seeker who is considered destitute is entitled to housing/accommodation support, referred to as 'Section 4 support' in accordance with the Immigration Act 1999, if their asylum claim has been refused and:

- a. They do not have adequate accommodation or means of obtaining it; or
- b. They have adequate accommodation or the means of obtaining it, but cannot meet their other essential living needs.

The applicant must prove that:

- they are taking steps to leave the UK, or
- they are unable to leave due to a physical impediment, or
- they have a judicial review pending of the refusal to grant asylum, or
- they have lodged a fresh claim, or
- there is no viable route of return, or
- failure to provide support would be a breach of the applicant's human rights (such as it would constitute torture, inhuman or degrading treatment contrary to the European Convention on Human Rights).

Solicitors and other community organisations such as Bryson Intercultural can assist in claiming Section 4 support.

Not entitled to support:

When an applicant's claim for asylum has failed, their asylum support is withdrawn after 21 days. She or he is then at increased risk of becoming destitute. If there is no legal process in motion, the failed asylum seeker falls outside of the scope for welfare support, including accommodation. Those individuals are refused access to homeless hostels, which are publically funded.

Those who are granted refugee status are also at risk of destitution when they are being transferred from asylum support (which stops after 28 days following a grant of status) to the welfare support system in place for refugees. This is often referred to as the 'transition period'.

Fresh Claim

After all appeals rights have been exhausted, a fresh claim can be lodged if there is 'new' evidence in relation to the claim. This can be in the form of any information which was discovered after the appeal which could affect the claim, but which the tribunal or Home Office did not have access to. It might be in the form of witness statements supporting a claim, or information about changed circumstances in the country of origin. The information must not already have been considered and must, taken with material previously submitted, create a realistic prospect of success.

Home Office

The Home Office is the government department which is responsible for, among other things, 'securing the UK border'. Accordingly, it has responsibility for immigration and passports. **UK Visas and Immigration** is a branch of the Home Office and has responsibility for making decisions on applications for visas as well as claims for asylum. **Immigration Enforcement** is another branch of the Home Office with the aims of preventing abuse of the UK's immigration system, tracking immigration offenders, and ensuring compliance with the immigration laws and decisions of the UK and the Home Office.

Immigration advisor

A general term for anyone holding themselves out as an advisor in the areas of asylum and immigration. You should check that they are a solicitor or an OISC advisor, otherwise they will not be regulated and there will be no basis upon which to rectify errors made as a result of their advice. Beware of 'rogue' immigration advisors!

Immigration detention

Anyone who has breached of Home Office conditions, or restrictions, is subject to being detained in an immigration removal centre. Larne House is a short-term residential holding facility. Anyone detained in Larne House can be held there for a maximum of 7 days, after which they will be released (if they have successfully challenged the detention/applied for bail) or transferred to an immigration removal centre in England or Scotland. A solicitor in Northern Ireland can continue to act on behalf of someone who is transferred to England or Scotland but, depending on funds available, may not be able to attend in person at that immigration removal centre to take instructions. This can be facilitated via telephone or video link depending on resources available at both locations.

Lawyer

In Northern Ireland, lawyer is a generic term for either a solicitor or barrister. Another generic term is 'legal practitioner'.

Leave to Remain

If a claim for asylum is refused, and someone is not granted refugee status, they may still be permitted to stay in the United Kingdom for a specified time ('limited leave to remain'). This usually applies where there are human rights reasons that prevent the person from being returned to their country of origin. For example, this would be the case where return would expose her or him to a risk of torture, contrary to the European Convention on Human Rights.

A person with refugee status can, after five years, apply for 'indefinite leave to remain', meaning that they are no longer subject to the usual immigration restrictions.

Legal Services Agency

The government body responsible for considering applications for legal aid funding, and for the distribution and oversight of that funding to solicitors and barristers.

Legal Aid

Public funding, or 'legal aid' as it is most often referred to, is funding provided by the government for certain cases. In most cases, legal aid is 'means-tested'. In other words, it depends on your ability to fund to your own case. If you have money or assets, or a 'means' to pay, you are unlikely to qualify for legal aid. If you have assets which are below the 'legal aid limit' you may have to pay a contribution towards your fees. It is also 'merits based', meaning it is dependent upon there being a reasonable prospect of success. Your solicitor will advise you further in relation to legal aid funding.

