

Asylum Report

The quality of legal service provided to asylum seekers

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Executive summary

Asylum seekers are some of the most vulnerable people needing the services of a solicitor or law firm. This has led to a number of organisations focusing on the quality of legal services provided to asylum clients.

In this report, we set out the results of our thematic asylum project (the project). This review was undertaken in the light of the findings of independent research we commissioned in 2014, reported in the, 'Quality of legal services for asylum seekers', published in January 2016ⁱ (the research paper).

We set out our findings in the core areas of:

- introduction of clients
- client care
- legal process
- appeals and judicial reviews
- staff supervision
- qualifications and training.

These findings are supported by some examples of good and poor practice.

The majority of firms we visited appreciate the potential vulnerability of their clients and many have shown dedication to supporting their clients. This support includes examples where guidance and advice have been provided in addition to the expected legal service, often without charge.

Many of the firms have welcomed our review and share our commitment to encouraging an improvement in the quality of legal services provided to asylum seekers.

Although the overall picture is broadly positive, there remains scope for improvement and areas of concern.

In particular, there is a need for further focus on:

- communicating the key client care messages
- the role and quality of interpreters
- providing an appropriate explanation of costs
- meeting the client's specific needs and avoiding over-reliance on firm policy or proforma documents
- meeting and considering all of the legal needs of the client
- ongoing training and the competency of advisers
- the appropriate and professional use of the appeals process.

Introduction

In August 2014, we jointly commissionedⁱⁱ a consortium, led by Migration Work Community Interest Company (CIC), to undertake research assessing the quality of legal advice available to asylum seekers. The focus of the research was the assessment of solicitor behaviours and competence, together with a review of good and bad practice, rather than a critique of the asylum legal process. The research paper was published in January 2016ⁱⁱⁱ.

Of key concern to us were findings about the standards of legal advice and the extent of poor service or advice. The research identified a number of examples where solicitor competence could be called into question and where behaviours and practices may have regulatory implications and justify more targeted engagement with firms. These are summarised below:

- Use and conduct of introducers: stakeholders provided anecdotal evidence of solicitors' firms using interpreters to introduce asylum seekers to their firms in return for financial remuneration.
- Provision of suitably skilled interpreters: in addition to interpreters introducing asylum seekers to particular firms, there were concerns that solicitors were failing to provide suitably skilled interpreters at key stages in the legal process.
- Lack of clarity about costs: for those asylum seekers able to pay for advice, there was evidence of a lack of understanding of how costs are calculated and of solicitors overcharging or deliberately confusing clients.
- Lack of case knowledge: both asylum seekers and advice providers^{iv} identified instances of firms or solicitors lacking knowledge relating to the specifics of an asylum seeker's case and the law underpinning it.
- Experience at appeal hearings: the high volume of appeals against initial Home Office decisions posed separate questions about the quality of advice provided.
- Interview technique and quality of witness statements: solicitors lacked the requisite skills and experience to engage effectively with asylum seekers and vulnerable individuals to obtain sufficient and relevant information.

Our approach

In response to the findings of the research, we decided to undertake a review of the legal services provided to asylum seekers and commissioned our Regulatory Management Thematic Team to deliver the project. The objectives of the review were to:

- Review the practices and behaviours of sample firms by testing their systems and processes to identify risk. This would provide evidence to us of the level of risk posed.
- Test the extent, and raise awareness, of best practice and ethical conduct.
- Challenge poor behaviours and practices by firms with a view to encouraging process change and improvement.
- Identify whether any firms have breached the SRA Handbook and, where appropriate, take regulatory action.

Selection of participants

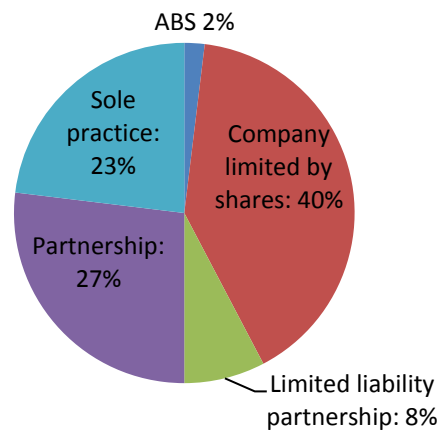
We established a sample of 52 firms using the following process:

- We identified all firms that advised us they undertake immigration work. (We do not currently ask firms to advise us if they undertake asylum work).
- These firms were then cross-referenced against solicitors who have advised us they undertake asylum work within those firms.
- This resulted in a list of 479 firms most likely to undertake some asylum work.
- We selected the 52 firms with the highest turnover of immigration work but excluded those where such work is reported as less than 10 percent of the firm's annual turnover.

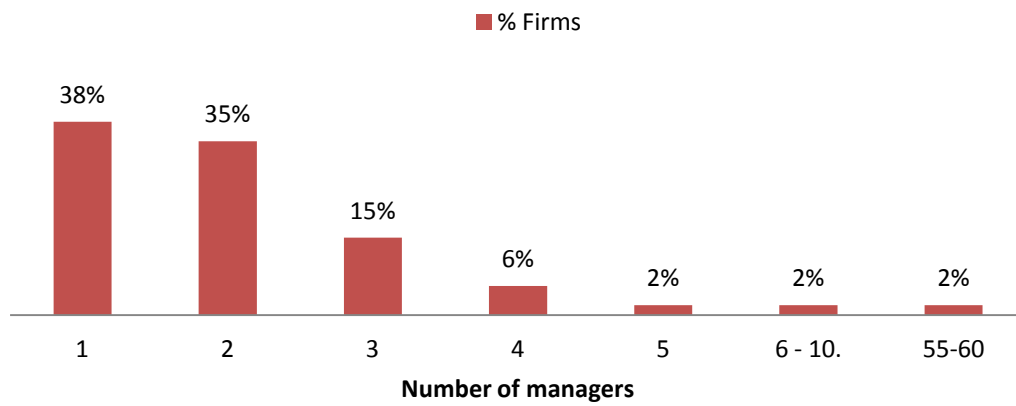
This approach made sure we visited firms that undertook the highest volume of asylum work and, therefore, potentially have the largest impact as they advise more asylum seekers.

The firms

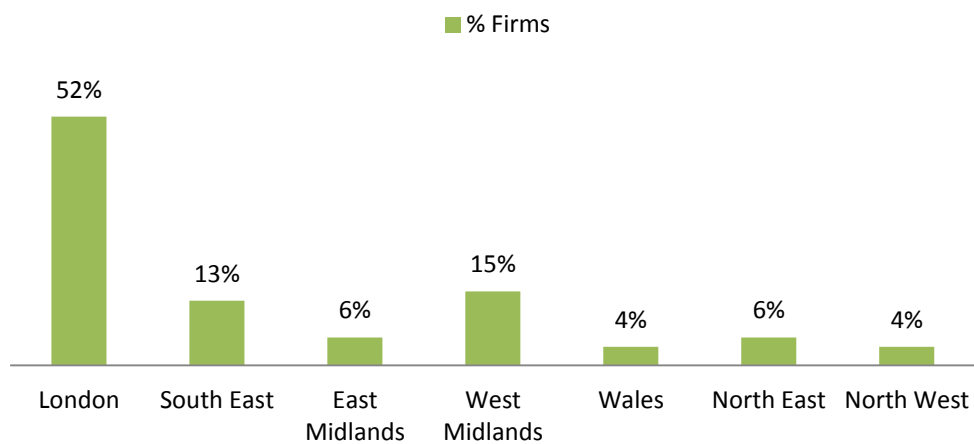
Sample firms by structure



Sample firms by number of managers



Sample firms by geographical location



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Collectively, the sample firms employed the following types of staff who offered asylum advice:

Role/qualification	Number of asylum staff	Percentage of all asylum staff
Solicitor	298	64%
Caseworker ^v	111	24%
Trainee solicitor	35	8%
Legal executive	9	2%
Other qualification	5	1%
Barrister	3	1%
Registered European lawyer	1	<1%
Registered foreign lawyer	1	<1%
Total	463	

Key findings:

- The sample firms carried out around 14,300 cases per year.
- The number of asylum cases undertaken per firm ranged from less than ten to over 1,000 per year.
- Just over half of firms (28) had a legal aid contract to provide asylum advice. The amount of legal aid asylum work undertaken by these firms varied from between 20 to 100 percent of the firms' total work.
- The total number of legal aid cases for the sample firms was 13,422 in contrast to only 875 private client cases.
- The most common countries of origin for asylum clients were Afghanistan, Pakistan, Albania, Bangladesh and Eritrea.
- The most common languages used by the client were: Arabic, Pashtu, Albanian, Dari, Urdu, and Farsi.

Types of asylum claim included:

- children (minor) cases
- religious persecution
- political persecution
- gender and sexuality persecution.

Summary of findings

The meetings with sample firms covered the following:

- introduction of clients
- client care
- legal process
- appeals and judicial reviews
- staff supervision
- qualifications and training.

Introduction of clients

The research paper identified: "a concerning practice of interpreters being used to introduce asylum seekers to particular firms or individual solicitors, in return for mutual co-operation, financial remuneration and the promise of further work"^{vi}. It also noted that community groups, friends and peers referred clients to firms on the basis of personal connections rather than on the quality of services provided^{vii}.

Key findings

The profile of asylum clients varied widely, and often did not conform to popular stereotypes of asylum seekers. By way of example, these are some of the clients whose files we reviewed:

- an author and poet
- a lawyer, persecuted by a terrorist group
- women fleeing forced marriages and 'honour' violence
- conscientious objectors, fleeing compulsory military service
- an aide to a former government minister, persecuted following his employer's downfall.

The firms' managers were asked specific questions about the introduction of clients and how they sourced work. The three most common answers were:

- 27 firms said recommendations by other clients
- 10 firms said recommendations by family members
- seven firms said referrals from local authorities.

Recommendations also came from community groups, and could be on the basis of a solicitor's membership of that group, or by the solicitor having built up a relationship with the community over a long period of time. Other means of introduction included advertising and advice surgeries.

Some firms were on a rota to provide advice surgeries at detention centres or received work directly from the Home Office. Detention centres hold a variety of individuals, some of whom may be in a position to instruct solicitors on a fee-paying basis. Firms can be placed on a rota to provide free advice at detention centres and receive a certain number of slots. The 30-minute advice session gives an opportunity to take initial instructions and to assess the client's needs.

All of the firms stated that they had no financial referral arrangements in place. Legal aid firms should also be aware of outcome 9.6 in the SRA Code of Conduct 2011, which prohibits payments to an introducer where the client has public funding.

Some firms had informal arrangements with charitable bodies. For example, one firm would take a few pro bono cases every year for a refugee charity, which in return would offer medical reports for the clients at a reduced rate. This benefitted the firm's clients, both private and pro bono. The file reviews showed a wide variety of other methods by which clients came to the firms. These included:

- walk-in clients
- internet searches
- referrals from church
- referrals from a government-in-exile
- via a television programme featuring the firm's senior partner.

It is important that firms should put their clients' interests above the interests of any third party who may have been involved in the referral of the client to the firm, however informal the arrangement.

Good example

One firm stated that they would accept referrals from interpreters, but would not allocate those clients to the interpreter who referred them. They considered a pre-existing relationship between the client and interpreter to be a risk that could affect the client's testimony. Another firm checked the validity of the referrer and their relationship with the client. This included obtaining a copy of the referrer's identification documents and references.

Poor example

One firm took referrals from interpreters in exchange for work. Although not directly involving commission, this provided a financial incentive which could compromise the solicitor's independence and restrict the client's choice of solicitor or interpreter. Allocating the work to a single interpreter could also limit opportunities to book meetings when the interpreter was available.

Client care

A key point highlighted in the research paper was that asylum clients sometimes felt the solicitor did not keep them informed about their case or listen to their evidence and concerns^{viii}. Issues were also raised about unclear costs information^{ix}.

Many of the good practices identified could be classed under effective communication between the legal representative and asylum client. These included:

- providing more face-to-face meetings to explain advice letters and correspondence from the Home Office
- using client care letters to set out clear standards and expectations of service
- keeping clients updated on the progress of their case
- writing letters detailing the content of meetings to make sure asylum clients understood and had records of all conversations.

The SRA Code of Conduct 2011 also provides indicative behaviours of good client care:

- agreeing an appropriate level of service with their client, for example the type and frequency of communications^x
- explaining the firm's responsibilities and those of the client^{xi}
- ensuring that the client is told, in writing, the name and status of the person(s) dealing with the matter and the name and status of the person responsible for its overall supervision^{xii}
- explaining any limitations or conditions on what the firm can do for the client, for example, because of the way the client's matter is funded^{xiii}.

Communication

The overwhelming majority of firms stated the most common form of communication with asylum clients was through meetings.

Texting

The research paper cited text messages as a positive means of communication with the client. When we spoke to firms about this, however, they stated that they were reluctant to use texts because of confidentiality and privacy concerns. One firm had trialled communication via text but found that it was not workable. The reasons for this were that asylum clients tended to share mobile phones with each other. They also sent text messages to the firm asking for updates, which did not identify who they were from.

A number of firms, however, said they used texts to provide routine administrative information such as appointment confirmation and reminders. One firm said they used texts a lot as most of their clients had a mobile phone and rarely had an email address. Texts were always in English, except where the firm had an in-house linguistic resource.

First language communication

Communication in writing was never, or rarely, in the client's first language. Some reasons firms gave for this were:

- for private firms, it would be too expensive for each written communication to be translated professionally
- for legal aid firms, their contract with the Legal Aid Agency would not cover translation of firm documents
- it would be impractical to translate written correspondence, and would cause delay
- some firms reported that all, or the majority of, their clients had sufficient ability in English to understand the letters.

The same could be said for emails. However, firms did say that, usually, their clients could understand some basic English by the end of the asylum process. The ability of children to understand English improved very quickly.

Firms told us that they were using telephone interpreters more frequently, especially where the client was unable to travel.

In other firms, caseworkers were multilingual and could speak the client's language.

Case management

Some 96 percent of firms said they had a process to check that clients received an update about their case at regular intervals, generally every three to six months. This was particularly important as some applications can take several months or longer to complete. Some firms had electronic case management systems, which allowed alerts to be set up if a set period had elapsed since the last activity on a file, or to produce a monthly report on all fee earners' activity.

Firms took a number of factors into account when deciding how much contact the client needed. These included:

- age
- particular vulnerability (eg whether the client had been trafficked into the UK or was disabled)
- level of education and/or understanding of the process
- level of literacy.
- type and urgency of the case (eg whether the client is in detention)
- stage of the case
- level of case complexity
- the availability of evidence.

Face-to-face meetings

Given the importance placed on oral communication, firms were asked how often they would meet with clients face-to-face at certain stages in the proceedings.

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Firms varied in the number of times they met with clients at various stages of the case, as set out in the table below. They were also asked to provide a figure for a typical case.

The following trends were noted:

- Legal aid firms tended to rarely or never see clients before their screening interview, as in most cases the client only came to them after this had happened.
- The amount of contact varied with the client's circumstances – vulnerable clients would typically require more face-to-face meetings.
- Firms reported that asylum clients can have an expectation that their solicitor will do all of the work – they often had to convince their clients that their testimony had a central place in the process.
- Upper-tier Tribunal and judicial review applications were made on a point of law, so there was less need to have more than one or two client meetings.

