



Legal Aid
Agency

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Civil: Nationality and Borders Act: Changes to the Immigration and Asylum Specification from 01 April 2023 - Help Us Say Yes Webinar – Your Questions

Service development

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National Referral Mechanism (NRM) advice

Q: Is the NRM bolt-on fee claimable on matters opened prior to 1 April 2023 that are ongoing at that point?

A: Yes, however where the start date is before 1 April 2023 and the bolt on fee has been claimed the advice must be given on or after 1 April 2023.

Q: What must the NRM advice cover to receive the bolt-on fee?

A: Para 8.57 of the Immigration and Asylum Category Specific Rules sets out what should be included in the advice given.

Q: What should be on the file to evidence this?

A: Evidence on the file could be in different forms, for example, the advice could form part of a letter to the client, or an attendance note, detailing the advice given including the date.

Q: If the matter is paid at hourly rates, is the NRM bolt-on fee still claimed via the dropdown on CWA?

A: If the matter is paid at hourly rates, this advice should be claimed via the dropdown and should not be included in the Profit Costs calculation.

Q: What should be on the file in terms of indicators of trafficking?

A: There should be some reference to indicators either in statements, letters or forms that are retained or in a note on the file.

Q: Is there a standard pro-forma to be completed by providers for NRM advice?

A: No there is not

Q: Can the NRM bolt-on fee be claimed with a matter funded by Exceptional Case Funding (ECF)?

A: Section 67 of the Nationality and Borders Act 2022 sets out when a client will be in scope for pre-NRM advice, paid for via the bolt-on fee, when their matter is funded via ECF

Q: Can this advice also be given if the trafficking exception code is used?

A: Using the Trafficking code can bring otherwise out of scope work into scope where a client has been recognised through the NRM that they are a Victim or Potential Victim of Trafficking or Modern Slavery.

The bolt on fee covers advice for clients **before** they have been referred into the NRM.

Q: Does the claim for the NRM bolt-on fee need to be made in a stage claim prior to a referral?

A: No. The claim can be made after the client has been referred into the NRM however the advice is only available before they have been referred. For example, if advice is given to the client on 5 May 2023 and they are subsequently referred into the NRM on 7 May 2023, the bolt on fee can be claimed after 7 May if that is when the matter is being submitted for payment.

Q: When can the NRM bolt-on fee be claimed?

A: The bolt on fee can be claimed as part of a completed claim, however, should not be claimed on its own, and should only be claimed once.

Q: Can counsel claim this bolt on?

A: The bolt-on fee should be claimed as part of the substantive matter as outlined above. It is for counsel and the Provider to agree who will provide the NRM advice and how the bolt-on fee will be distributed.

Q: Can there be a claim for referral?

A: No, the bolt on fee is for advice prior to referral only and not the referral itself.

Q: Can the NRM bolt-on fee be claimed for advice given after a referral into the NRM has been made?

A: The add-on services that have been brought into scope specifically relate to advice with regards to referral into the NRM and not ongoing advice or support once the referral has been made.

Q: Does the substantive matter cover individual advice or does the bolt-on fee cover this?

A: The bolt on fee can cover individual advice given to a client in respect of the impact that referral into the NRM may have on their substantive matter.

Q: Is the £150 bolt on fee for advice on entry to the NRM costs only? How does one charge for the disbursements? Do the disbursements (such as interpreter's costs) come out of the asylum disbursement limit?

A: The bolt-on fee is for profit costs only. Disbursements such as interpreter costs should be included in the disbursement claim for the matter.

Priority Removal Notices (PRNs)

Q: Is a CW1 form needed?

A: A CW1 form will need to be completed for the initial work however the sections relating to means can be disregarded. A new form related specifically to the initial up to 7 hours of PRN advice may be introduced. Any follow-on work, for example, an Immigration or Asylum substantive matter that is opened as a result of the initial advice, will be means tested and a CW1 form will need to be completed in full and signed at that point.