Unlike in England and Wales, legal aid funding is still available in NI for non-asylum immigration matters, subject to the means and merits tests.

Migrant

A person who moves from one country to another. This usually refers to an 'economic migrant', someone who is pursuing work or other opportunities outside of their country of origin but who is not fleeing from any risks of persecution as stipulated in the Refugee Convention. Whilst some migrants may not be seeking the protections afforded by the Convention, they may still be subject to immigration controls.

OISC

The Office of Immigration Services Commissioner is another branch of the Home Office. It regulates immigration advisors who are not members of the legal profession. It ensures that those advisors are trained to certain standards set by the OISC and investigates complaints about any OISC-registered advisor. Anyone giving advice in immigration law who is not a solicitor or barrister must, by law, be accredited by OISC.

OISC advisor

Someone who has undertaken a course, and sat an exam, set by the OISC and is thereby qualified to provide certain aspects of asylum and immigration advice. There are three levels to the OISC training and two strands to each level – ‘immigration’ and ‘asylum and protection’. Level 1 advisors are, generally speaking, only permitted to assist with the completion of basic applications. Level 2 advisors are permitted to assist with some higher level or more complicated applications. Level 3 advisors are permitted to assist with all levels of applications, as well as judicial review case management¹⁴. It is also important to note that the advisor can only properly provide advice through an organisation which is registered with and regulated by the OISC.

Refugee

Anyone whose claim for asylum has been granted and who is thereby afforded the protection of a third country (or, in other words, a country other than their country of origin), having established a well-founded fear of persecution due to her or his race, religion, nationality, membership of a particular social group or political opinion. The right to such protection is provided for, and defined in, the United Nations Convention Relating to the Status of Refugees of 1951 (commonly referred to as ‘The Refugee Convention’). A person who has been granted refugee status is no longer considered to be an ‘asylum seeker’ but is a ‘refugee’ in legal and political terms. Rights and entitlements differ depending on whether a person is considered by the government to be an asylum seeker or a refugee.

Solicitor

A solicitor is a fully trained and qualified legal practitioner who provides legal advice to, and representation on behalf of, a client. Some solicitors are ‘general practitioners’ meaning that they practice across a range of areas in law. Others are ‘specialist’ and concentrate their practice in a limited number of specific areas. Specialist legal practitioners are likely to have a more in-depth knowledge of those areas than general practitioners. A solicitor is ‘client facing’. This means that anyone who needs legal advice in Northern Ireland must approach a solicitor. If the solicitor requires more detailed advice or a second opinion she or he will employ a barrister. A person seeking legal advice cannot engage a barrister directly.

Solicitor Advocate

These are solicitors who have received additional training and a qualification in Advanced Advocacy from The Law Society of Northern Ireland. They are thereby specifically trained and qualified to conduct hearings (avoiding the need to employ a barrister).

¹⁴ Further information on what each level of advisor can and cannot do is available at <https://www.gov.uk/government/publications/competence-oisc-guidance-2012/guidance-on-competence-2017-summary-of-levels> or by searching ‘OISC guidance on competence’.

Statutory Registration Scheme

A new scheme for all providers of publically funded legal services in Northern Ireland is due to be set up by the Department of Justice and the Legal Services Agency.

The scheme will require all solicitors who wish to receive legal aid for qualifying cases to register and comply with a code of practice, including ring certain minimum standards with regards to the progression of a claim. It provides for such things as an agreement at the outset of the case as to the level of communication which will pass between the solicitor and the client for the purposes of keeping the client informed about their case. It also requires that solicitors provide a statement to the client, the assisted party, which sets out the issues in the case and the options available.

Firms will be audited for compliance, and sanctions will be imposed for non-compliance. It will also be possible for the assisted party to make a complaint to the Legal Services Agency about the way their case has been handled.

It is hoped that the scheme will be set up in 2018, although this is dependent upon legislation being passed to provide for its introduction.

The Law Society of Northern Ireland

The regulatory body for solicitors practicing in Northern Ireland. The Law Society provides for and regulates the training and practice of solicitors. This includes providing updated training courses across a range of practice areas. One of its functions is to investigate complaints made about solicitors in relation to inadequate service, such as unreasonable delays or failing to respond to telephone calls/letters, and in relation to professional misconduct, such as acting dishonestly.