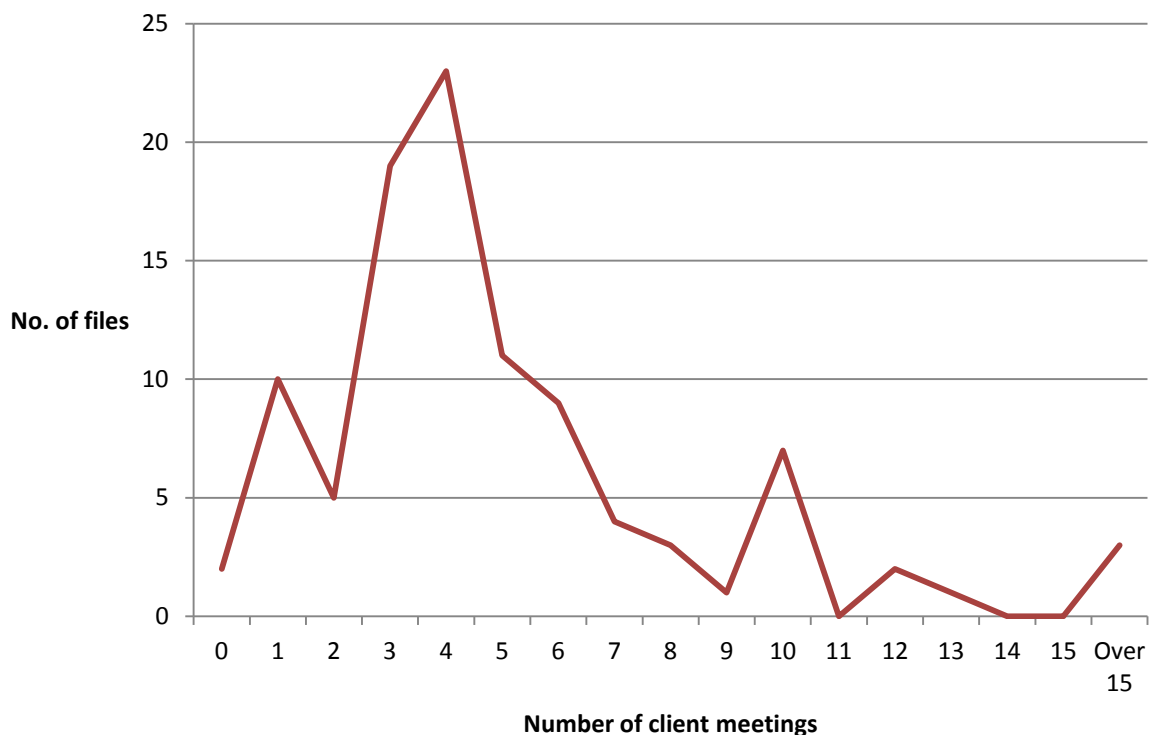
How often, on average, will you have a face-to-face meeting with the client during the following stages?

	Never	1–2 times	3–4 times	5–6 times	More than 6 times	Not applicable
Before initial screening interview	8%	66%	14%	2%	2%	8%
Before substantive Home Office interview	0	54%	30%	12%	4%	0%
After the substantive Home Office interview	4%	90%	4%	2%	0%	0%
Following the substantive decision	0%	90%	8%	2%	0%	0%
First-tier Appeal	0%	23%	54%	15%	8%	0%
Upper-tier Appeal	0%	69%	25%	4%	2%	0%
Judicial Review	2%	44%	38%	10%	2%	4%

We also reviewed a sample of client files to see how often the fee earners met with clients. Although the type of file and number of meetings varied, we have worked out the total number of meetings the sample firms had with clients on the files reviewed.

The graph below shows that the fee earner had met the client three times on 19 files (18 percent) and four times on 23 files (22 percent). The number of meetings then declined rapidly, with only 9 files showing that the fee earner had met the client eight or more times. The results show that, in the majority of files reviewed, the fee earner had three to four meetings with the client. This result was affected by the stage of the proceedings and type of file. More complex and older cases inevitably featured more meetings with the client.

Graph showing the total number of meetings with clients as shown by the file reviews:



Understanding the client care information

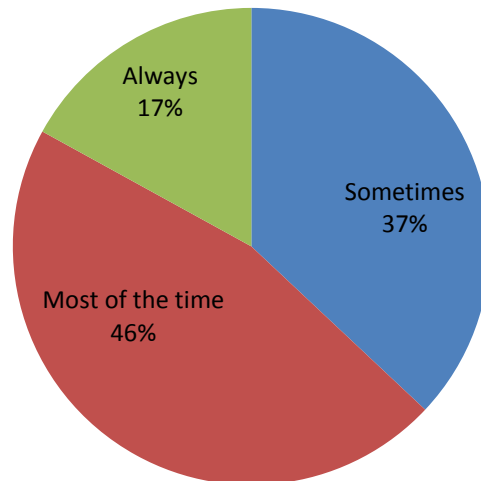
Firms were asked how they made sure that clients understood client care information, particularly if the client did not understand English. Firms adopted a number of strategies to deal with this, such as:

- going through client care information with the client in the presence of an interpreter, if required
- using a member of staff who spoke the client's language
- obtaining the client's written authority to send the documentation to a friend or relative who could explain it to them.

Some firms, however, did not take such proactive measures and left it to clients to familiarise themselves with the client care information. In one firm, the client care information was sent

to the client with the instruction: "read this letter carefully (ask a relative to explain) as it contains important advice" halfway through the text.

How often do you follow up face-to-face meetings with a written communication explaining what was discussed?



In general, client care letters were written in English and many were quite detailed and technical. Many firms said they tended to write client care letters to comply with regulations. However, some questioned the effectiveness of sending written client care information to the asylum client, especially if they could not speak English.

Some firms acknowledged that clients may get a friend or relative to read the letter to them. However, it is important that the level of communication is tailored to the client's needs and a detailed client care letter in English may not always be helpful to the client.

Managing expectations

Managing clients' expectations can be an important part of client care. The research paper identified clear and frequent communication as an example of good practice^{xiv}.

We examined whether firms set out what level of service clients could expect. Some 81 percent of firms said they included some description of standards and expectations of service. Our review of files showed this in 77 percent of cases. Some of these standards were quite basic; for example, a commitment to reply to missed calls or provide "a high level of service". Others were more detailed and included the following:

- a commitment to using simple, jargon-free language
- defined time scales for responses, such as calls returned within 24 hours
- listing the client's objectives and how the firm would try to meet them
- the estimated prospects of success
- out-of-hours and emergency numbers

- a commitment to send the client copies of all substantive correspondence
- contact details and office hours of the fee earner handling the case.

Contact information

All client care information included the firm's contact numbers and email. A significant number of firms provided clients with business cards bearing the individual fee earner's contact details, including a mobile phone number. One firm often received client communication via private messages to its Facebook page, although the firm said this could cause difficulties as clients often used a different name online. Managing clients' expectations of contact was considered to be important by the majority of firms.

Firms took different views on how clients could contact them. Some provided fee earners' direct dial numbers and/or mobile phone numbers, while other only provided a switchboard number. Both methods have pros and cons. While direct dial numbers may allow a more personal touch, a reception number allows clients to speak to a person rather than leaving a voicemail message if the fee earner is not available.

Good practice	Poor practice
<ul style="list-style-type: none"> • Accessible fee earners who are easily contacted. • Managing clients' expectations about calls. • Client care information presented in clear, plain and jargon-free language and summarised orally. • Ensuring the client has the best interpreter for their needs. • Keeping the client informed at regular intervals and as new issues arise. 	<ul style="list-style-type: none"> • An assumption that the client has the ability to read and digest client care information in English. • Failing to establish that the client is happy with the interpreter. • Treating client care as a tick-box exercise rather than a reference document for the client. • Failing to set out what the client can expect from the firm.

Vulnerable clients

All asylum clients can be considered vulnerable to some degree due to their situation, though naturally some will be more sophisticated and robust than others. Particular groups, however, may in some circumstances require reasonable adjustments to enable them to give full instructions. We concentrated on the following:

- female asylum clients, who were often reported having suffered gender-specific persecution, violence or trafficking
- minors
- clients with mental health problems.

Female asylum clients

The majority of firms had female lawyers and staff available if required. This extended, in appropriate cases, to making sure that female interpreters and barristers were instructed.

The case of *Wasif* (see judicial review section) shows the importance of this. The judgment refers to the asylum claimant introducing new facts in the middle of a hearing, because she had not felt able to discuss them with her male solicitor.

In the case of one particularly traumatised client, a firm managed to arrange an all-female appeal hearing to ensure the client felt able to give evidence freely.

Some firms stated they would ask the client in advance for their preference, others tended to make a judgment in advance based on the client's initial contact. In one case, a firm booked an appointment with a client and engaged a male interpreter, but re-booked it with a female interpreter when they received the client's documents in advance of the meeting showing she had been a victim of female genital mutilation.

Firms also worked with specialist advisers such as women's refuges, the NHS Assist service, female genital mutilation specialists and anti-trafficking charities.

Minors

Some firms had a policy of not taking clients who were minors, while others only took on minor clients. Firms coped with the vulnerability of these clients by:

- making sure staff who dealt with them had undergone an enhanced Disclosure and Barring Service check
- only allowing other adults (eg relatives or foster carers) to attend meetings if agreed with the client's social worker
- providing biscuits, sweets and toys for young clients
- talking about neutral issues, such as football, to put the client at ease
- dressing and behaving in a less formal manner than they would for an adult client.

One firm also insisted on seeing older minor clients alone to ensure they were content for their social worker and/or foster carer to be present.

Asylum clients with mental health difficulties

A number of firms were able to work flexibly to accommodate their clients' needs – this included:

- visiting clients in mental health units
- helping the client get counselling
- making sure internal guidelines were in place so that all staff could respond sensitively to the client's needs
- working with the Home Office to obtain dispensation for clients who are unable to travel to interviews and hearings.

All firms reported taking particular actions to make sure asylum clients felt comfortable and able to speak openly. The firms took a wide variety of measures, such as:

- taking instructions via an iPad in the case of a client who could not hear or speak
- greeting the client in their own language, which one fee earner commented could do a great deal to put clients at ease
- reassuring the client of their independence and the confidentiality of the meeting, in particular that the firm is independent of the Home Office
- frontloading^{xv} the case in order to build up a relationship with the fee earner
- ensuring that meeting rooms were welcoming and spacious. One firm who dealt with a particular community furnished meeting rooms with pictures and symbols from the clients' home country, which helped to give a sense of familiarity
- the use of a whiteboard and diagrams to explain the asylum process to the client.

Naturally not all of these would be suitable in all situations and the clients' circumstances should be considered. While it is good that some firms take a pro-active approach, the firms should try to confirm this approach with the client in advance of the meeting.

Clients may not always want an interpreter of the same sex. An example of this arose in some firms who told us that male clients fleeing persecution due to their sexuality often preferred to have a female interpreter. However, firms need to make sure that they do not breach the Equality Act 2010 when instructing interpreters.

All firms had rooms where clients could be seen in private. These were of varying size and quality – some were spacious, well-lit and comfortably furnished, while some were quite cramped, stuffy cubicles. This is still preferable to having no private rooms at all.

One firm had some fairly large cubicles for seeing one or two clients, but for larger groups (eg clients with children) they used a back room. This was large and comfortable, but it also contained the firm's one photocopier and was the only means of access to the firm's lavatory. It therefore had the potential to become a thoroughfare.

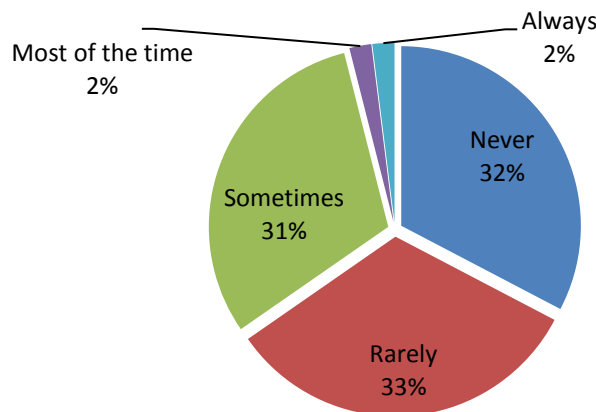
A small number of firms saw clients in offices where other solicitors were working. They assured us that they asked clients whether they minded other fee-earners being in the room and the fee-earner would withdraw if necessary. The client should not, however, be placed in this position. Confidentiality problems could also arise should the other fee earner take a telephone call, for example.

The research paper also identified working with appropriate support agencies as an example of good practice^{xvi}. Some 96 percent of firms reported that they worked with support organisations to assist their clients. Among the most frequently cited agencies were:

- the Helen Bamber Foundation^{xvii}
- Freedom from Torture^{xviii}
- the National Asylum Support Service^{xix}
- Migrant Help^{xx}
- UK Lesbian and Gay Immigration Group^{xxi}
- local and community charities such as Southall Black Sisters^{xxii} (Southall), Black Association of Women Stepping Out^{xxiii} (South Wales), Apna Haq^{xxiv} (Rotherham) and Ashina^{xxv} (Sheffield).

Third parties

How often do you receive instructions from someone else on behalf of your client?



The chart above shows that asylum clients often attend a firm's offices with a third party – typically a spouse, relative, religious leader or friend. This is not in itself a problem. However, solicitors should take steps to ensure that the client is happy for the third party to be there and that their instructions are not given under duress or undue influence. The person introduced as a relative or friend could, for example, be a trafficker. In some circumstances, such as in one reported instance where a client was severely disabled, taking instructions via a third party could be unavoidable.

Most firms reported that their clients were accompanied at least some of the time, and adopted a number of strategies to make sure their clients were able to give instructions freely:

- insisting on seeing the client without the third party at the outset of the first meeting, to check that they were happy to proceed
- refusing to see clients with a third party present at all

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- getting the client's written consent to proceed with a third party present
- maintaining control of the meeting and making sure that the third party keeps to a purely supportive role.

Good practice	Poor practice
<ul style="list-style-type: none">• Treating clients as individuals with individual needs.• Making sure clients feel comfortable so that they can give full instructions.• Working with external organisations who can help the client.• Reassuring the client of the firm's confidentiality and independence.	<ul style="list-style-type: none">• Treating all clients the same without properly assessing their needs.• Seeing clients in rooms that are not private.• Relying on clients to request assistance, rather than anticipating and offering it.• Assuming that clients are happy for a third party to attend, simply because they arrived with them.

Costs and costs information

The research paper stated that a number of asylum clients felt that there was a lack of clarity around the costs payable to their solicitor^{xxvi}. In particular, clients were reported as feeling that they had paid an initial sum, only to be charged more money as the case progressed, which they were not expecting.

All of the client care letters we reviewed contained costs information in writing, as required by the SRA Code of Conduct 2011. Some 96 percent of managers said they additionally went through costs information in the meeting.

Eight firms did not charge clients on a private basis. For the other firms, the chart below shows some common methods of charging privately:

Method of charging	% of firms
Fixed or agreed fees	77%
Hourly rates	27%
Instalments	17%
Pro bono	27%

Fixed and agreed fees, however, could vary widely. Most were around £1,000 to £1,500 until the substantive decision. Some were as low as £800 and others as high as £4,000 to £5,000. This was partly due to the services included within the retainer.

At one firm, £800 represented the firm's fees, but interpreters and experts would cost extra. At another, a global figure of £4–5,000 was quoted, but this included experts, interpreters and all work including consultations with the fee earner whenever the client wanted. The firm's own costs were around half of the global sum.

Neither approach is wrong but in both cases it should be made clear to the client what is included in the costs.

Firms generally expressed a willingness to be flexible where the client engaged them on a fee-paying basis but could not afford their fees. One firm reported taking on a case for £300

Types of fee

We found some confusion among firms regarding the distinction between 'fixed' and 'agreed' fees. Agreed fees are governed by Rule 17.5 of the SRA Accounts Rules 2011 and must:

- be evidenced in writing
- be paid directly into office account and
- not be varied upwards or dependent on the transaction being completed.

Fixed fees are payable on completion of the work required – this may, for example, apply to work billed per hour but with a fixed upper threshold. Any costs on account of the fixed fee must be paid into the client account in the usual manner. At the conclusion of the matter, a final bill is delivered to the client in the usual way.

The major difference is that agreed fees are office money, and fixed fees are client money. Agreed fees do not, therefore, have the protection given to client money. Clients should be made aware of the implications of this.

up to the Home Office decision – this was an exceptional matter for a particularly desperate client. Firms also stated that they would not pursue clients for unpaid bills as it would be disproportionate to do so. Some also said that they would not generally exercise their lien over a client's files if they needed to transfer to a legal aid firm.

On examining files we found that in 12 percent of cases firms did not appear to provide costs updates to clients throughout their matter. The research paper cited this as a particular problem, with clients not knowing what they owed and being unsure as to how much more they would be expected to pay^{xxvii}.

One firm we visited took a very relaxed attitude to costs, providing clients with a global figure at the outset and asking them for 'some money' at the conclusion of client meetings. Flexible arrangements may be beneficial to some clients, but there needs to be certainty on both sides as to how much clients have paid and when the final bill should be settled. Payments should be recorded on the file.