Q: Will there be an increase in the number of matters paid at Hourly Rates as a result of this?

A: Yes, there may be an increase in the number of matters subject to hourly rates.

Q: Should the same UFN be used for IPRN and substantive work?

A: No, they are separate matters and will have different UFNs

Q: Is this a New Matter Start?

A: Yes. Up to 7 hours of advice following receipt of a PRN constitutes 1 New Matter Start. Any follow-on work would be a separate New Matter Start. These will come out of the New Matter Starts allocated at the start of a Contract period.

Q: Are the profit costs included in the £3000 self-grant limit?

A: Initial advice is capped at 7 hours and cannot be extended therefore Profit Costs should not exceed this limit, as set out in the Immigration and Asylum Specification.

Q: Is there a disbursement limit on PRN work? What is it?

A: There is a disbursement limit of £400 for initial advice of up to 7 hours given following a Priority Removal Notice being received. This limit can be extended on application.

Q: There is an apparent inconsistency between 8.61...when the limit is reached determine where client qualifies for another form of publicly funded work as opposed to 8.62 cease to provide PRN advice as soon as determine otherwise qualifies for contract work

A: 8.62 sets out the expectation that the substantive matter will be opened as soon as possible. 8.61 sets out that if the Provider reaches the 7-hour cap and they have thus far

been unable to make that determination they must do so at that point as the 7 hours cannot be extended.

Q: Can the self-grant scheme be used to extend the disbursement limit for PRN matters?

A: Yes.

Q: Is it only for PRNs issued after 1 April 2023?

A: Yes

Controlled Legal Representation (CLR)

Please note: Following the webinars and further discussions, Legal Help Matters and Controlled Legal Representation Matters **will not** be required to have the same UFN. All questions related to this have therefore been removed as are no longer relevant.

Q: What about matters that are subject to hourly rates e.g., UASC or DDAS?

A: Where matters are specified in the contract as being paid at hourly rates this will not change.

Q: Will CLR matters paid at hourly rates be separate matters from the Legal Help matter before it?

A: All CLR matters granted on or after 1 April 2023 should be claimed as separate matters from any preceding Legal Help matter

Q: Will the LAA automatically be increasing NMS allowances for Providers?

A: Increases to New Matter Start allocations is under review. In the meantime, Providers can continue to increase their allocation by 50% without reference to the LAA. Any more than that will require them to contact their Contract Manager as is currently the case.

Where an increase in allocation may result in the contract then being in a higher lot the provider should contact their contract manager.

Q: Will a new means test be required when opening a CLR matter for an existing client?

A: Yes. This has always been the case and continues to be so. This is because they are separate matters.

Q: Why is the situation not comparable to the position when opening a subsequent matter to advice on rebutting the Home Office's provision Group 2 refugee decision i.e., the same financial determination applies as it did to the original Legal Help matter owing to the connected nature of the work?

A: This is due to the connected nature of rebuttal work with the ongoing asylum matter, as well as the timescales set out by the Home Office for response to the provisional Group 2 decision.

Q: What will the escape fee threshold be for a Legal Help matter?

A: The escape fee threshold will depend on the case start date. If the case start date is 1 April 2023 or after the escape fee threshold will be 2x the fixed fee.

Q: Will these changes affect the remuneration for counsel across CLR, Fixed fee cases?

A: The advocacy fees have not changed

Q: If Humanitarian Protection has been granted but asylum has been refused what is the correct MT2 code of the LH: IE or IC?

A: If the client is going to receive further legal aid in the form of CLR as a result of this decision, then the Outcome Code should be recorded as IE

Q: Is there any add on fee at hourly rate for the ASA?

A: No

Q: If the matters are separate does the £3000 self-grant limit apply to LH and CLR separately rather than £3000 for the whole case?

A: Yes

Q: Is the escape threshold of 2x the standard fee scheme rate, only in relation to immigration?

A: The new lower escape threshold will only apply in the category of Immigration & Asylum

Q: Where can the grant date be recorded when making a claim on CWA?