ACKNOWLEDGEMENTS

For more information/support: Contact NICRAS, The Law Society of NI, Bryson Intercultural, British Red Cross, Homeplus, Migrant Help NI, ACSONI, HAPANI, Larne House Visitor Group.

Please refer to 'Refugees and Asylum Seekers in Northern Ireland: An Essential Guide' produced by NICRAS for more information on organisations that can offer help with different aspects of life in NI.

Thanks to: Minority Ethnic Development Fund of The Executive Office, Northern Ireland Strategic Migration Partnership, Refugee Asylum Forum, Bryson Intercultural and Homeplus.

Finally, in preparing this document, interviews were carried out with asylum seekers and refugees who have experienced the legal process in Northern Ireland, as well as with various stakeholder organisations working in the refugee and asylum sector. NICRAS is extremely grateful to all who contributed to or supported this initiative in any way.

APPENDICIES

12.1 Appendix A

List of Immigration & Asylum Law Solicitors, Northern Ireland

Immigration and asylum law is a complicated area. You are entitled to legal advice and you are encouraged to seek it at the earliest opportunity. It is up to you who to instruct and you may change solicitors, subject to them receiving payment (from you or the Legal Services Agency) in relation to work carried out on your file. It is also important to remember that there are time limits to comply with and it is vital, therefore, that you do not delay.

You will be entitled to legal aid – that is, financial assistance - for an asylum application and for some non-asylum immigration matters. Your solicitor will advise you further in relation to what funding you are entitled to.

This is a list of immigration and asylum law solicitors in Northern Ireland. The majority are based in Belfast. Please note that the list is not exhaustive and there may be other solicitors working in this area who are not on the list. For details of other solicitors, or if you require a solicitor outside of Belfast, you should contact The Law Society of Northern Ireland on 028 9023 1614, or search on its website at: <https://www.lawsoc-ni.org/>. NICRAS is unable to recommend one solicitor over another and the names on this list are not an endorsement, they appear alphabetically. You may find it helpful to speak to other members of the refugee and asylum community who have experience of the legal process in Northern Ireland.

PQE refers to the number of years since qualification as a solicitor. It does not necessarily indicate the number of years someone has practiced in the area of immigration/asylum. The number of cases dealt with by a particular solicitor is not indicative of how good or successful they are in immigration and asylum law, but may suggest that they focus more or less of their time in this area. NICRAS may hold further details about the experience of the solicitors above. You can also look the firms up online to find out more.

If you are not happy with how your solicitor has conducted your case you are entitled to bring a complaint. For further details and support in doing so, please contact NICRAS or e-mail: advocacy@nicras.org.uk.

“I would have liked him to give us the options and the information, and then let us decide.”

Andrew Russell & Co Solicitors

Stephen Hollywood
1st Floor, 3 Rosemary Street, Belfast BT1 1QA
028 9027 8039
Stephen@arcolaw.co.uk

Creighton & Co. Solicitors

Sam Creighton (34 years PQE)
77 Botanic Avenue, Belfast BT5 5AE
028 9073 2461
Elaine@creightonsolicitors.co.uk

Deals with over 100 immigration related matters per year. Experience includes dealing with applications on behalf of clients from: Africa, Syria, Iran, China, Caribbean, Yemen, Columbia

Higgins Hollywood Deazley Solicitors

Matthew Higgins (25 years PQE)
507 Oldpark Road, Belfast BT14 6QU
028 9077 0770
matthewhiggins@hhdsolicitors.com

Deals with over 100 immigration/asylum related matters per year. Experience includes dealing with applications on behalf of clients from: Afghanistan, Bangladesh, Brazil, China, Democratic Republic of Congo, Egypt, Ethiopia, France, Germany, India, Indonesia, Iran, Iraq, Italy, Japan, Mexico, Nigeria, Pakistan, Philippines, Russia, South Africa, Thailand, Turkey, USA, Vietnam

James T Johnston & Co Solicitor

Gerard Ward (10 years PQE)
138 Donegall Street, Belfast BT1 2GY
028 9024 6091
gward@johnstonsolicitors.com