Another firm's files showed that while clients were being charged at an hourly rate, the time spent on the work was not being recorded anywhere. When questioned, the fee earner said he would estimate the costs and bill the client at various intervals. He kept no time records but said that the appointments shown on his online calendar would give a figure that was accurate 'to within half an hour'. He did not explain how time spent on other tasks would be estimated. This practice would not be acceptable in any branch of the law^{xxviii}, but being overcharged by even half an hour could have a considerable impact on an asylum client, who may have limited income and/or restricted employment rights. This firm has now been referred to our Supervision Team.

Firms also need to be clear about whether they are offering a fixed fee, which may go up if matters outside the initial retainer arise, or an agreed fee, which may not be exceeded, save for disbursements (see types of fee above).

Good Practice	Poor Practice
<ul style="list-style-type: none"> ■ Clear costs information at the outset of the case, explaining what is and is not covered by the retainer. ■ Clarity as to whether fees are "fixed", "agreed" or charged at an hourly rate plus disbursements. 	<ul style="list-style-type: none"> ■ Failure to keep clients informed as to their current level of costs and future liability. ■ Failing to record time accurately or at all.

Given the importance of this issue and the potential vulnerability of asylum clients we have taken the opportunity to provide further [guidance](#) on this point.

Complaints

The research paper noted^{xxxix} that the number of complaints from asylum clients was low, compared to other legal sectors. This was largely attributed to:

- a lack of awareness of the ability to complain and how to do it
- a fear that a complaint could lead to a case being handled badly or the person complaining manipulating the asylum process against the client.

The SRA Code of Conduct 2011 requires firms to inform clients:

- whether and how the services provided are regulated and how this affects the protections available to the client^{xxx}
- in writing at the outset of their matter, of their right to complain and how complaints can be made^{xxxix}
- in writing, both at the time of engagement and at the conclusion of the firm's complaints procedure, of their right to complain to the Legal Ombudsman, the time frame for doing so and full details of how to contact the Legal Ombudsman^{xxxix} and
- of their right to challenge or complain about the firm's bill and the circumstances in which they may be liable to pay interest on an unpaid bill^{xxxix}.

Some 92 percent of firms said they explained the role of the Legal Ombudsman^{xxxix}. Some firms did not refer to the SRA outside of the firm's letterhead. Three firms included a brief complaints paragraph, but did not refer to either. Other firms, by contrast, included their whole complaints procedure within the client care information.

All firms said they informed their clients of the firm's internal complaints procedure although on reviewing the files one firm did not in fact do so. All firms did so in writing with 81 percent doing so in the initial meeting. Some 6 percent and 4 percent informed clients by email and telephone respectively.

Only 27 percent of the firms, however, reported that they made it clear to clients that a service complaint would not have a negative impact on their case. This information was only given in writing on 6 percent of the files we reviewed. Firms had elsewhere reported their clients' widespread distrust of authority figures and a lack of understanding of the independence of lawyers from the government. This would therefore seem an important point to make.

The client was only informed that there would be no charge for investigating complaints in 6 percent of cases.

Some 35 percent of the firms we spoke to had received at least one complaint from an asylum client in the preceding 12 months.

In our interviews with fee earners, we found that the majority were familiar with the firm's complaints policy. None of the files randomly selected had service complaints on them so we were unable to test this. One firm showed us a copy of an historic service complaint regarding billing, which had been referred internally and then onwards to the Legal

Ombudsman, who found in the firm's favour. This showed that the firm's policies had been followed throughout the matter.

Some 84 percent of firms had a system in place for gathering client feedback. This was typically done at the end of a case and enclosed with a closure letter – firms commented that the level of service satisfaction tended to follow the result of the case. Other firms asked clients for feedback at six-monthly intervals, or asked them to fill out online surveys.

Barriers to complaints

What are the main barriers which prevent clients from complaining?

We received a number of responses to this question, the most common of which can be broken down as follows^{xxxv}:

- 33 percent thought that clients feared that a complaint would cause a negative impact on the handling of their case or the success of their application.
- 31 percent thought that there was a linguistic barrier to complaints.
- 19 percent thought that cultural differences, or a lack of awareness of how complaints work in the UK, created a barrier.

Some 27 percent of firms did not think that there was any barrier to asylum clients complaining. Some of the reasons given for this included:

- the firm's asylum clients generally being sophisticated
- the firm's asylum clients having a good command of English, or the firm being able to speak their language
- a general assumption that all clients know how to complain and will do so if they want to – perhaps best exemplified by one firm which stated: "There are no barriers. There are no complaints."

There may also be significant cultural barriers to challenging authority. It is reasonable to assume that clients may not have the necessary confidence and ability to make a complaint. Occasionally, the client's fear of an impact on their case may be well-founded. One firm reported that a client who had come to them from another firm had told them that her previous solicitor had threatened her and told her not to make a complaint about his handling of her file. The solicitor had said: "If you complain to anyone, I will make sure that you are deported". The client's new firm assisted her in reporting the matter to the Legal Ombudsman and the SRA.

As in other areas, firms highlighted the need to build trust and understanding with asylum clients. This helped to give them the confidence to feel they could make a complaint if needed, as well as reducing the likelihood of that happening.

Good practice	Poor practice
<ul style="list-style-type: none"> ■ Having a clear and concise complaints policy, explained and provided to the client at the outset of the case. ■ Making clear that raising a complaint will not affect the handling of or the decision in the client's matter. ■ Making clear that the complaint will not result in any additional costs. ■ Actively seeking client feedback on cases. 	<ul style="list-style-type: none"> ■ Failing to set out what the client can expect in terms of service levels and advice. ■ Assuming that all clients will feel able to complain if dissatisfied. ■ Failing to advise the client of their right to contact the Legal Ombudsman.

Challenges in asylum work

By its nature, asylum can be a challenging field in which to work. The firms we visited gave a number of examples of challenges which they had faced in their work.

Finding good-quality interpreters for some languages posed a particular problem. An example which one firm gave was Badîni, a minority Kurdish language with few speakers in the UK.

Clients as a whole would forget appointments, attempt to see solicitors on a drop-in basis and fail to bring documents to meetings. Failure to meet appointments was a particular problem for legal aid firms, who are not able to recoup the cost of interpreters attending for missed appointments. This has led to some firms tending to use freelance interpreters rather than agencies, as they were likely to have a more flexible attitude to missed appointments.

Some clients had difficulty with the concept of legal aid, and assumed that, as the solicitors were effectively paid by the government, they were working to the Home Office's agenda. This could lead to a lack of trust.

A number of firms reported that clients' past experiences and vulnerability could impact on their credibility (eg if the client was suffering from post-traumatic stress disorder) by making it difficult for them to recall details of their past.

Other firms reported that asylum clients would take poor advice from their peers and had to be told not to embellish their stories.

Cultural issues could lead to misunderstandings. For example, one client told his solicitor that he had five brothers. At a later meeting he told her he was an only child. She questioned this and he explained in his culture that 'brother' was a label for unrelated people he had grown up with. If this had not been established before the Home Office interview, it could have affected his credibility.

Other challenges arose from external causes. Legal aid firms reported that they were finding it difficult for cases to be profitable at the current legal aid rate (£413 up to the Home Office's decision), where a case might typically take more than ten hours.

A number of firms felt that the quality of Home Office decision-making was sub-standard and did not take account of its own policies. They suggested that the Home Office's default stance was to refuse permission to stay, though this could often be successfully appealed.

Other firms noted that the deadlines for obtaining legal aid did not always fit with the judicial and Home Office timescales. For example, a firm may need to lodge an appeal without having first applied for legal aid, because the appeal time limit is shorter than the turn-around time for a legal aid application.

Firms had a number of strategies for dealing with these challenges. These included:

- explaining the solicitor's role, independence and confidentiality at the outset to build trust
- patience, empathy, and taking extra time to speak to vulnerable and traumatised clients
- working with other agencies to support clients – some are able to send reminders to clients that they have appointments booked
- a good understanding of the client's culture, and how it might differ from that in the UK
- an effective professional working relationship with the Legal Aid Agency and the Home Office
- supporting the client in dealing with refusals and delays outside the firm's control.

Good example

One firm we visited had an extremely thorough client care process – clients were provided with a client care letter, terms of business and a letter setting out the extent and limitations of legal aid. The firm set out in clear terms what the client could expect of the firm, how the law applied to their case, prospects of success, and other crucial information. Although this was detailed, it was explained fully in client meetings and there were file notes to evidence this.

Poor example

A firm we visited had quite an offhand attitude to their asylum clients. Asylum clients came to the firm through its immigration practice, and it did not treat them any differently to the rest of their client base. Cases were treated in a formulaic manner, with identically worded witness statements used for different clients. The manager stated that asylum clients were not always seen within the five-day window after the substantive interview. This is despite the firm being a private firm with a low number of asylum matters each year. The complaints information given to clients was terse and brief, and did not mention Legal Ombudsman or the SRA.

Legal process

It is the role of each legal representative to explain adequately the asylum process to each client in a way that they can understand.

Despite this, the research paper found that asylum seekers had trouble obtaining suitable advice from their legal representative. The Research Paper also states that asylum seekers struggle to access or recognise good quality legal advice due to their lack of understanding about the asylum legal process^{xxxvi}. In addition, asylum seekers are dealing with other issues that exacerbate the situation including:

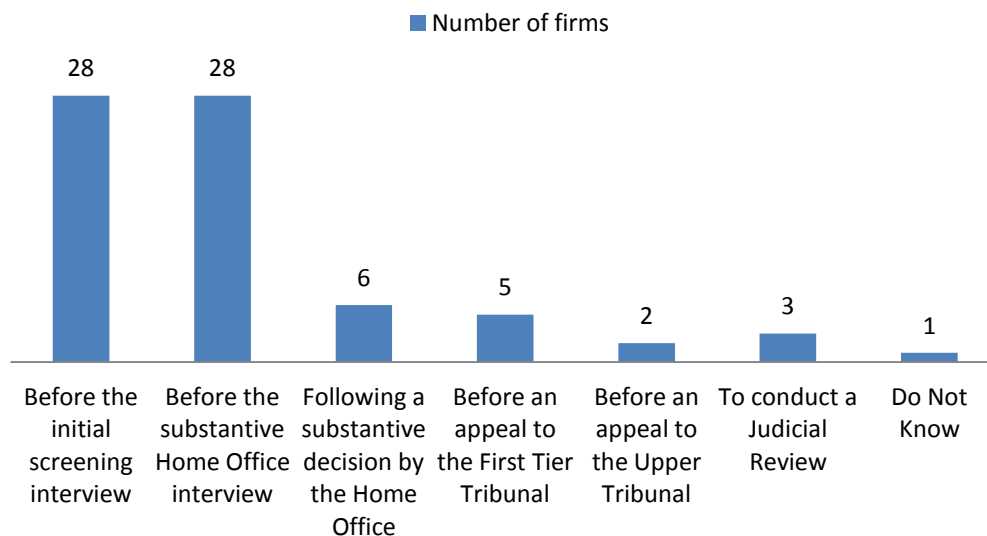
- arrival at a new country
- language difficulties
- mental health difficulties
- bereavement.

To understand these issues further, we asked firms a range of questions about the legal process and their clients.

At what stage are firms usually instructed?

We asked firms to outline when they were instructed by asylum clients. Each firm provided a number of responses to reflect the broad range of instructions that they received. A significant majority were instructed during the initial stages of the asylum process. In particular:

At what stage(s) are you most often first instructed?



What information is given to clients?

Our interviews showed that firms tended to provide a similar, initial range of information to clients about the legal process. This included:

- information about the stages of the asylum process

Asylum Report: The quality of legal service provided to asylum seekers

- the timescales
- significant definitions (eg "refugee")
- possible outcomes
- the responsibilities of the solicitor and the client.

This information was also provided in writing, for example:

- within the body of the client care letter, or
- in a separate advice letter.

Firms acknowledged that clients often struggled to understand the process. To overcome this, firms used a range of techniques to share information during the client meeting including:

- diagrams
- time lines
- flow charts.

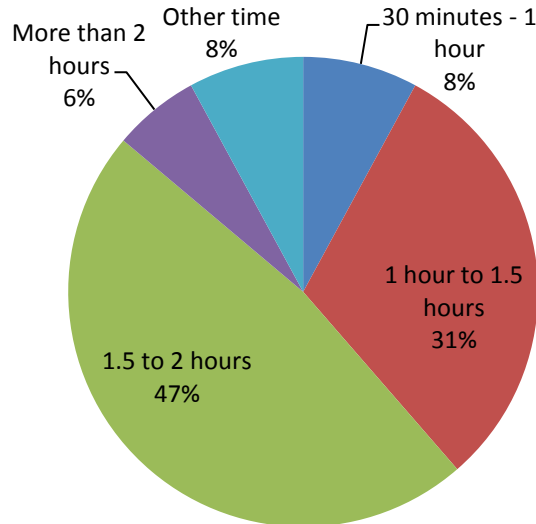
Some firms provided additional information about particular topics, for example:

- obstacles to asylum applications such as internal relocation and state protection at the outset
- practical information for clients in Immigration Removal Centres
- practical information and support for victims of domestic violence and slavery.

Good practice	Poor practice
<ul style="list-style-type: none"> • Provide clients with information they can understand (eg jargon free and in an appropriate language). • Draw clients attention to significant issues (eg contact details and costs). • Ensure the client has information that they can retain for future reference. • Continue to provide information throughout the course of the retainer to ensure the client understands their case and the issues. • Letters provide relevant information to the clients about their specific circumstances. 	<ul style="list-style-type: none"> • Provide too little, or too much information. • Fundamental information is provided in a way which disadvantages clients that cannot speak English. In particular, information is provided during a meeting and not covered in written correspondence. • Using templates that are too general and contain insignificant or inappropriate information.

First interview

How long does it take, on average, to conduct a first interview with the client?



We asked firms about their initial meeting with the client. It is important to spend time gathering information from the client at the start of the process. We found the length of the appointment and the firms' approach varied with some:

- dealing with matters on a flexible, case-by-case basis
- suggesting that the type of client may influence how long a meeting takes, for example, a child may be deliberately given a shorter appointment to reduce stress and anxiety
- providing an initial fixed fee consultation (eg 30 minutes)
- gathering information over a number of appointments
- limited by external issues (eg the appointment system at an Immigration Removal Centre).

Firms differed in the amount of information they would gather at the outset from a client:

- some completed an initial, bespoke asylum questionnaire
- some gathered information on a case-by-case basis
- some placed an emphasis on frontloading cases and obtaining large amounts of information from the outset
- some claimed that a vulnerable client may require a slow and prolonged period of information gathering.

A number of firms highlighted the tension between their attempts to gather information expediently and making allowances for the vulnerable nature of each client.

The witness statement

An asylum seeker may provide a witness statement to the Home Office but it is not mandatory. The research paper mentioned the importance of taking detailed instructions and drawing up detailed statements^{xxxvii}.

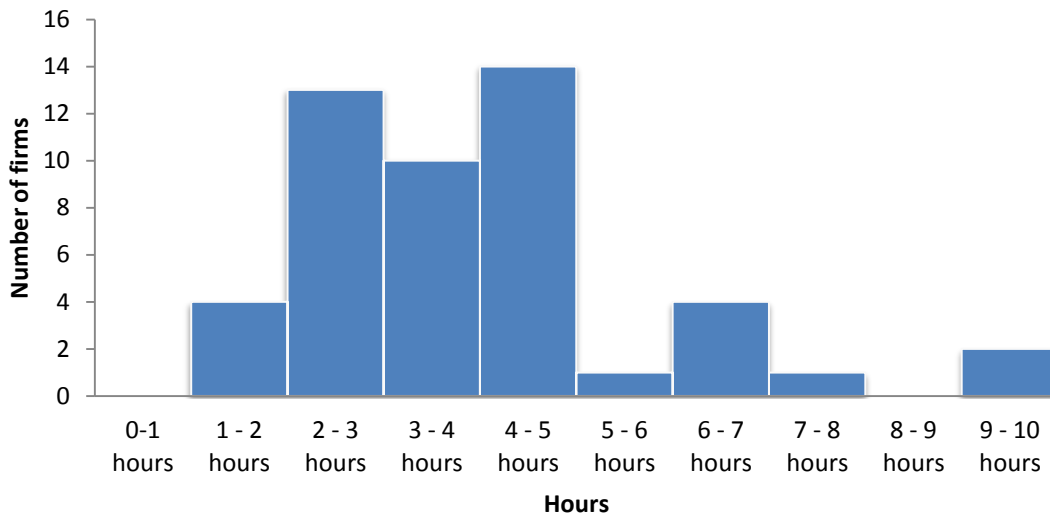
There was a significant difference between firms about the merits of providing a witness statement to the Home Office:

- some thought it was an integral part of the process
- some opted for a detailed statement and believed that it helped prepare the client
- some opted to provide a concise statement to aid the client
- some did not provide the Home Office with witness statements as they believed this gave the Home Office an opportunity to focus on particular issues to the detriment of the client.
- some decided on a case-by-case basis, depending on the complexity of the case and the client's ability to convey information. They acknowledged that some clients were hindered by submitting a witness statement.