A: The CLR grant date will be recorded as the Case Start Date which is already a field that must be completed when making a claim through CWA. It is on the left-hand side and the 3rd field down in the Outcome Details section

Q: What is the rate for stage 2(d) and 2(e)? The remuneration doesn't seem to have been updated yet.

A: The new fees can be found in Table 4(aa) of The Civil Legal Aid (Remuneration) Regulations 2013:

IACE - £669

IACF - £1009

IMCE - £628

IMCF - £855

Q: When CLR becomes a 'new matter' should there be a closure letter on the legal help and a new client care letter on the CLR matter?

A: The LAA would expect to see a closure letter on the file or a letter confirming that the client has been granted CLR. The latter would then also be expected to be retained on the CLR file.

Q: What are the transitional arrangements related to this change?

A: There are no transitional arrangements being put in place

Group 2 Refugee Decisions (Differentiation)

Q: Can a matter start be opened before the written notification of the group 2 decision is received?

A: No. A matter relating to a preliminary Group 2 Refugee decision cannot be opened before the client has been notified of this preliminary decision by the Home Office

Q: What rates are payable for the Group 2 Refugee Decision.

A: This work is paid at hourly rates using the code combination IAXL:IDIF

Q: If a client confirms no changes in their circumstances that would affect their eligibility for their Legal Help matter is a new CW1 form needed for the rebuttal work?

A: Where a Client with an open asylum matter receives notification from the Home Office of a provisional Group 2 Refugee decision, the Provider is directed to open a separate new matter to deal with the work related to the rebuttal, however in funding terms this will fall under the same financial determination as the main file owing to the connected nature of this work with the ongoing asylum matter, as well as the timescales set out by the Home Office for response to the provisional Group 2 decision.

Providers should ensure that a copy of the relevant CW1 form. and copies of the means evidence are retained on the rebuttal matter file and a note made of the UFN of the linked asylum claim.

Q: If a reassessment is required for the Group 2 Refugee Decision, does a new CW1 need to be completed, or would an attendance note be sufficient?

A: If the Client has advised that a change in circumstances has occurred since the original assessment which may affect their eligibility, apply the guidance in section 11 of the Lord Chancellor's Guidance to determine if a reassessment is required on the open asylum matter. If a reassessment is not required, then the provider can also rely on the original assessment for the new matter start (to rebut the provisional Group 2 decision). If a further determination is required on the asylum matter and a new CW1 form completed, the result will also apply to the rebuttal matter.

You must however ensure that the UFN of the substantive asylum matter is noted on the differentiation matter file.

Q: Will there be guidance on how all these provisions affect the self-grant scheme and particularly the £3000 profit costs limit?

A: Self-grant scheme provisions have now been formalised as part of the Immigration and Asylum Category Specific Rules which can be found here.

Q: What would be the end point codes?

A: This work will be paid at hourly rates using the following code combination: IAXL:IDIF

The outcome code will depend on the outcome of the work. Details can be found in the CWA Codes Guidance

Q: When should Group 2 decision matter be opened?

A: The matter relating to the preliminary Group 2 decision can only be opened when that decision has been communicated to the Provider / Client.

Q: Are the hourly rates increasing or still the same?

A: The hourly rates have not been amended.

Q: Is the differentiation matter just for rebuttals of a decision on Group 2 and not for representations on it prior to a decision?

A: The work to be completed under the separate differentiation matter should include advice on the preliminary decision, drafting and submission of the rebuttal.

Q: What is the profit cost limit for the hourly rate Group 2 refugee rebuttal matter?

A: The asylum Legal Help profit cost limit of £800 applies to these matters. The disbursement limit of £400 applies.

Q: Why does the means assessment not apply to Controlled Work?

A: The decision to disapply the need for a new CW1 for this work is owing to the connected nature of this work with the ongoing asylum matter, as well as the timescales set out by the Home Office for response to the provisional Group 2 decision.



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