Deals with over 40 immigration/asylum related matters per year. Experience includes dealing applications on behalf of clients from: Syria, Iraq, Iran, Nigeria, Haiti, The Philippines, Kuwait, Morocco, Algeria, Kenya, South Africa, EEA states

JMS Solicitors

John McStravick (18 years PQE)
239 Ormeau Road, Belfast BT7 3GG
077 8670 8735
jmcstra@icloud.com

Deals with over 150 immigration/asylum related matters per year. Experience includes dealing with applications on behalf of clients from: China, Nigeria, Syria, Iran, Albania, Sudan, Zimbabwe, Democratic Republic of Congo, South Africa, Indonesia, Pakistan, Bangladesh, North Korea
Uses FLEX Interpreting Services

Kristina Murray Solicitors

Kristina Murray (17 years PQE)
9-11 Crumlin Road, Belfast BT14 6AA
028 9075 5011
tina@kmsolicitor.co.uk

Experience includes dealing with immigration and/or asylum applications on behalf of clients from: China, Turkey, India, Pakistan, Algeria, Russia, Zimbabwe, Nigeria

Martin Brennan Solicitor

Martin Brennan (33 years PQE)
1 Fitzwilliam Street, Belfast BT9 6AW
028 9023 3477
martinbrennan555@gmail.com

Deals with over 75 immigration/asylum related matters per year. Experience includes dealing with applications on behalf of clients from: China, Zimbabwe, Sudan, Eritrea, Somalia, Kenya, Egypt, Palestine, Iran, Democratic Republic of Congo, Albania, South Africa, The Philippines, Vietnam, Bhutan, Thailand, Ecuador, USA, Canada, Bangladesh, Pakistan, Nigeria, Niger, Brazil, Mexico
Uses FLEX Interpreting Services (or interpreter of client's choice in privately funded cases)

McCallion Keown Solicitors

David Jones (12 years PQE)
462a Oldpark Road, Belfast BT14 6DG
028 9074 0457
info@mccallionkeown.co.uk

The Immigration law department at this McCallion Keown was established in 2016. Experience includes dealing with immigration and/or asylum applications on behalf of clients from: China, Bengal, Bangladesh, Lithuania, Romania
Uses FLEX Interpreting Services

McCourt & Co Solicitors

Ronan McCourt
11 Canal Meadows, Clonoe, Dungannon, Co. Tyrone BT71 4UD
079 1703 1322
ronan@mccourtandco.com

MSM Law

Una Boyd (1 years PQE + 4 year pre-qualification experience in immigration casework)
MSM Chambers, 9-15 Queen Street, Belfast BT1 6EA
028 9032 1409
uboyd@msmsolicitors.com

Deals with over 200 immigration/asylum related matters per year. Experience includes dealing with applications on behalf of clients from: Somalia, Sudan, Syria, Nigeria,

Zimbabwe, South Africa, Venezuela, China, Iran, Pakistan, India, Vietnam, Thailand, The Philippines, UAS, Eritrea, Poland, Hungary, Algeria, Estonia, Guinea, Japan, Kuwait, Russia, Mexico

Uses FLEX Interpreting Services

NA and Co Solicitors

Naheed Anwar (11 years PQE)

347 Newtownards Road, Belfast BT4 1AJ

028 9508 5041

naandcosolicitors@hotmail.co.uk

Deals with over 300 immigration/asylum related matters per year. Experience includes dealing with applications on behalf of clients from: Pakistan, India, Bangladesh, Nepal, Egypt, Jordan, Ghana, Nigeria Palestine, Mongolia, China, Mauritius, Iran, New Zealand, Afghanistan

Uses FLEX Interpreting Services and has staff who speak Urdu and Punjabi

Nelson-Singleton Solicitors

Colin Dougan (14 years PQE)

10-12 Forsyth House, Cromac Square, Belfast BT2 8LA

077 1315 1383

colin@nelson-singleton.co.uk

Deals with over 100 immigration/asylum related matters per year. Experience includes dealing with applications on behalf of clients from: Sudan, Somalia, Yemen, Chad, Iraq, Iran, Ghana, Jordan, Morocco, Nigeria, Ethiopia

Oracle Solicitors

Shauna Carberry (10 years PQE)