Our view is that firms should decide whether a witness statement is required on a case-by-case basis. A blanket policy saying that witness statements should not be sent to the Home Office would not take into account a client's individual circumstances and needs.

We asked firms how long it would take to prepare a witness statement to help gauge whether the firm spent sufficient time on this activity. Firms provided various responses:

How long will it usually take the adviser to prepare a client's witness statement?



One firm we visited asked clients to prepare their own witness statements. One of the files reviewed had a handwritten statement prepared by the client which was in poor English. It appeared that this had been sent to the Home Office. This firm was referred to our Supervision Team for this and other reasons.

Good practice	Poor practice
<ul style="list-style-type: none"> • Thoroughly consider with their client whether a witness statement is in the client's best interests. • Provide well-drafted and accurate witness statements where appropriate. • Cross reference information to ensure that a witness statement is coherent or addresses inconsistencies in information. 	<ul style="list-style-type: none"> • Adhere to a blanket policy on the use of witness statements. • Require clients to produce their own handwritten witness statements and send them without review to the Home Office. • Produce error-laden witness statements that are poorly drafted and fail to reflect the circumstances of the client. • Over-reliance on templates and pro forma wording.

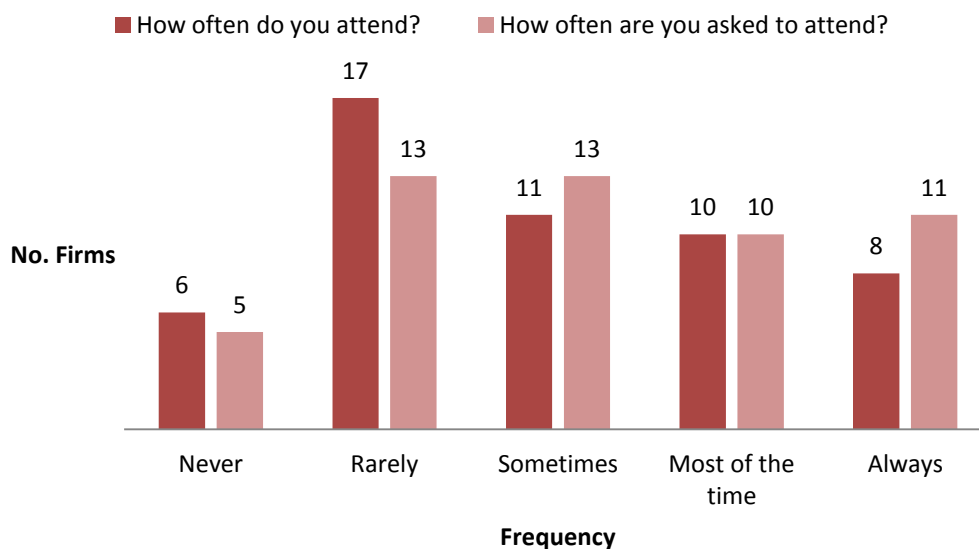
The Home Office substantive interview

Firms provided a range of information about their client's first substantive interview with the Home Office – an interview with a Home Office caseworker where the case is assessed.

We asked firms:

- How often do you attend the substantive interview?
- How often are you asked to attend the substantive interview?

Comparison between attendance at substantive interview and request for attendance



Some firms said that the substantive interview was a significant part of the asylum process and their attendance was crucial. These firms suggested this was important to:

- give emotional support to clients
- monitor the progress and general tone of the interview (and intervene where necessary)
- assess whether the client/Home Office needed any assistance.

A significant number of firms did not arrange for a solicitor to attend or rarely attended the interview. Many highlighted the impact of funding. In particular:

- legal aid funding is not available for solicitors to accompany adults to the substantive interview (funding is provided for minors and some clients with a disability)
- some private clients are unable to pay a solicitor to attend the interview.

In addition, some firms highlighted the nature of the interview and concluded that a solicitor's presence was not required, the reasons for which were:

- the lawyer has a limited role at the interview and few opportunities to interject
- the lawyer can make a request for the interview to be recorded
- the Home Office provides a transcript of the meeting
- the Home Office provides five days after the interview for additional representations from the client
- the interviews are of significant length
- the interviews occur at Home Office premises and these can be based a significant distance away from the firm.

In light of these circumstances, some firms concluded:

- it was not always in the client's best interests for a solicitor to attend the interview due to the costs the client would incur (time and travel)
- their time could be used more productively to progress other work
- issues at the interview could be resolved via additional representations.

Eleven firms (21 percent) said the client always asked them to attend the interview, but only eight firms (15 percent) said that they always attended the interview.

Some 29 firms (56 percent) said they attended the interview at least sometimes or more. However, 35 firms (67 percent) said that the client asked them to attend at least sometimes or more.

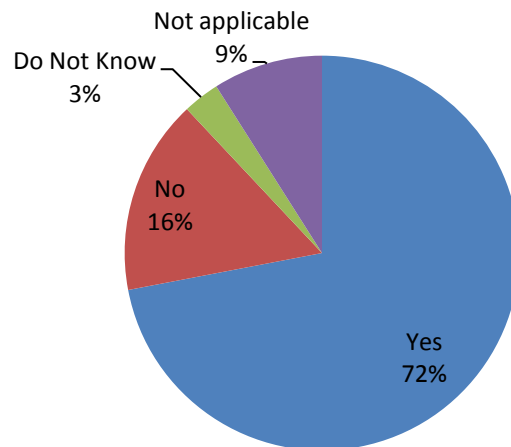
These figures suggest that solicitors are not always able to accommodate the wishes of their client. Some firms said clients did not ask the adviser to attend as the limitations of legal aid funding were explained to the client at the start.

However, some firms had explored alternative, cost-effective ways of supporting their client during the interview, for example, by instructing outdoor clerks or trainee solicitors to attend the meeting.

Recording

Some 32 firms were asked whether they asked the Home Office to record the substantive interview. We understand that a tape recording, if required, must be requested from the Home Office before the meeting.

If you do not attend the interview, do you ask the Home Office to record the interview?



The majority of firms thought a tape recording of the interview was crucial and easy to arrange. This reflected a common belief that a tape-recorded interview provided the most accurate record of the event. In particular, some firms stated that a tape-recorded interview had been a significant factor in challenging an initial Home Office decision to deport a client.

Some 16 percent of these firms did not ask the Home Office to record the interview. Firms provided a number of reasons why:

- clients feel threatened by the tape recording
- experience has shown it is unnecessary
- a transcript is sufficient
- a tape recording is not available if the solicitor attends with their client.

All firms discussed the Home Office interview with their client within five days of the interview. A significant majority arranged for clients to attend the office while others sought to speak with clients via telephone or even Skype. These meetings often resulted in firms making additional representations on behalf of their client to the Home Office.

Good practice	Poor practice
<ul style="list-style-type: none"> ☒ Make that the client receives appropriate emotional support during the Home Office interview. ☒ Contact the Home Office in advance to ensure a tape recording is made of the meeting unless there is an exceptional reason (such reasons to be recorded). ☒ Make arrangements prior to the interview to meet and discuss the interview with the client. ☒ Make appropriate representations to the Home office promptly following the interview. ☒ Request extensions where relevant. 	<ul style="list-style-type: none"> ☒ Failure to provide the client with appropriate information about the process or interview. ☒ Failure to request a recording of the interview or retrieve a copy of the interview transcript. ☒ Failure to make relevant representations to the Home Office within the permitted time frame or fail to request appropriate extensions of time. ☒ Reliance on the client to make appropriate enquiries with the Home Office or organise a tape recording/transcript.

Interpreters

The language barrier between the asylum seeker and a solicitor can be a significant issue. Clients' ability to speak, read and write in English varied. Some:

- ☒ Used it as a first language
- ☒ Had learned English as a foreign language, and they could interact to varying degrees
- ☒ could not speak, read or write in English
- ☒ were illiterate in their own language.

Firms also acknowledged that legal terminology added a layer of complexity to the relationship.

An inability to communicate with the client is a clear and significant risk. An inability to understand the information and nuances of a client's case may lead to them being wrongfully deported. We asked firms how they managed this risk.

A significant majority relied upon the assistance of translators and interpreters. The courts and the Home Office also rely upon translators.

Firms confirmed there were a variety of translation resources available to them:

- ☒ every legal aid client is eligible to receive funding for an interpreter
- ☒ commercial interpreters (eg agency staff and freelance practitioners)
- ☒ some local authorities provided a translation service
- ☒ a significant minority of firms employed bi-lingual fee earners and these were sometimes required to provide translation services
- ☒ several private firms relied upon the family and friends of clients

- one private client firm relied on the client to bring an interpreter.

Firms acknowledged that each option had benefits and limitations.

Of the 104 file reviews we undertook, 46 featured a professional interpreter (eg an agency or freelance interpreter).

The firms highlighted the following benefits of agency interpreters:

- competent translations and good levels of English
- complaints process if there were issues
- some agencies have a code of conduct
- agencies offer a range of individuals and languages.

The firms acknowledged the following benefits of freelance interpreters:

- flexibility (eg time and attendance)
- specialism, for example, some clients speak a very rare language/dialect and commercial entities may not be able to provide a translator.

Some clients relied on friends and family members to provide a translation service. Although this was a cost free alternative, firms acknowledged the following issues:

- supporting individuals may have poor levels of English
- supporting individuals may attempt to influence and embellish a client's response in an attempt to be helpful
- further work had to be undertaken to check the identity, relationship and motivation of the family member/friend.

Some of the firms required any potential translator to be registered with the National Register of Public Service Interpreters^{xxxviii}. This organisation:

- keeps a public register of members
- set standards for interpreters
- investigate complaints about conduct or competence.

As of 2014, the organisation offered 101 languages and had 1,909 members.

A significant majority of firms were reliant on the skills and experience of the interpreter and this raised specific risks. In particular, we asked firms how they checked:

- if the client was happy with the interpreter
- if the interpreter was providing an accurate translation.

Firms acknowledged that these are difficult issues to address.

Some 45 firms undertook checks to make sure that the client was comfortable and happy with the specific interpreter. This is significant as the identity of the interpreter may influence the client's response due to:

- vulnerability of the client/circumstances of the claim
- social issues
- religious issues.

In general, firms relied on their own experience and knowledge to judge these issues. The firms placed an emphasis on speaking with the client and monitoring the client/interpreter's body language. Although this may be useful, it is a limited tool and vulnerable individuals may not exhibit typical responses. In particular, one firm acknowledged that clients from certain cultures struggled to raise issues because of an unwillingness to:

- reveal an emotional response
- challenge people in positions of authority
- challenge an individual due to their gender/age.

Other review methods included:

- using different interpreters at different meetings and checking information
- personally reviewing the translation
- repeating set information at separate points across the retainer to check the accuracy and initial response.

Each option can be expensive.

We also asked firms when they instructed interpreters. In particular, we asked whether interpreters attended the first meeting with each client.

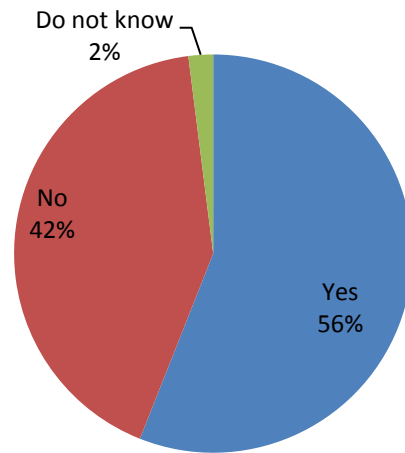
Private firms tended to instruct a translator as and when it was necessary. Legal aid practitioners differed in their approach due to the cost implications. In particular, a client must sign the appropriate form before the Legal Aid Agency sanctioned the disbursement for the interpretation service. Significantly, if an interpreter was instructed but the client did not sign the form or failed to attend the appointment, the firm was responsible for paying the interpreter's fees. This resulted in two approaches:

- some required the client to attend and sign the relevant forms before instructing the interpreter
- others opted to instruct the interpreter from the outset and accepted the corresponding financial risk.

Interpreter complaints and quality control

We asked firms if they had complained about an interpreter. Firms interpreted this question broadly and included occasions where interpreters had been removed.

Have you ever complained about an interpreter?



Common complaints about an interpreter included:

- failure to speak the language or dialect
- poor quality translations
- attempts to influence or embellish the answers of the client
- poor behaviour (eg punctuality or politeness).

We also asked about the quality control procedures that firms had in relation to interpreters. Some 84 percent of firms said they had some form of quality control in place. The remaining 16 percent were unsure or said they had no controls.

The most common response was a list of approved interpreters. Many firms also either relied on agencies to carry out checks on the interpreters they employed or used well-known independent interpreters. Some firms said they would check the interpreter's CV and whether they had any professional accreditation.

Rather than complain, firms tended to dis-instruct translators and not work with them in the future. This is significant because information about poor translators was not shared. This could lead to other individuals instructing incompetent or unsuitable interpreters.

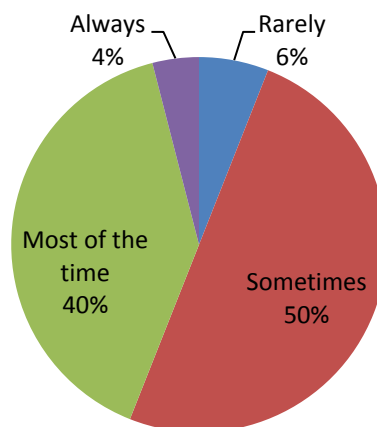
In addition, we heard anecdotes about interpreters attempting to take money directly from the client. This was confirmed by one firm who had experienced this. The translator was confronted and they were made to return the money to the client.

A significant majority also felt they had witnessed poor translations and interpreters at the Home Office and courts. A number of firms consequently took their own interpreters to the Home Office and court appearances to verify translations.

Good practice	Poor practice
<ul style="list-style-type: none"> ☒ Make sure interpreters are able to explain information to clients in a way that the individual understands. ☒ Provide a discreet opportunity to the client to raise any concerns about the proposed interpreter. ☒ Sensitively consider the client's circumstances and cultural/social background to ensure an appropriate translator is selected. ☒ Explain the role of the interpreter to both the client and the interpreter and make clear who is responsible for payment of all relevant fees. ☒ Undertake checks to review the quality of interpreters and their work. 	<ul style="list-style-type: none"> ☒ Rely solely on experience to judge whether a client agrees with the choice of interpreter and is comfortable with them. ☒ Fail to provide an appropriate and/or competent interpreter. ☒ Allowing additional payments to be made direct to the interpreter.

Experts

Firms used legal and non legal experts to support asylum applications. These experts covered areas such as age, countries, religion, disabilities, culture etc. The extent to which experts were used varied across the firms.



Firms gave a number of reasons why it may be necessary to instruct an expert:

- ☒ to provide information in light of a gap in the case law
- ☒ to corroborate the credibility of a client, eg engaging country experts
- ☒ to clarify a point beyond dispute eg with the use of age determination.

Firms stressed that instructing an expert may be hindered for a number of reasons, such as a lack of expertise in a niche area, or absent or insufficient funding (for both legal aid and private clients).

Our interviews found that firms tended to generally commission country and medical experts.

We asked firms about the quality control measures that were in place. Some 92 percent of the firms informed us that they have quality controls, for example:

- firms only chose experts from the Electronic Immigration Network
- firms reviewed the CV and subsequent report of the expert
- some firms had approved lists of suppliers and experts may be removed if they provided a poor level of service. This was a requirement for firms who have Lexcel accreditation or the Solicitors Quality Mark.

The approval process for the selection of an expert also varied. Some firms allowed fee earners to make the decision while others required the approval of a senior member of staff (eg a practice manager or senior partner).

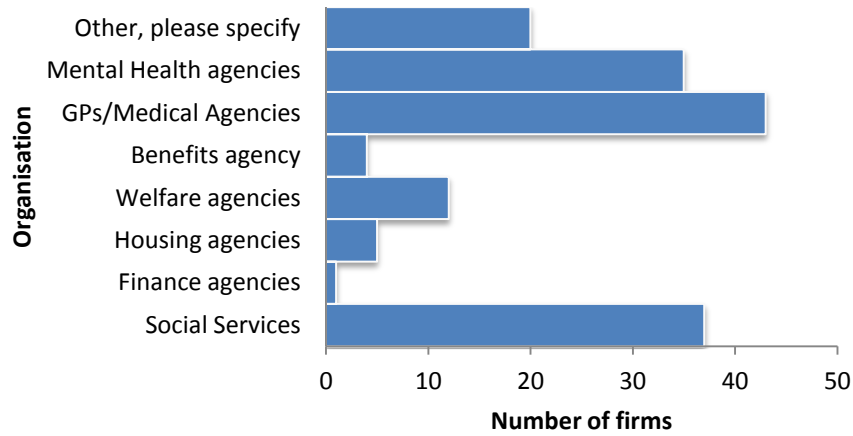
Working with others

The research paper also identified the benefits of working with others to support the asylum seeker and gather supporting information^{xxxix}. Some 51 firms worked with other organisations and agencies to gather information on behalf of their client. These included:

- 37 firms approached the social services
- 43 firms approached Doctors/medical agencies
- 35 firms approached mental health agencies.

In addition, a number of firms had approached charities and religious groups for support and assistance.

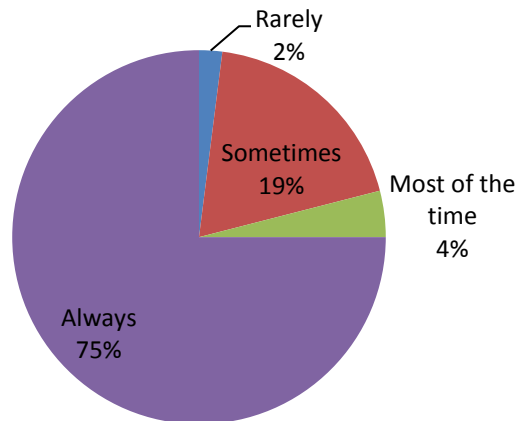
Do you work with other organisations and agencies to gather information to support your client's claim?



Other legal advice

The research paper highlighted the need for advisers to have knowledge of several areas of the law^{x1}. Some 39 firms (75 percent) said they always reviewed the other legal advice needs of asylum clients.

How often do you conduct an assessment of any other legal advice that the asylum client may require?



It is not clear why 25 per cent of firms did not assess a range of legal needs and this is a concern. In practice, very few firms provided a full range of legal services and accordingly may lack the knowledge or competence to offer advice on other areas.

Our interviews underlined the broad array of legal problems that asylum seekers face, eg:

- criminal prosecution
- disputes over their age
- family issues (eg domestic violence)

• social service issues.

In particular, some firms told us that clients had been wrongly advised about criminal law and had consequently pleaded guilty to an offence that ultimately prevented them from getting asylum.

The majority of firms leave their fee earners to assess the legal advice requirements of their client. A small minority placed the emphasis on a senior partner triage system at the outset to indicate what further information a client may need.

Good practice	Poor practice
<ul style="list-style-type: none"> • Undertake a comprehensive review of each client's legal requirements. • Ensure that advice is provided to the client from a competent individual. • Provide supervision to fee earners to ensure that this task is carried out appropriately. 	<ul style="list-style-type: none"> • Act outside their competency and provide false and misleading information to a client.

Appeals and judicial reviews

If the Home Office Caseworker refuses an application for asylum, the claimant has a right of appeal to the First-tier Tribunal (Immigration and Asylum^{xlii}).

The Upper-tier Tribunal (Immigration and Asylum Chamber) is^{xliii} responsible for handling appeals against decisions made by the First-tier Tribunal (Immigration and Asylum) relating to visa applications, asylum applications and the right to enter or stay in the UK.

There are specific procedures that must be followed when making an application to both the First-tier and the Upper-tier Tribunal Chambers.

The research paper stated that key informants were concerned that some solicitors lack experience of undertaking appeals^{xliiii}. This had led to poorly constructed and evidenced appeals, with short statements, poor and inaccurate country information and no supporting evidence. Time constraints within the appeal process also add further pressures to mounting a robust appeal. However, case file reviews in the research paper identified some examples of high-quality appeals.

Preparing the client for appeal is an important part of the process. The duty to act professionally towards the client and others such as courts and tribunals is important. This includes gathering as much factual information as possible from the client and considering any expert evidence.

Key findings: First-tier Tribunal chamber

Firms gave a range of explanations for the number of appeals that were made to the First-tier and the Upper-tier Tribunals. Some firms had less sophisticated methods of recording management information and were unable to give detailed information or were able to give an estimate. The number of appeals also depended on the number of asylum applications that a firm handled each year.

The chart below shows the number of First-tier appeal cases. Some 13 firms had only made between 1–10 appeals in the previous 12-month period. In contrast, three of the larger firms had all completed over 300 appeals in the previous 12 months.

Number of First-tier appeals per year	%	Number of firms
1–10	25%	13
11–20	21%	11
21–30	7%	4
31–90	17%	9
91–150	4%	2
151–200	4%	2
201–250	4%	2
251–300	6%	3
More than 300	6%	3
No information	6%	3
Total		52

Firms were also not always able to provide information in relation to their success rate at the First-tier Tribunal, as this was not always recorded. Some firms provided a best guess or rough figure. Some 38 firms said that their success rate was 50 percent or above with some firms putting their success rate as high as 80 or 90 percent.

These figures were again affected by the size of the firm and number of appeals submitted. Most of the firms with a higher number of First-tier appeals (over 150) said they had at least a 50 percent success rate although two of these firms were considerably lower at around a 20 percent success rate. These figures have not been checked independently.

Key findings: Upper-tier Tribunal Chamber

Firms were less able to provide information about the appeals to the Upper-tier Tribunal. The majority of firms had fewer than 20 appeals to the Upper-tier Tribunal in a year. There were eight firms who told us they had more than 20 appeals to the Upper-tier Tribunal per year with the highest number being around 150.

Some 30 firms were able to give an idea of their success rate at the Upper-tier Tribunal. The majority of these firms put their success rate at around 50 percent with some firms saying it was as high as 70 percent. No independent information was available or reviewed to check these figures.

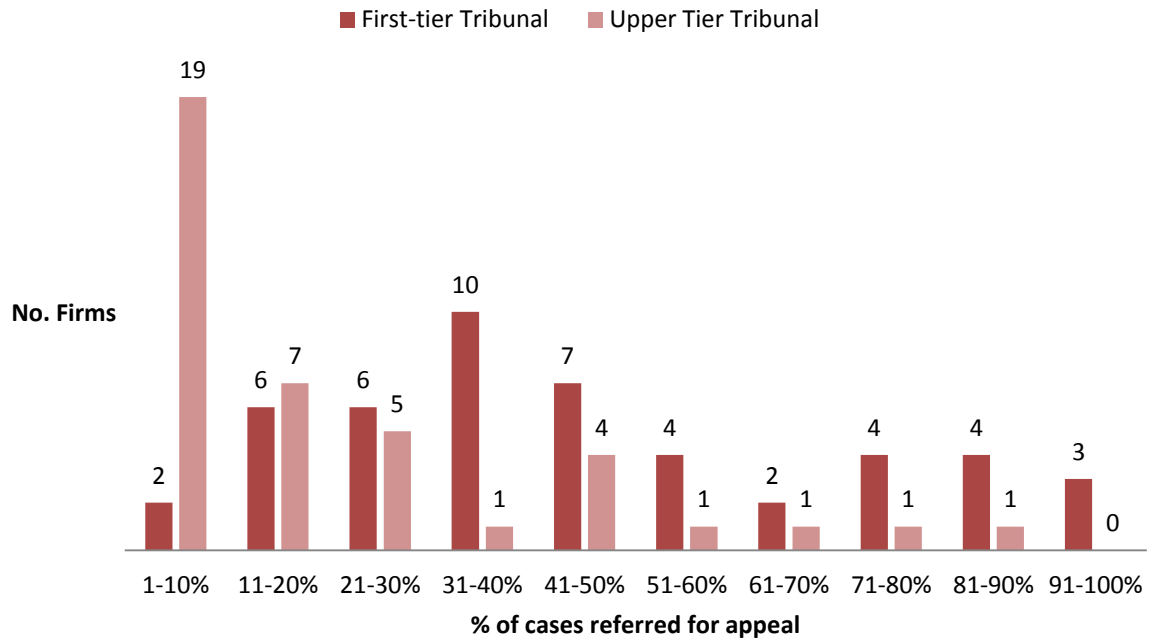
However, the chart below shows the percentage of cases referred by firms to the First-tier^{xliv} and Upper-tier Tribunals^{xlv}. For example, ten firms referred 31 to 40 percent of their cases to the First-tier Tribunal.

Some 70 percent of firms (34 firms) referred more than 30 percent of their cases to the First-tier Tribunal. This shows the significance of the appeal process in asylum work. It is important that:

- firms achieve the right balance between acting in the best interests of their client and meeting their duty to the court, by not proceeding with hopeless appeal cases
- the courts maintain a robust but fair system of dealing with applications on appeal.

Fewer cases were referred to the Upper-tier Tribunal, with 19 firms sending between 1 to 10 percent of cases for referral. Some 31 of 40 firms referred less than 30 percent of their cases to the Upper-tier Tribunal.

Chart showing the percentage of cases referred by firms to the First-tier and Upper-tier Immigration Tribunal Chambers



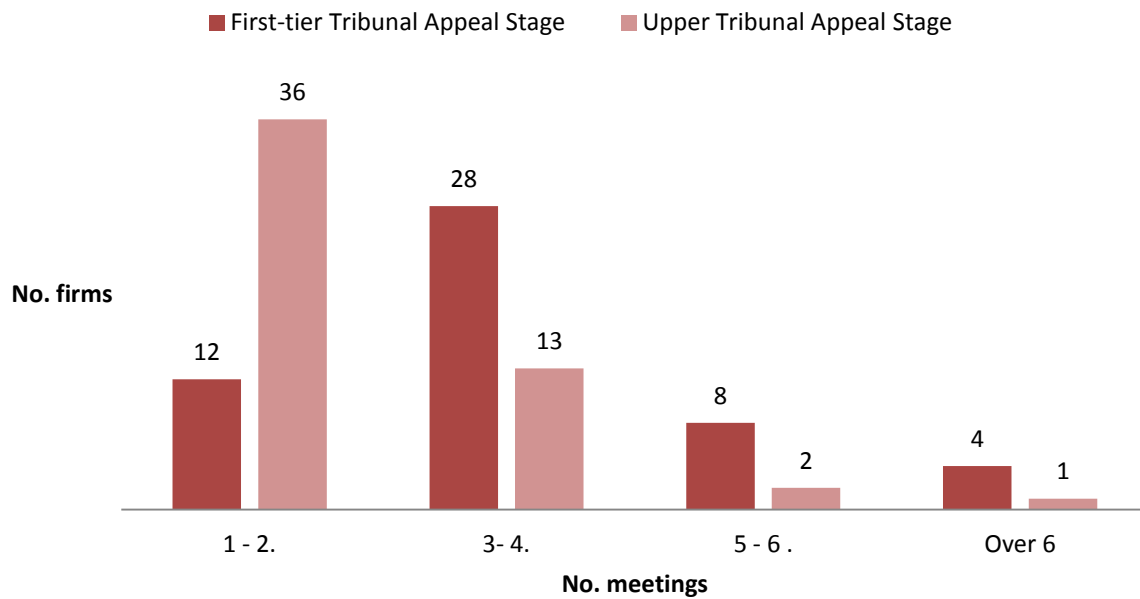
Preparing the client for appeal

The majority of firms (47) said they would have a meeting with the asylum seeker following the Home Officer caseworker's decision. If the application was refused, actions taken by firms at this stage included:

- explaining the legal requirements to the client and the strengths and weaknesses of their claim
- explaining the appeal process including the procedures, format, timescales and likely questions the client would face
- going through the reasons for refusal with the client
- reviewing the evidence and obtaining additional evidence
- preparing a witness statement
- drafting the grounds of appeal
- instructing experts (if required)
- instructing counsel (if required)
- preparing the appeal bundle
- good firms provided a further letter explaining the appeal process.

Given the difficulties of communicating effectively with some clients, it is important to meet with the client throughout the asylum process. It was encouraging that 40 firms said they had three or more meetings with the client at the First-tier appeal stage. Only 12 firms said they would have one or two meetings at this stage. However, reasons for this included were where the client had moved location or the appeal was on a point of law.

Number of meetings with the client at the First-tier and Upper-tier tribunal stages



In contrast, 36 firms said they would meet the asylum client only once or twice before the Upper-tier Tribunal hearing. Only 16 firms said they would meet the client three or more times. This may reflect the fact that much of the appeal work had already been completed earlier in the process and appeals to the Upper-tier Tribunal tended to be more technical in nature.

Reviewing the evidence with the client was of key importance to the majority of firms. This involved considering whether further expert evidence was required such as country or medical evidence. Identifying and interviewing other witnesses to support the client's case was also important.

Competency

Firms were asked how they ensure that staff are competent at dealing with appeals with reference to section A2 of the statement of solicitor competence^{xlvi}. The majority of firms said they used more experienced staff for appeals. Half of firms said that level 2 Immigration and Asylum Accreditation Scheme (IAAS^{xlvii}) accreditation was required. Some firms said they would only use counsel to deal with the appeals (see below).

Nine firms specifically mentioned internal training and ten firms mentioned external training that was provided in relation to appeals. Ten firms also mentioned that they would rely on their supervision procedures. These included allowing more junior staff to shadow experienced staff at appeals and supervisors monitoring staff until they had built up sufficient knowledge and experience.

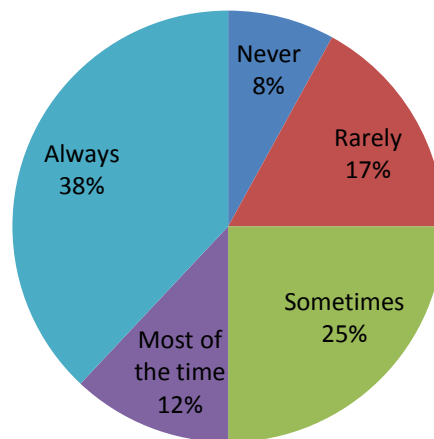
We would have expected more firms to respond with supervision and training specific to appeals as these are important to ensure ongoing competency. However, we are aware that level 2 accreditation requires ongoing training that includes training on the law, evidence and

procedure of appeals. Further analysis of supervision and training is set out later in this report.

Counsel

Firms varied in their use of counsel to conduct appeals. The chart below shows that firms said they used counsel at least some of the time or more in 75 percent of cases.

How often do you instruct counsel to advise on appeal?



Those firms who did not use counsel tended to use their own in-house advocates. They felt that this gave the client more consistency. Firms also commented that the advisers knew the case well and were able to put their client's case across more personally. Some firms said clients may also prefer this.

Some firms said they would use counsel if the case was particularly complex. This shows an awareness of the adviser's own competency to act in the client's best interests, for example, due to the need for greater expertise or the adviser's time being better used elsewhere. Geographical and scheduling factors also led to the use of counsel if the adviser could not attend a specific hearing.

Where counsel was used, there were mixed views on whether the client was able to meet with counsel ahead of the appeal hearing. The Bar Standards Board Immigration Thematic Review Report^{xlviii} refers to this issue and says that often the barrister will not see the client until the day of the hearing. By that stage it is too late for the barrister to make adjustments^{xlix}.

Some firms commented they would arrange a conference with counsel prior to the hearing so that the client can become familiar with the barrister. One firm commented that it is important that the client feels comfortable with the barrister as their credibility is vital to a successful outcome. Our view is that such a meeting is in the client's best interests where possible and firms should make every effort to do this. This did not happen with all firms. We are aware of the limitations imposed by time and/or funding.