Merrion Business Centre, 58 Howard Street, Belfast BT1 6PJ

028 9002 2371

SC2@oraclesolicitors.co.uk

Practice established in July 2016 and has a relatively new Immigration Law department. The Belfast office works in cooperation with Oracle's London office. Experience includes dealing with immigration and/or asylum applications on behalf of clients from: EEA states, India, Pakistan, Canada, USA, South Africa, Syria, Australia, Mauritius, Iran, Palestine, China, Madagascar, Mexico, Brazil, Venezuela, Afghanistan, Bangladesh, Morocco, Saudi Arabia, Turkey, Lebanon, Egypt, Algeria, Nigeria

RP Crawford & Co. Solicitors

Bernadette Hassan (4 years PQE, 8 years as immigration practitioner)

17 Stranmillis Road, Belfast BT9 5AF

028 9038 1024

Bernadette@rpcrawfordsolicitors.com

Deals with over 250 immigration/asylum related matters per year. Experience includes

dealing with applications on behalf of clients from: Somalia, Sudan, Syria, Egyptian, Yemen, Iraq, Iran, Eritrea, Ethiopia, Zimbabwe, South Africa, Democratic Republic of Congo, Nigeria, Niger, China, Thailand, Ghana, Malawi, Gambia, Algeria, Western Sahara, Palestine, India, Pakistan, Nepal

STEP

Julia Breathnach (6 years PQE)

The Junction, 12 Beechvalley Way, Dungannon BT70 1BS

028 8775 0211

info@stepni.org (Please include 'Immigration Matter' in the subject line)

STEP is a not-for-profit legal advice centre. Deals with over 300 immigration/asylum related matters per year. It has one non-solicitor advisor with OISC qualification, Level 1 and STEP is an OISC registered organisation. Priority may be given to those living in the Mid Ulster area. Experience includes dealing with applications on behalf of clients from: Bulgaria, Romania, East Timor, Brazil, Guinea-Bissau, Mozambique, USA, Nigeria, China
Uses STL trained and qualified interpreters

Tim McQuoid Solicitor

Tim McQuoid (16 years PQE)

2nd Floor, 432-434 Ormeau Road, Belfast BT7 3HY

028 9064 4888

tim.mcquoid@ntlworld.com

Deals with over 100 immigration/asylum related matters per year and one member of the firm has OISC qualification, Level 1. Experience includes dealing with applications on behalf of clients from: China, Taiwan, The Philippines, India, Bangladesh, Pakistan, Syria, Iran, Iraq, Egypt, Somalia, Algeria, Albania, Brazil, Spain, France, South Africa, Slovakia, Lithuania, Poland, Romania, Nigeria
Uses FLEX Interpreting Services and has staff who speak Mandarin, Polish and French

Worthingtons Solicitors

Brian Moss (7 years PQE)

24-38 Gordon Street, Belfast BT1 2LG

028 9027 9094

077 3916 1217 (Emergency contact e.g. if detained)

brian@worthingtonslaw.co.uk

Experience includes dealing with immigration and/or asylum applications on behalf of clients from: China, Zimbabwe, Russia, Turkey, Ukraine, USA, Canada, Australia, South Africa, Morocco, The Philippines, Egypt
Uses FLEX Interpreting Services

This list may be updated annually. Please contact NICRAS to be added to the list or to have details amended (although this will not be possible on a regular basis).

12.2 Appendix B

Solicitors' In-House Complaints Procedure

Complaint Form

Formal complaint to my solicitor under the Regulation 5 of the Solicitors' (Client Communication) Practice Regulations 2008.

1.	My contact details: (Name, address, telephone and e-mail address)	
2.	Name of solicitor in charge of case:	
3.	Name and address of firm:	
4.	Nature of work (eg Family law, Conveyancing, Administration of Estate)	
5.	Date of complaint	
6.	Date solicitor was first instructed	
7.	Date the work completed of if the work is ongoing say so	
8.	Date of receipt of solicitor's bill	
9.	Amount of money paid for costs if any	
10.	Legal Aid received?	Yes <input type="checkbox"/> No <input type="checkbox"/>
11.	Date of Legal Aid Certificate (if appropriate)	
12.	Reasons for my complaint: (set out issues in list form) Continue on a separate sheet if needed.	