Good practice	Poor practice
<ul style="list-style-type: none"> ☒ Review the reasons for the initial refusal of asylum with the client. ☒ Check documents in advance of the appeal hearing and challenging if appropriate. ☒ Prepare the client for the appeal hearing including the discussion of likely areas of questions. ☒ Carefully consider any further evidence that is required including witness or expert evidence. ☒ Preparing a chronology and a client witness statement if required. ☒ Consider who is suitable to give oral evidence at the hearing. ☒ Expert witnesses instructed as soon as possible. ☒ If counsel is instructed, arrange a conference with counsel ahead of the appeal hearing. ☒ Prepare client for cross examination and advising what to expect at the hearing. ☒ Keep accurate records of all information. 	<ul style="list-style-type: none"> ☒ The client has not been given the opportunity to present further evidence and discuss the implications on their case. ☒ The client is not prepared for the hearing and is unaware of the process or procedure. ☒ Documents are prepared in a rushed manner and lack sufficient detail. ☒ There is insufficient time to brief counsel and make sure that the client is comfortable with counsel.

Legal aid comparison

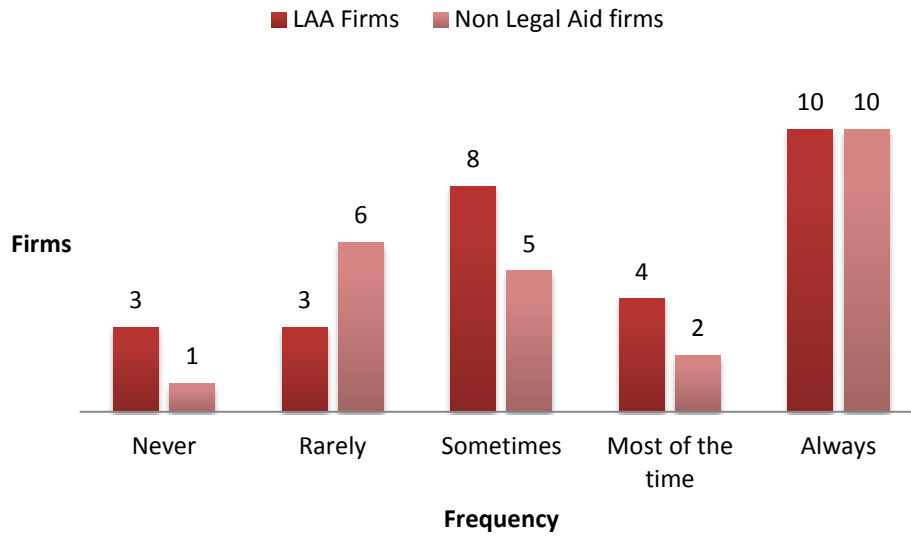
We were able to compare the results of the survey between legal aid and non legal aid firms.

Information about the number of appeals to the First-tier Tribunal was provided by most firms. Some firms gave a possible range, for example, 10–12 appeals per year. This figure was rounded up to the highest figure and gave the following results:

	Legal aid	Non-legal aid	Total
Number of firm responses	25	24	49
Total number of appeals to the First-tier Tribunal	4,635	416	5051
Average number appeals to the First-tier Tribunal	185	17	202
Total number of all asylum cases ¹	13,422	875	14,297
Percentage of cases which went to First-tier appeal	35%	48%	35%

The average number of legally aided First-tier appeals is again affected by a small number of larger firms who do a high volume of appeals. We should also be careful about concluding that legally aided clients in the sample firms are more likely to be granted asylum following the Home Office interview, as there is a lower percentage of cases referred to appeal. There are other factors which affect the likely outcome of the claim that are not taken into account in these statistics. For example, it could be that clients were more likely to be advised not to appeal at legal aid firms, as the client did not meet the legal aid merits test.

How often do you instruct counsel to advise on appeal?



Legal aid firms were more likely to use counsel to advise on appeal with 22 firms (78 percent) saying they would use Counsel at least sometimes or more. This is in contrast to 17 non legal aid firms (70 percent) who said the same. One reason for this may be that there are fewer appeals in private firms and private firms may seek to keep costs down.

Good examples

At one firm we visited, the firm reviews the Home Office decision and reasons for refusal. They prepare a very detailed proof of evidence, which can span a couple of client attendances. They go through the evidential issues and gather extra documentation or evidence if needed. They verify all aspects of the case and prepare a further chronology of events and skeleton arguments. The adviser tells the client what to expect during the appeal process and the client meets with counsel before the appeal hearing. This is done in advance of the hearing to avoid the need for Counsel to raise issues at the last minute (usually the day of hearing). It also helps to put the client at ease.

At another firm the advisers obtain country guidance and check the Home Office country reports. They prepare a detailed witness statement in response to the refusal letter and go through this with the client. They gather medical/country guidance experts if necessary. They also gather further statements/letters from the client, friends, family members and/or the client's community. These documents are translated and they prepare the skeleton argument, chronology and bundle. They then instruct and meet with counsel.

Judicial review

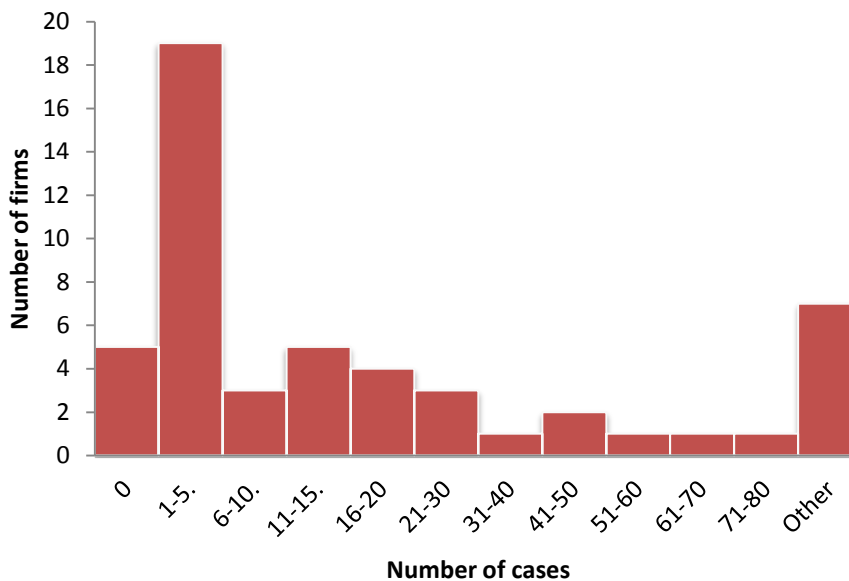
In addition to appeals, the Upper-tier Tribunal (Immigration and Asylum) Chamber also decides applications for judicial review of certain decisions made by the Home Office. These normally relate to immigration, asylum and human rights claims. For this reason, firms were asked about their judicial review work.

The Home Office has raised concerns about the increase in Totally Without Merit (TWM) decisions in judicial review applications over the last two years.

Key findings

The firms were asked general questions about judicial review applications, including a question about the number of judicial review applications that the firm dealt with in the last 12 months.

How many applications for judicial review do you undertake, on average, per year?



The other category included the following responses:

- over 80 applications
- 100 applications
- 150 applications
- two firms were unsure.

The graph shows that the majority of firms (19) made between one and five applications for judicial review per year. Five firms said they did not do judicial review work. Two firms said that they made

What are "Totally Without Merit" cases?

Permission from the court is required for the judicial review of a decision. The first step is to make a paper application for permission based on the application's grounds and full evidence.

In refusing permission for judicial review, a judge can certify a case to be TWM. Since 1 July 2013, a case refused permission and certified as TWM cannot be reviewed at an oral hearing. Application for permission to appeal the decision to the Court of Appeal remains but that application is still decided on the papers only.

In 2014, the Court of Appeal defined "totally without merit" in the case of *R (Grace) v Secretary of State for the Home Department*. It said that the phrase simply means that the claim is "bound to fail". It was unnecessary to prove that the claim was abusive or vexatious.

However, in the case of *Wasif v Secretary of State for the Home Department* the Court of Appeal stated that: "... judges should certainly not certify applications as TWM as the automatic consequence of refusing permission. The criteria are different... the claimant should get the benefit of any real doubt."

over 100 applications for judicial review in a year. The average was around ten cases per year. The size of firms also had an impact on this result.

Some 16 firms (31 percent) said that they had received at least one TWM decision in the last 12 months. Seven of these firms had a legal aid contract.

Comments from the firms on the TWM decisions included:

- the Upper-tier Tribunal decisions did not tend to give detailed reasons for their decisions
- several of the decisions had been successfully challenged at the Court of Appeal
- immigration judges did not always understand public law principles or consider all of the evidence.

The issue provoked a strong reaction at some firms. In particular, some managers felt that there were two or three distinct levels of decisions involved in making an application:

1. The adviser had to decide that there were sufficient grounds to bring the application.
2. Counsel may be consulted before making the application (see below).
3. In legal aid firms, the Legal Aid Agency also had to approve the merits of the application to receive funding.

Given that a case had to pass all three gateways before being progressed, it was difficult for some managers to see how an immigration judge could decide the case as TWM.

In general, none of those who commented on TWM cases agreed with the immigration judge's decision. Some firms said they avoided judicial review work as it was high risk.

General comments

Some managers referred to a paper by Professor Robert Thomas at the University of Manchester School of Law, entitled 'Immigration Judicial Reviews in the Upper-tier Tribunal (Immigration and Asylum Chamber) an analysis of statistical data (April 2016)'.^{li} Professor Thomas found that the number and proportion of claims certified as TWM had increased considerably. He went on to suggest that the increase in tribunal workload, with no increase in judicial resources, may have affected judges' decision making. This was a viewpoint shared by some of the managers who were interviewed.

Some firms stated that judges:

- did not give full reasons for their decisions
- were inconsistent and followed case law in some cases and sometimes did not, or they did not read the evidence and simply followed the Home Office's refusal letter.

The decision in *Wasif* stated that in the Administrative Court and the Upper-tier Tribunal, it is common for the reasons behind a decision to refuse permission to be given in summary form. However, where the application is certified as TWM: "peculiar care must be taken to ensure that all the arguments raised in the grounds are properly addressed." However, the decision acknowledged that it may be that all that can be said in many or most cases is

something to the effect of "I consider the application is totally without merit: my reasons are those already given above".

Issues identified

As part of the project we looked at 71 applications for judicial review with TWM decisions. These revealed a number of issues:

- A. Many of the applications claimed that there were exceptional circumstances why the asylum seeker should be allowed to remain in the UK. However, the decisions often criticised the applicants for not setting out these exceptional circumstances. Many of the applications reviewed did not go into detail on this issue. One judge referred to the application as being "strong on assertion and weak on evidence."

If there are exceptional circumstances the firm should clearly identify and evidence those circumstances in the application. We suspect that there may not be exceptional circumstances in some applications and that firms were using the judicial review process as a last resort. This does raise the issue of whether the judicial review process is being properly used.

- B. Some firms were submitting applications on behalf of a number of clients, based on the same facts, with almost identical wording. Although there is nothing wrong with using a document as a precedent, firms should take care to avoid cutting and pasting information as this had lead to factual errors. The use of precedents does not remove the need to analyse and fully set out the client's case and can lead to sloppy thinking and practice, as shown in some of the applications.

One firm had made a series of identically worded applications on similar facts but had not discussed the failure of the first application with their other clients. This would have been an obvious step to take, particularly as there are costs implications for the client if the application failed. The firm should also bear in mind that much of the drafting would have been completed for the first client. We question whether it would be reasonable to charge any subsequent clients the same amount of costs as for the original application.

One firm was specifically challenged as the grounds for some of the TWM decisions were very similar and the judge had referred to the applications as "formulaic" and stated the grounds were "pleaded in a generic and vague manner." The managers explained that clients were often insistent that an application for judicial review was made and they were following the client's instructions. Clients would get emotional if the firm did not follow their instructions. This led to a discussion about balancing the duty to act in the client's best interests with the duty to act with integrity and duty to third parties. Making an application may not always be in the client's best interests, particularly as failed applications will carry costs for the client.

- C. Some of the applications reviewed had very short statements. In one case the application was drafted in poor English.

- D. Some applications referred to out of date case law or were submitted out of time. It is fundamental that firms keep their knowledge of the law and procedure up to date.

Conclusions on judicial review

The number of judicial review applications to the Upper-tier Tribunal is increasing^{lii}. The vast majority of claims that reach the paper application stage are refused permission^{liii}. The number of TWM claims has increased and a total of 23 percent of all immigration judicial review applications have been certified as TWM^{liiv}.

The managers who were interviewed had their own views on why the number of TWM decisions was increasing. They were largely critical of the Home Office and the immigration judges. The subject of TWM decisions was an emotive topic for those we interviewed and some were concerned that the Home Office was trying to limit their ability to challenge decisions.

While recognising the fundamental importance of access to justice, it is also necessary to consider whether further action is in the interest of the client and in line with the need to uphold the proper administration of justice.

In light of these findings we have issued a [guidance note](#) in relation to judicial reviews.

Supervision

Firms must have supervision systems and processes in place to monitor the quality of the service they provide and the advice that is given.^{iv}

Solicitors must also have regard to the Statement of Solicitor Competence^{iv} (the statement). The statement defines the continuing competences that are required from all solicitors. It is made up of three parts:

- solicitor competence
- threshold standard
- statement of legal knowledge.

Section A3 of the statement requires solicitors to work within the limits of their competence and the supervision which they need, including:

- disclosing when work is beyond their personal capability
- recognising when they have made mistakes or are experiencing difficulties and taking appropriate action
- seeking and making effective use of feedback, guidance and support where needed
- knowing when to seek expert advice.

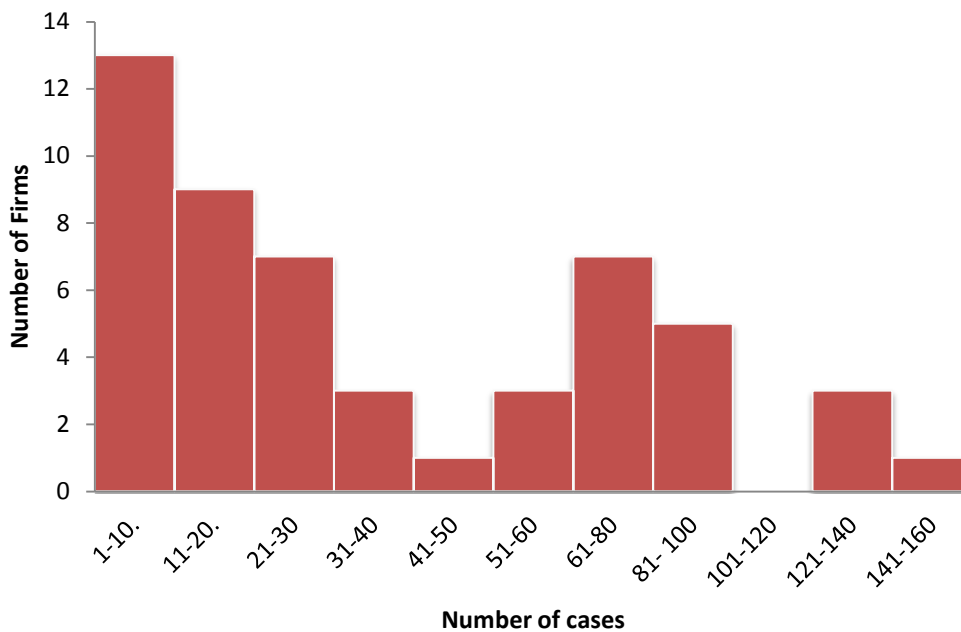
Good supervision provides the following benefits:

- reduces the risk of mistakes being made
- ensures a quality service is provided to clients
- develops the skills of both the supervisor and the individual being supervised
- allows improvements to be made
- makes employees feel valued.

Key findings

Although supervision is relevant to all firms, irrespective of the number of cases managed by fee earners, it can raise additional issues for those firms having to supervise a large number of cases. This is of particular concern if there is an imbalance in the ratio of supervisors to fee earners.

Number of asylum cases held by a fee earner



The number of asylum cases held by a fee earner ranged from one to 160.

There may be a greater supervision risk posed by fee earners who have a higher caseload, as there is more work for the fee earner and supervisor to manage. A number of firms dealt with this risk by making sure only their most experienced staff were given a higher proportion of asylum matters. Legal aid firms were required to have a ratio of three to four staff per supervisor.

Supervision raises particular issues for sole practitioners as there is no one else to supervise their work. Additionally, some of the sole practitioners we visited felt unable to turn away work, which meant periods of increased pressure without support.

It is noticeable that 25 percent of firms had an average fee earner asylum caseload of between nought to ten cases. This was for a variety of reasons. In some cases asylum was just one of the services provided by the firm. Staff had files in other areas such as immigration, family or criminal law. Some firms had also seen a reduction in the number of asylum files either because the firm no longer provided legal aid or there had been a drop off in the number of asylum seekers from countries they have historically dealt with. Although some firms are experiencing lower numbers of asylum cases, it is important that supervision standards at these firms are maintained.

We also compared the number of cases held by a fee earner with the average length of time it would usually take an adviser to prepare a client's witness statement. This was to see if the number of cases held by a fee earner impacted on the time spent in drafting a statement. Most of the firms with an average case holding of between 21–60 files took between two to five hours on average to prepare a witness statement. Fee earners holding between 81–160 matters spent on average the same amount of time in preparing a statement. There was no

evidence that fee earners with higher case-holding took less time to prepare a witness statement.

Average time spent by a fee earner on an asylum case

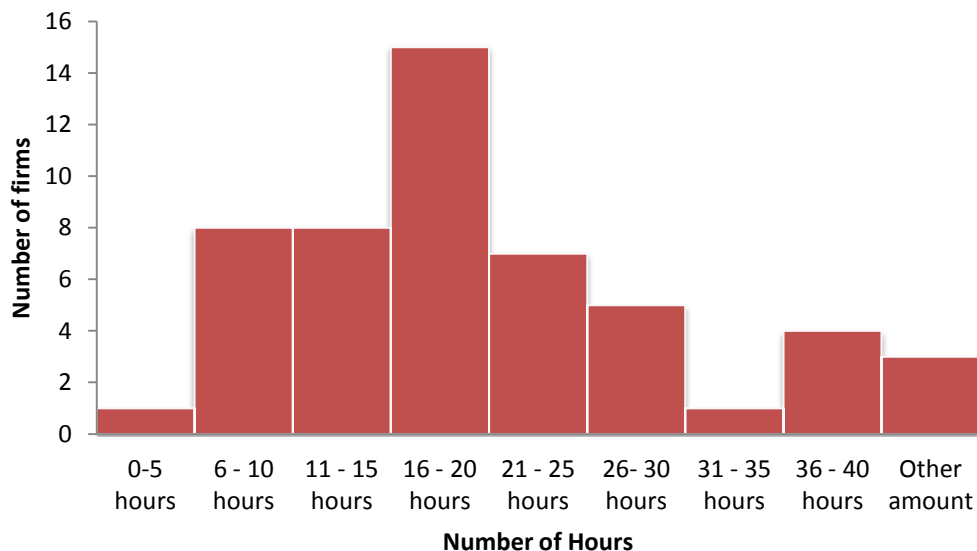
Another factor relevant to supervision is the average time spent by a fee earner on an asylum case. This was measured from first instruction to the start of the appeal process (if applicable). Although the amount of time will vary according to the size and complexity of a case:

- 29 percent of firms spent on average 16 to 20 hours dealing with an asylum matter
- 24 percent spent an average of 21 to 30 hours.

Some 8 percent of firms spent in excess of 40 hours dealing with an asylum case to appeal. This was for a number of reasons including the:

- complexity of the cases
- number of issues arising
- need for expert evidence
- numerous meetings needed with the client to take a detailed statement.

How long, on average, is spent dealing with an asylum case?



We compared the average time spent on an asylum case with the number of cases held by a fee earner. This was to see if the number of cases held by a fee earner impacted on the time spent on an asylum matter. In respect of the results:

- A majority of firms which had fee earners holding between 11 and 40 matters spent between 16 to 25 hours on an asylum case.
- Of the five firms that had fee earners holding between 81 to 100 matters, three spent on average 16 to 30 hours on an asylum case, with the remaining two firms spending between six to ten hours.

- There were three firms that had between 121 and 140 files per fee earner. Two of those firms spent an average of 16 to 20 hours on a case.
- only one firm had an average fee earner case load of between 141 to 160 files. It spent an average of 11 to 15 hours on an asylum file.

These results suggest that the size of a caseload does have some impact on how much time is spent preparing and progressing a case to appeal.

Supervision systems and processes

Supervision procedures will vary depending on the firm's size and the nature of work it undertakes. The visits found the following supervision procedures being used:

- random file reviews
- three-month activity checks
- one-to-one support by a supervisor
- an open plan/door policy
- tailored supervision
- review of incoming and outgoing post
- membership of award quality marks such as Lexcel
- diary system
- use of external counsel.

Firms often used a combination of these procedures to provide supervision. This is because using these procedures in isolation (for example, having an open door/plan office or operating a diary system) does not amount to an adequate method of supervision.

Random file reviews

Random file reviews were usually conducted by firms on a one, three or six-monthly basis. This consisted of a selection of files per fee earner.

The number of files reviewed varied according to the experience of the fee earner, for example, one to two in the case of an experienced fee earner and three to four for junior fee earners. One firm outsourced file reviews to an external company. This decision was taken to free up senior fee earner time to concentrate on delivering legal work. However, the firm needs to maintain confidentiality and comply with Outcome 7.10 in the SRA Code of Conduct 2011 when outsourcing in this way.

Random file reviews were usually supplemented by:

- informal file review meetings
- general discussions about a file (see below)
- weekly case review meetings. A number of firms had partners/directors attend random meetings with the client.

Three-month activity checks

In addition to random file reviews, some firms did three-month activity checks. This involved a more comprehensive review of all files held by fee earners to check the stage a file had reached and what further work or updates were required.

One-to-one support

A number of firms maintained regular supervision of fee earners and matters through one-to-one support. This usually consisted of formal one-to-one meetings on a weekly or monthly basis. One firm had two to three caseworker meetings per week.

Outside formal meetings, informal meetings regularly take place whenever there are any queries or issues on a file. A number of firms stated that they had "tight-knit teams" and this was a very useful supervision mechanism as it encouraged issues to be raised and discussed freely.

A small number of firms operated a peer review system for complex work handled by senior fee earners. A senior colleague was always available to review particularly complex or challenging work, for example in relation to an appeal.

An open plan/door policy

A number of firms highlighted the benefits that an open plan office had on supervision. Firms consistently made the point that an open plan office/open door culture allowed staff members to feel that they could approach a supervisor/other members of the team with questions or concerns about their work at any time. This helped create an environment that encouraged fee earners to ask for help, find solutions to problems and take responsibility for their self-development. Typical comments were "we are constantly talking" and "we all liaise very regularly".

Tailored supervision

Some firms adopted supervision procedures requiring a senior member of the team to sign off/review certain documents. Typical documents included grounds of appeal, appellant's bundle and instructions to experts to ensure they covered the correct areas.

Review of incoming post

Many firms had a policy where a senior fee earner opens all incoming post received by the firm. This provided an opportunity to see if there were issues on a file that needed to be addressed as well as the stage that files had reached.

Membership of award quality marks such as Lexcel

A number of the firms had been awarded quality marks such as the Legal Aid Agency Specialist Quality Mark (SQM) and/or the Law Society's 'legal practice quality mark for excellence in legal practice management and excellence in client care' (Lexcel) These quality marks require firms to meet standards of supervision. Firms we visited with these quality marks already had processes and procedures in place for supervision. Many firms we visited had recently had either a Lexcel or SQM audit or, in some cases, both. This meant that supervision arrangements were high on the agenda for these firms.

Diary system

A small number of firms used a diary system to monitor workloads and key dates. This took the form of a written diary system or an electronic version and in one case both. The diary system was a useful tool to:

- review workloads
- record and monitor key dates
- assess inactivity on files.

Good examples

The firm works in teams with a dedicated supervisor. There is a ratio of one supervisor to three to four caseworkers. Informal supervision takes place through a supportive open-door policy. Regular, random file reviews take place on a monthly basis. The number of file reviews depends on the ability of the caseworker. It ranges from four per month to two per quarter for more experienced caseworkers. No individual is exempt. All incoming and outgoing documents are reviewed by a supervisor. Team meetings take place every week where any issues are discussed.

The firm has daily meetings to discuss files and any issues that fee earners may have. Random file reviews take place every six months where ten files are selected. In addition, the senior partner undertakes monthly "cabinet raids" to assess the quality of files. He also randomly sits in on client meetings on regular occasions. Feedback is sought from all clients every six months, as well as at case closure.

The supervising partner reviews all key documents drafted, including witness statements representations and grounds of appeal. All appellant bundles must be approved. Caseworkers are provided with guidance and files are reviewed by sitting with the supervising partner. The partner frequently sits in on client meetings as an observer. He reviews each caseworker's diary on a daily basis to see what they are doing, who they are seeing and whether there are any new clients that he needs to meet.

The firm is both Lexcel accredited and has the Legal Aid Agency's SQM. File reviews take place every month and all outgoing post for junior fee earners is always signed out. All incoming post is reviewed. The firm has departmental meetings each month, which provides informal supervision. There is an open-door policy and more formal monthly supervision meetings are held for junior fee earners each month. The firm has a key date system to make sure key dates are recorded centrally so dates/deadlines are not missed.

Poor examples

A fee earner at one firm had minimal supervision. The two cases examined were charged on the basis of hourly rates but the fee earner had made no time recording entries to note how much time was being spent on the file. He said he would estimate the work done and, if required, he could consult the Outlook calendar to see how long meetings had taken. This would be 'accurate to within half an hour'.

A manager at a firm was unaware that a trainee solicitor he supervised had ten private client

cases. He believed someone else supervised these matters, raising concerns about appropriate supervision.

The supervision processes at this firm were unclear and did not appear to be implemented. Although files are said to be reviewed at key dates there was little evidence of this. The firm also appeared to be using standard form witness statements which had spelling errors.

Qualifications and training

Principle 5 of the SRA Principles 2011 provides that solicitors must give a proper standard of service to clients.

Outcome 7.6 of the Code of Conduct 2011 states that firms should train individuals working in the firm to maintain a level of competence appropriate to their work and level of responsibility. In addition, part A2 of the statement provides that solicitors should be able to:

- Maintain the level of competence and legal knowledge needed to practise effectively, taking into account changes in their role and/or practice context and developments in the law, including:
 - taking responsibility for personal learning and development
 - reflecting on and learning from practice and learning from other people
 - accurately evaluating their strengths and limitations in relation to the demands of their work
 - maintaining an adequate and up-to-date understanding of relevant law, policy and practice
 - adapting practice to address developments in the delivery of legal services.

The research paper highlighted a number of areas of concern that impact directly on qualifications and training:

Poor legal and case knowledge^{lvii}

Consumers of legal services expect their legal representatives to have a detailed understanding of relevant law. Unlike other areas of law, legal representatives in asylum need to have sufficient levels of knowledge about other areas of law, including immigration and nationality, family and child (particularly knowledge of the UN Convention on the Rights of the Child and how it is applied to migrant children and law surrounding article 8). Consultations with solicitors and previous research conducted by CORAM Children's Legal Centre have identified that not all immigration and asylum advisers have the specialist knowledge required.

Furthermore, asylum advice raises a number of other related issues, including gender persecution, child protection, trafficking and detention. The law in all these areas is complex and constantly changing and solicitors need to have comprehensive and appropriate knowledge across multiple disciplines.

Insufficient experience of undertaking interviews with asylum seekers^{lviii}

During initial meetings with legal advisers, it is necessary for asylum seekers to disclose personal and often harrowing information about their situation. The ability of the asylum

seeker to provide this information is largely dependent on how skilled the legal adviser is at interviewing and asking appropriate and carefully worded questions. Failure to elicit sufficient evidence at this stage can prove detrimental in subsequent stages of the case.

Limited experience of appeals^{lix}

Some solicitors lacked experience of undertaking appeals. This was demonstrated through poorly constructed and evidenced appeals, with short statements, poor and inaccurate country information and no supporting evidence.

Understanding the case

There was evidence of poor practice in terms of country and client knowledge. There are asylum seekers arriving in the UK from countries that solicitors are unfamiliar with where required research into the circumstances behind the application has not been completed.

Key findings: Staff training

Firms were asked in advance of each visit to complete a schedule of training received in a number of different areas. The schedule also requested firms to confirm whether they have any guidance available in those areas. Firms struggled to do this. Although 85 per cent of firms stated that they kept training records, many firms were unable to provide detailed information about:

- when training was received
- who delivered it
- what guidance was available
- when it was drafted/updated.

In some cases, answers provided by firms were vague ranging from training was "ongoing" or guidance was "continually updated". There were two firms, however, that provided comprehensive responses to the training schedule. These responses provided significant detail about when training was received, who delivered it, course content as well as when guidance was prepared and updated.

The schedule also sought to gather information on soft skills training received by firms, for example: how to conduct interviews, take witness statements or deal with clients with a specific vulnerability. Although 44 of the 52 firms said they provided training about how to conduct interviews and take witness statements, only 33 firms had guidance available on these areas. Some 15 firms had not received any training on soft skills, with only 31 firms providing guidance to fee earners in this important area.

Some 48 firms said they received training on asylum law and process with 44 having received training on human rights relating to children. Although a number of firms provided training in the different areas above, fewer firms said they provided any internal guidance about these areas. Some 17 firms said they did not provide any guidance notes in the area of asylum law.

The research paper identified that legal representatives in asylum need to have sufficient levels of understanding in a number of other areas of law, including:

- immigration and nationality law
- family law
- child law
- gender persecution
- trafficking and detention abduction
- country knowledge.

Some 46 firms said they received training on immigration and nationality law but only 28 received training on childcare and family law. Some 32 firms stated they provided guidance in the area of immigration law with only 25 doing so for childcare and family law. Training received by firms for gender persecution (33), human trafficking (35) and country knowledge (38) suggests that a number of firms have not received any training in these important areas. Similarly, there are a number of firms that could usefully provide additional guidance to fee earners in these areas.

Table showing training received by firms and guidance provided in specific areas

Area	Number of firms that have received training	Number of firms that have not received training	Number of firms providing guidance	Number of firms that do not provide guidance
How to conduct interviews	44	8	33	19
How to take witness statements	44	8	33	19
Soft skills (eg building empathy, listening and encouraging the client to disclose personal information)	37	15	31	21
Dealing with clients with a disability	30	22	29	23
Dealing with clients with mental health issues	32	20	30	22

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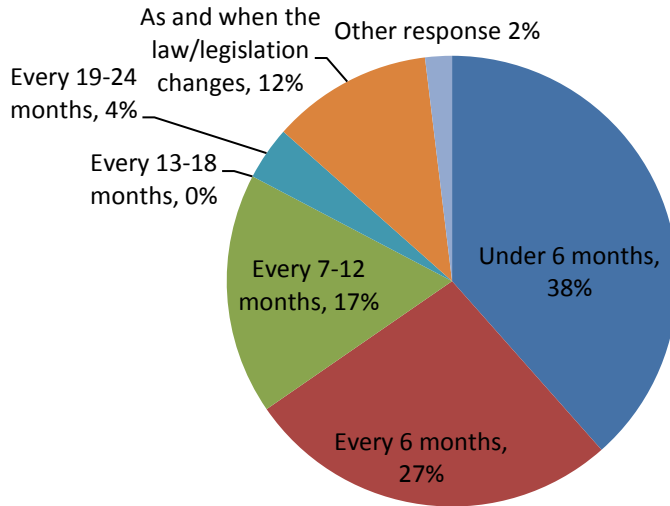
Area	Number of firms that have received training	Number of firms that have not received training	Number of firms providing guidance	Number of firms that do not provide guidance
Dealing with clients who are children	35	17	31	21
Law and legal process:				
Asylum law and process	48	4	35	17
Immigration and Nationality law	46	6	32	20
Criminal law	23	29	22	30
Childcare and family law	28	24	25	27
Human rights	44	8	34	18
UN Convention on rights of the child				
Child protection	31	21	30	22
Human Trafficking	35	17	28	24
Gender persecution	33	19	27	25
Advocacy	32	20	23	29
When to seek expert advice	33	19	32	20
Country and client knowledge	36	16	31	21
How to conduct appeals	38	14	33	19

Competency and training interview questions

The firms were asked how often staff received training on asylum law and practice. Some 38 percent of firms said that staff received training on an ongoing, weekly or monthly basis. A further 27 per cent of firms received training every six months with 17 per cent of firms

saying that staff received training every seven to 12 months. Of particular concern was that 4 percent of firms stated that staff received training every 19 to 24 months.

How often do your staff received training on asylum law and practice?