<p>13.</p>	<p>Desired outcome:</p> <p>(What would you like your solicitor to do to help sort out this problem?)</p> <p>Continue on a separate sheet if needed.</p>
<p>14.(a)</p>	<p>This complaint is made under the Solicitors' (Client Communication) Practice Regulations 2008 and I wish you to deal with my complaint under those procedures. You are obliged to acknowledge receipt within 7 days and provide a detailed response within 28 days otherwise I may complain to the Law Society that you have been in breach of Regulation. You are also obliged to furnish me with a copy of your complaints procedure.</p>
<p>14.(b)</p>	<p>Tick one of the following:</p> <p>I have received a copy of that procedure already and wish you to implement it <input data-bbox="1102 1615 1155 1665" type="checkbox"/></p>

	<p>Or</p> <p>I have not received a copy of your procedure but wish you to follow those Procedures on receipt of this form and forward a copy of your procedures to me for information in accordance with the regulations. <input data-bbox="1113 292 1163 339" type="checkbox"/></p>
<p>14.(c)</p>	<p>This complaint is made voluntarily. I acknowledge it may be provided to anyone in the Firm who has been involved in my case and who may need to assist in drafting the response. I acknowledge that the signature below is my own.</p> <p>Signed: _____ Date _____</p>
	<p>Print name: _____</p>
<p>15.</p>	<p>I authorise you to liaise with _____</p> <p>(name of person you wish to assist you with the complaint, if any) on my behalf in respect of this complaint.</p>

<p>Additional notes</p>
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Notes on solicitors inhouse complaints procedure complaints form

These notes are designed to assist you in completing the Complaints Form if you wish to make a complaint to your Solicitor inhouse under their Complaints Procedures under the Provisions of Regulation 5 of the Solicitors (Client Communication) Practice Regulations 2008.

1. Any formal complaint to your Solicitor about their conduct or service in handling your case must be in writing under the Society's Regulations.
2. The complaint should be made to the Solicitor either within six months of the date of the work being concluded (usually after the Bill of Costs has been delivered) or within six months of finding out that the Solicitor has done something that has cause for your concern, whichever is the later.
3. Write your complaint as if you are writing to a stranger so that you then set out the facts of the case fully and correctly. The Solicitor who handles your case may not necessarily be the person who deals with the complaint within the firm. Some firms refer their complaints out to a third party to handle rather than deal with within the firm. It is therefore important that someone seeing your file for the first time fully understands the nature of your business and thereafter your concerns arising from the Solicitor's work.
4. If you have instructed the Solicitor in a number of related issues, then you should ensure that the areas of work are fully identified at Paragraph 7 on the form. For example, if you have instructed the Solicitor in relation to a divorce there may also have been issues arising in relation to contact with your children, with the sale of family/the matrimonial home, with the distribution of other property and with the financial settlement issues. All different topics should be listed separately. (Put on a separate sheet if necessary).
5. If your complaint relates only to one or two matters which the Solicitor dealt with then you should clearly identify that at Paragraph 12 of the form. If for example you have no concerns about the way in which the sale of property was handled, specifically exclude that item from your complaint. Making it clear that you are isolating matters that you are happy with from those that you were unhappy with makes it easier for the Solicitor to address your concerns and shows that you have thought clearly about your complaint.
6. Be clear about what your reasons are for the complaint at section 12.
7. Be clear about what it is you would wish the Solicitor to do in relation to it at section 13.
8. The Complaints Regulations allow the Solicitor 28 days to give you a substantial response to your complaint. If you post the complaint then you should allow 3 or 4 days for receipt of the letter of complaint and give the Solicitor 7 days to respond from that date. The response initially should be to acknowledge receipt of the complaint. If after the expiration of 28 days you do not receive a response from the Solicitor or if the response is unsatisfactory, then it is open to you to bring the matter forward to the Society.
9. It is in the interest of both you and the Solicitor that you try and resolve any outstanding concerns about the nature of the work between you. An agreed solution is in both of your interests. Therefore you are encouraged to be open with the Solicitor and consider any request for a meeting, although you are not obliged to attend any such meeting.