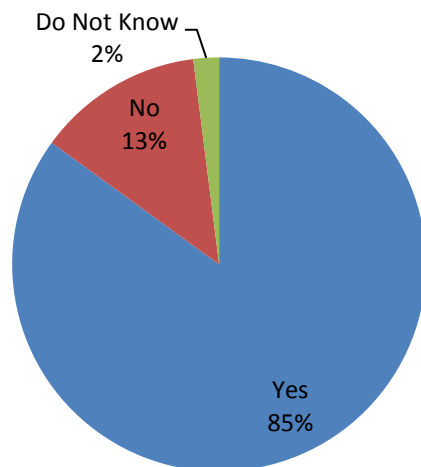


"Under 6 months" includes ongoing, weekly or monthly training.

The "other response" was: "two support staff do not do asylum work. Only two principals."

Some 85 percent of firms said they kept staff training records showing what training staff received and when this was. This is important as it not only shows what training staff had received but also where training needs may lie. The regulatory managers reviewed training records where these were available during the visit. However, as stated above, firms sometimes struggled to provide this information.

Do you keep a record of staff attendance at training?



Process to identify external training providers

Firms took into account a variety of factors when determining which external training providers to use and what courses to attend. These included:

- relevance of the training course content
- fee earner knowledge and experience of the providers
- whether a specialist is providing the training
- recommendations from colleagues
- cost
- the seniority and reputation of the trainers
- availability of trusted counsel to provide training (sometimes at no cost)
- whether it will assist in the provision of services to clients and add to the firms working knowledge base.

Effectiveness of training

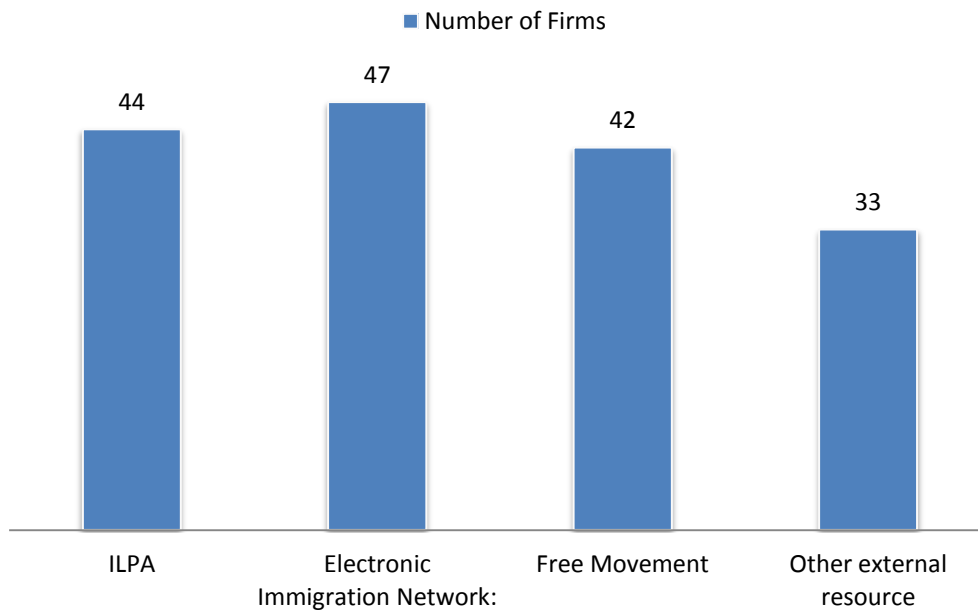
Firms also took into account a number of factors when determining the effectiveness of staff training. These included:

- reviewing whether the training provided live examples and could be applied to everyday situations
- considering whether the training was sufficiently engaging
- collecting feedback from fee earners at meetings
- seeing if fee earners are implementing the training in their day-to-day work
- assessing whether the trainer has provided clarity on an uncertain area of law.

External resources

A significant number of firms have access to the Immigration Law Practitioners' Association (86 percent), Electronic Immigration Network (92 percent) and Free Movement (82 percent). Some 65 percent of firms also used other external resources such as blogs written by counsel, LexisNexis or HJT.

Do you use any external resources to provide guidance and training?



The use of online and external resources is in line with the changes to the continuing professional development requirements for solicitors, which allow more flexibility on the type of learning activities that can be undertaken. Research and learning from these resources, along with more formal training, should enable solicitors to demonstrate their ongoing competency in asylum law and practice.

Review of cases

Firms were asked whether they conducted a review of successful/unsuccessful cases. Some 92 percent of firms said they did this. There were a number of reasons given by firms including:

- it provided a useful analysis of what went well and not so well
- it feeds into possible improvements in existing and future cases
- training needs could be identified.

Other methods used to ensure competence

Firms used a variety of other methods to ensure fee earners are competent in relation to asylum law and practice. These included:

- subscriptions to additional online resources and relevant publications
- appraisals to formulate a training plan for fee earners to ensure continued competence and development
- regular internal meetings/training sessions to discuss case law and changes in legislation
- regular case management discussions/one-to-one's on files to address issues

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- informal peer support to make sure experience and knowledge is shared and passed on
- case and legislation updates to the team
- considering client feedback. If a client raises an issue relating to competence, this is examined to identify any issues and implement any changes, if required.

Good practice	Poor practice
<ul style="list-style-type: none"> • The firm has a system in place to monitor the ongoing training needs of their staff. • The firm tailors training needs to the areas most encountered in an asylum practice, which will include areas other than asylum law and practice. • The firm ensures that its advisers are competent at "soft skills", for example, listening and making sure that vulnerable clients are able to open up, feel comfortable and relaxed and training is delivered to staff as necessary. • The firm uses both formal training and reliable external resources to ensure that the legal and procedural knowledge of their staff remains up to date. • The firm has minimum standards of training and has a programme of continuous improvement. • One firm stated that if a fee earner attends a course, it is a requirement that any relevant information from the course is shared at the next departmental meeting. 	<ul style="list-style-type: none"> • The firm gives no thought to the training needs of its staff including areas other than asylum law and practice that might be required. • The firm has an erratic training schedule and fails to keep any records to monitor the training needs of their staff. • The firm has insufficient training resources and guidance to keep staff up to date with the latest changes in law and process.

Good examples

We observed the following good practices at firms:

- Wide selection of training and guidance available to fee earners. The firm tends to use webinars, online resources and regular internal meetings to discuss recent changes in asylum law alerted to them by the Home Office or Electronic Immigration Network. Training is provided on a weekly basis and all attendance at training is recorded. Where members of staff attend external training, this is shared with the team at the earliest opportunity.
- Pro-active stance to training is taken by the firm, which encourages fee earners to attend external courses where relevant. Each fee earner has a personal development plan listing areas they need further training on. The training plan is monitored to ensure fee earners attend relevant courses.
- A review of all successful and unsuccessful cases is carried out by the firm to establish learning points which can be fed into the wider team and improve the service they provide. Training records provided show a wide range of courses attended. Firm use counsel and recognised training providers such as the Immigration Law Practitioners Association. Training takes place each Thursday when someone in the team will provide an update or feedback the contents of any external training attended.

Poor examples

One firm was reported to our Supervision Team as a result of its poor record at attending training. The firm, by its own admission, had neglected this area and was aware that it needed to make significant improvements to ensure it was up to date with developments in case law and legislation across a number of areas. The lack of training implemented by the firm may partially explain its poor success rate on appeals to the First and Upper-tier tribunals.

There was little or no evidence of training at this firm. Although the firm use ILPA, they do not use any other external training providers. The fee earner interviewed had a very limited range of training, the majority of which was historic. It is unclear how she maintained a relevant and current knowledge of asylum matters.

Training at this firm is very slapdash and in danger of being out of date. Some training has not been refreshed since 2011. The firm acknowledge that they need to improve, and anticipate doing so as, for them, asylum cases were increasing in number.

Qualifications and accreditations

Individuals at the firms had a variety of qualifications and accreditations. Across the entire sample, there was a total of 298 solicitors, 35 trainee solicitors and 111 caseworkers with three barristers and nine legal executives.

Accreditations

Immigration and Asylum Law Accreditation Scheme (IAAS)

Many Legal practitioners are accredited through the Law Society's accreditation scheme. The IAAS covers all types of immigration and asylum law work. Members will have shown, to the satisfaction of the Law Society, that they have and will maintain a high level of knowledge, skills, experience and practice in the area of immigration and asylum law.

Membership is a mandatory requirement only for immigration practitioners who wish to carry out and receive payment under a Legal Aid Agency contract in the immigration and asylum category. It is not compulsory for solicitors offering immigration and asylum advice and services on a privately funded basis.

Of the 463 asylum fee earners at the firms we visited, 306 (66 percent) had some form of IAAS accreditation. There were 176 IAAS Level 2 accredited staff with 28 gaining IAAS Level 3 accreditation. Some 86 staff received IAAS accreditation at supervisor level.

Conclusions

The Legal Services Board^{lx} and the Legal Services Consumer Panel^{lxi} had already identified many of the issues faced within the immigration sector and specifically raised concerns about the detriment to asylum seekers of poor quality advice. The 2014 report on the independent research we commissioned confirmed the vulnerability of these clients and their reliance on the legal advisers.

This thematic project has enabled us to spend a considerable amount of time with firms who have the responsibility of advising asylum seekers on matters that are often complex, emotional and can lead to tragic consequences. We have made sure that we engaged with a wide spectrum of firms, ranging from sole practitioners working out of their own home to some of the largest firms in the sector. This has ensured that we gained a full insight into the wide variety of challenges and issues that are faced.

The vast majority of these firms have demonstrated that they appreciate the potential vulnerability of their clients and many have shown dedication to supporting their clients. This support often extends to providing guidance and advice beyond the expected legal service, often without charge. Many of the firms have welcomed our review and share our commitment to encouraging an improvement in the quality of legal services provided to asylum seekers.

Although the overall picture is broadly positive, there remains scope for improvement and areas of concern.

In particular there is a need to focus on:

1. communicating the key client care messages
2. the role and suitability of interpreters
3. providing an appropriate and thorough explanation of costs
4. meeting the client's needs and avoiding over-reliance on firm policy or pro formas
5. meeting and considering all of the legal needs of the client
6. training and the ongoing competence of the advisers
7. the appropriate and professional use of the appeals process.

Importantly, this thematic report is intended not only to highlight the areas of concern but also demonstrate examples of good practice. While we have identified regulatory concerns and breaches, our objective is also to assist in an overall improvement in the quality of service and guidance provided to asylum seekers.

Our regulation has a specific requirement on solicitors to meet the service needs of vulnerable clients. The importance of this obligation has been made very clear during this project where we have seen numerous cases where clients are seeking asylum due to fleeing torture, imprisonment or potentially death. It confirms the need to do all we can to ensure asylum seekers obtain the quality of service and advice they are entitled to expect from a responsible, qualified, trained, knowledgeable and regulated professional.

What else is being done as a result of the project?

The asylum process is a complex and nuanced area of work. In particular, there is a significant disparity between the knowledge and understanding of the asylum seeker and that of the solicitor. We recommend that further work should be done to support, educate and empower vulnerable clients and those that assist them, including the firms themselves.

Examples of further action that we are taking include:

1. publication of this external [report outlining our findings](#), together with a summary report and a toolkit of relevant resources and links.
2. proactive circulation of this report to:
 - interested parties including: Legal Aid Agency, The Home Office, The Law Society (Immigration Law Committee), The Bar Standards Board, The Legal Ombudsman (LeO) and CILEx
 - representative groups and appropriate community groups
 - consumers via the Legal Choices website.
3. a rolling schedule of liaison meetings with the Legal Aid Agency, the Legal Ombudsman and the Home Office to consider and share information, including areas of concern.
4. publishing specific guidance for solicitors providing advice to asylum seekers on three issues identified in the full report. [The guidance note](#) provides detailed guidance on the topics of costs information for clients, the conduct of judicial review applications and firms' systems and procedures, particularly those related to competence and supervision of fee earners.
5. where issues were highlighted at firms as part of the project further regulatory action is to be taken.
6. our assessment process for complaints from asylum clients is to be reviewed to ensure that their complaints are given appropriate weighting.
7. continuing to closely monitor developments in this area.

November 2016.

Endnotes

- ⁱ <http://www.sra.org.uk/sra/how-we-work/reports/asylum-report.page>
- ⁱⁱ With the Legal Ombudsman and Unbound Philanthropy
- ⁱⁱⁱ <http://www.sra.org.uk/sra/how-we-work/reports/asylum-report.page>
- ^{iv} A term used within the Migration CIC research. The researchers interviewed solicitors and local support services to asylum seekers, including migration and refugee community organisations and refugee projects.
- ^v The term "caseworker" is a generic term used for those who did not have a formal qualification as a solicitor, barrister, REL, RFL or with ILEX. Some of these caseworkers had IAAS accreditation which is discussed further in the qualifications and training section.
- ^{vi} p.23
- ^{vii} p.24
- ^{viii} Page 35 onwards
- ^{ix} Page 27
- ^x Indicative behaviour 1.1
- ^{xi} Indicative behaviour 1.2
- ^{xii} Indicative behaviour 1.3
- ^{xiii} Indicative behaviour 1.5
- ^{xiv} pp35-36
- ^{xv} The term 'frontloading' means gathering as much information and evidence as possible at the start of the case. It is considered further in the legal process section.
- ^{xvi} p.41
- ^{xvii} www.helenbamber.org
- ^{xviii} <https://www.freedomfromtorture.org>, formerly The Medical Foundation for the Care of Victims of Torture
- ^{xix} <https://www.gov.uk/asylum-support>
- ^{xx} <http://www.migranthehelpuk.org/>
- ^{xxi} <http://uklgig.org.uk/>
- ^{xxii} <http://www.southallblacksisters.org.uk/>
- ^{xxiii} <http://www.bawso.org.uk/>
- ^{xxiv} <http://www.apna-haq.co.uk/>
- ^{xxv} <http://www.ashianasheffield.org/>
- ^{xxvi} p.27
- ^{xxvii} p.27
- ^{xxviii} See, for example, the Tribunal judgment of *SRA v Thomas* 11373-2015 at paragraph 110.
- ^{xxix} pp.32-34
- ^{xxx} Outcome 1.7
- ^{xxxi} Outcome 1.9
- ^{xxxii} Outcome 1.10
- ^{xxxiii} Outcome 1.14
- ^{xxxiv} When we reviewed case files, however, we found that 12 percent of firms did not provide details of how to contact LeO in the client care information provided.
- ^{xxxv} Some firms gave more than one reason.
- ^{xxxvi} Page 25.
- ^{xxxvii} Page 38
- ^{xxxviii} <http://www.nrpsi.org.uk/downloads/AnnualReview2014.pdf>
- ^{xxxix} P.41.
- ^{xl} Page 41
- ^{xli} <https://www.gov.uk/courts-tribunals/first-tier-tribunal-immigration-and-asylum>
- ^{xlii} <https://www.gov.uk/courts-tribunals/upper-tribunal-immigration-and-asylum-chamber>
- ^{xliiii} Page 31
- ^{xliiv} Based on information provided by 48 firms for the 12 month period before the interview

^{xlv} Based on information provided by 40 firms for the 12 month period before the interview

^{xlvi} <https://www.sra.org.uk/solicitors/competence-statement.page>

^{xlvii} Immigration and Asylum Accreditation Scheme

^{xlviii} <https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/bsb-conducts-thematic-review-on-immigration-services,-adopts-recommendations/>

^{xlix} Paragraph 36

^l This figure was based on the information provided by 27 legal aid firms and 24 non legal aid firms

^{li} https://www.academia.edu/24421389/Immigration_Judicial_Reviews_in_the_Upper_Tribunal_Immigration_and_Asylum_Chamber_an_analysis_of_statistical_data_April_2016

^{lii} Thomas p.2

^{liii} Thomas, p.3

^{liv} Thomas p.4

^{lv} Chapter 7 of the SRA Code of Conduct 2011 places an obligation on all solicitors, particularly managers, to have a system for supervising clients' matters. This includes the regular checking of the quality of work by suitably competent and experienced people (Outcome 7.8).

^{lvi} <https://www.sra.org.uk/solicitors/competence-statement.page>

^{lvii} Page 4

^{lviii} Page 4

^{lix} Page 4

^{lx} http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20120301_immigration_discussion_doc_1_1_final.pdf

^{lxi} <http://www.legalfutures.co.uk/latest-news/the-legal-lot-asylum-seeker-complex-system-hard-to-find-lawyers-sloppy-advice>