10. The object of the Complaints Procedure is to ensure that all issues which give rise to concern are dealt with at once by the Solicitor. Investigating your complaint takes considerable time and effort on the part of the Solicitor. It is therefore appropriate that you should include all issues of concern that are known to you at the time you first raise the complaint to allow the Solicitor to comprehensively address your concerns. It will not be of assistance to you or the Solicitor if you only raise some matters in the course of the In-house Complaints Procedure and then attempt to raise additional matters when you bring the matter to the Society.
11. Please remember that in presenting your complaint to your Solicitor it is not about professional criticism in general, it is usually about addressing misunderstandings, delays or difficulties or resolving cost issues. These are matters which any business will normally be happy to address with the client and you should therefore feel free to raise these matters with the Solicitor knowing that they are willing to address your concerns properly.
12. If after raising the matter with the Solicitor you do not receive a response, failure to do so will be a breach of the Society's Regulations which the Society will have to consider if you make a complaint to it. The Law Society of Northern Ireland, Law Society House, 96 Victoria Street, Belfast, BT1 3GN, T. 028 9023 1614, F. 028 9031 1323, Library Fax: 028 9031 1323. www.lawsoc-ni.org info@lawsoc-ni.org

12.3 Appendix C

CCF1

Complaints Form

THE LAW SOCIETY
OF NORTHERN IRELAND



In all cases, please tick the relevant boxes

We would encourage you to complete this form in TYPE or to please use BLOCK CAPTIALS in black ink.

Part 1 - Your personal details

Mr		Mrs		Miss		Other			Please give details
----	--	-----	--	------	--	-------	--	--	---------------------------

First name	
Surname	
Address	
Postcode	
Telephone Number	
Mobile Number	
Email Address	

Part 2 - Details of the solicitor you are complaining about

Details of the solicitor you are complaining about

Name of the Solicitor	
Name of the Firm	
Firm's Address	
Firm's Postcode	

Part 3 – Who is the solicitor acting for?

Status	Issued
Version	1
Date	September 2010
Date issued	
Review date	

(Please note that we are not able to help with the concerns we receive about other people's solicitors. It might help to discuss your concerns with your own solicitor. Please answer YES or NO.)

QUESTION	YES	NO								
<p>A) Does the solicitor you are complaining about act for you now in relation to this matter or did he/she act for you in the past?</p> <p>(If YES please go to part B below.) (If NO, we regret we are unable to help you)</p>										
<p>B) Have you used the firm's own complaints procedure?</p> <p>(If YES, please send us a copy of any complaint letter which you sent to the solicitor, and their reply. Please tell us why you are still not happy. In Part 6) (If NO, please note that we are not able to help you until you have used the firm's own in-house Complaints procedure)</p>										
<p>C) Is the solicitor you are complaining about dealing with an estate of someone who has died?</p> <p>(If YES, please give more details in Part 5, but it is important that you read the section on the administration of estates in our leaflet.)</p>										
<p>D) Do you have solicitors acting for you now in this matter, different to the you wish to complain about? (If YES, please give their name and address below).</p> <table border="1" style="width: 100%; margin-top: 10px;"> <tr> <td style="width: 30%;">NAME</td> <td></td> </tr> <tr> <td>FIRM</td> <td></td> </tr> <tr> <td>ADDRESS</td> <td></td> </tr> <tr> <td>POSTCODE</td> <td></td> </tr> </table>	NAME		FIRM		ADDRESS		POSTCODE			
NAME										
FIRM										
ADDRESS										
POSTCODE										
<p>E) May we contact your new solicitors to discuss your complaint?</p>										

Part 4 – Nature of Work and relevant dates?

A) Please describe what kind of legal work is involved? (For example, selling or buying a house, family matters, a personal injury claim such as road traffic accident or an accident at work, administration of deceased estates).				
B) When did you first instruct your solicitor?	Date/...../.....		
C) Has the work been completed? (If YES when was the work completed?)	YES/NO	Date/...../.....	
D) When did you last instruct your Solicitor?	Date/...../.....		
E) How are you paying for the work? For example, privately or through legal Aid, legal expenses, insurance, trade Union funding or not known.)	PRIVATELY / LEGAL AID / OTHER			
F) Have you paid money to your Solicitor? If YES, when and how much?	YES/NO	IF YES:	Date:/...../.....	Amount: £.....

Part 5 – Complaints about the administration of an estate

(If this does not apply, please go to **part 6**)

A) Name of the person who has died?			
B) Date of their death?	/ /		
C) Are you the executor or administrator?	YES	NO	
D) Please indicate below the names of the executors or administrators (Include yourself if you are one):			
1.	2.		
3.	4.		

Part 6 – Your Complaint

Please describe your concerns as clearly as possible.

We would prefer you to complete this section in **TYPE**
or use **BLOCK CAPITALS** in black ink.

- Include the complaint letter sent to the solicitor and any response
- If necessary you may use a separate sheet. However we ask that you attach all sheets when submitting your form.
- We will send a copy of this form and accompanying documents to the solicitor for their comments.

A) The Facts –

Please set out the facts of your case, including the date of your first visit. (You may use a separate sheet if necessary)

B) Reasons for your Complaint –

Please state the reasons for your complaint. (if you have documents in support of your allegation, please enclose copies of same).

C) Solution you would prefer –

Please tell us what you would like us or your solicitor to do to help sort out this problem. We may be able to reduce your solicitor's bill or direct the solicitor to take certain actions which are in your interest. If we can prove that the solicitor's behaviour fell below the expected standard (this is called professional misconduct), we can take action in the public interest.

Part 7 – Your Agreement

- I would like the Law Society of Northern Ireland to look into my complaint.
- I understand that you will send a copy of my complaint form to the solicitor for their comments.
- I understand that details of my file may be made available to outside regulators whose duties are to ensure the Law Society acts properly.

- **YOU MUST SIGN THIS FORM AND SEND IT TO US**
- **WE CANNOT ACCEPT EMAIL OR FAX VERSIONS OF YOUR FORM**
- **WE RECOMMEND THAT YOU MAKE A COPY OF THIS FORM**

Your Signature	
Date	

12.4 Appendix D

DID YOU KNOW THAT...

Article 31 of the United Nations Convention Relating to the Status of Refugees prohibits states from penalising refugees who use false documents in order to escape persecution. This provision has also been translated into domestic law by virtue of s.31 of Immigration and Asylum Act 1999.

- Article 31 of the Refugee Convention 1951 provides that refugees should not have any penalties imposed upon them as a consequence of illegally entering, or being present in the country of refuge illegally in order to seek sanctuary, provided that:
 - » they travel to the country of refuge directly from the territory where they fear persecution
 - » present themselves to the domestic authorities without delay
 - » show good cause for their illegal entry or presence
- Section 31 of the Immigration and Asylum Act 1999 states that a refugee, who has presented himself to the UK authorities without delay, shown good cause for his illegal entry or presence, and has made a claim for asylum as soon as was reasonably practicable, is afforded protection in England, Wales and Northern Ireland against prosecution for the following offences:
 - » Part 1 of the Forgery and Counterfeiting Act 1981 (forgery and connected offences)
 - » Section 24A of the Immigration Act 1971 (deception)
 - » Section 26(1)(d) of the Immigration 1971 Act (falsification of documents)
 - » Sections 25(1) and (5) of the Identity Cards Act 2006 with effect from January 2011

The House of Lords held that the statutory defence is available for offences attributable to a refugee's attempt to leave the UK in the continuing course of a flight from persecution and that the term "coming directly" is to be interpreted liberally in that a refugee should be entitled to transit through other countries and then claim asylum, without risk of prosecution in more or less the country of his choice.



THE TRUTH IS:

- » In Northern Ireland, Asylum Seekers are arrested and convicted for using false documents and then are sent to prison before an asylum application is made.
- » The criminal defence solicitors allocated to the Asylum Seekers in most cases advise them to enter a guilty plea in court.

WHAT NEEDS TO HAPPEN?

- » NICRAS are calling on all PSNI officers to refrain from arresting any asylum seeker "as a consequence of illegal entering" when called on the scene by Immigration Officers. Instead please remind them of Article 31 of the Refugee Convention and Section 31 of the Immigration and Asylum Act 1999: An asylum seeker shall not be charged ***"with immigration or criminal offences relating to the seeking of asylum or be arbitrarily detained purely on the basis of seeking asylum"***
- » We are calling on the Public Prosecution Service to not pursue cases where the crimes are relating to an attempt to claim asylum
- » We are calling on all criminal defence solicitors to advise their client to enter a not guilty plea if it goes to court, and to raise the possibility of using the 'refugee defence' (s.31 of the 1999 Act) in court.

**Northern Ireland Community of
Refugees and Asylum Seekers**

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