Solicitors Regulation Authority

# A thematic review of asylum legal services

30 July 2024

# Executive summary

## Background

Users of asylum legal services can be some of the most vulnerable people in our society. The reasons behind how and why they arrive in England or Wales are likely to be complex and unique to them. It is common for many to experience stressful or difficult circumstances and have little knowledge of the UK's legal system.

Like all users of legal services, it is important that they receive appropriate good quality legal advice and services. For people who use asylum services, the consequences of poor advice can be particularly severe, long-lasting, and difficult to rectify - for example, it may result in them incorrectly being returned to a country they felt compelled to leave and where they could suffer harm.

Our Principles place obligations upon solicitors to make sure they provide the standard of service expected of the profession. As well as ensuring the quality of service to clients, the processes, policies and day-to-day approaches of law firms working in this area must serve to ensure those we regulate do so in a way that is consistent with the law.

We have a programme or a body of work to help firms/solicitors understand their obligations, including issuing various materials to help law firms and solicitors understand their obligations. We have also carried out numerous other research projects and thematic reviews into immigration and asylum services over the years. Our programme has included:

- A thematic review [https://beta.sra.org.uk/sra/research-publications/immigration-asylum-thematic-review/] into immigration services (November 2022)
- Updated guidance [https://beta.sra.org.uk/solicitors/guidance/immigration-work-guidance/] on performing immigration work (November 2022)
- A warning notice [https://beta.sra.org.uk/solicitors/guidance/immigration-work/] regarding solicitors potentially advising clients to falsify or fabricate information to support applications for asylum or leave to remain (September 2023)

We also took disciplinary action against a number of firms or solicitors where we have found them to be acting dishonestly in relation to immigration or asylum work. This includes in relation to three law firms which we [https://beta.sra.org.uk/sra/news/press/2023-press-releases/three-immigration-firms/] closed down in July 2023 [https://beta.sra.org.uk/sra/news/press/2023-press-

releases/three-immigration-firms/] , following an undercover operation by a national newspaper.

## This report

We carried out this thematic review to help us better understand how firms work in this sector, how they engage with clients, what supervision and training is being undertaken to support this work, and what firms are doing if and when any concerns arise. The review also seeks to identify examples of good practice, which may prove useful to other firms working in such areas.

The primary objective of these reviews is to support our work in understanding risk arising within legal services and what we may need to do to address it. A secondary objective is to share knowledge across the profession to support its understanding risks. If we identify matters of concern during the course of a review, the solicitors or firms involved are referred into our disciplinary system for investigation. In this thematic review, no such issues were uncovered.

The review looked at:

- how firms engage with clients and the evidence in asylum matters
- how firms maintain effective oversight of work and their supervision arrangements
- how firms ensure the ongoing competence of fee earners
- the extent to which individuals were reporting concerns about other solicitors and authorised firms to us.

We visited 25 firms who provide asylum legal services. The firms included sole practitioners and firms who held a legal aid contract. Five of the firms had also previously been visited as part of our immigration thematic review [https://beta.sra.org.uk/sra/research-publications/immigration-asylum-thematic-review/] .

At each firm, we:

- spoke with the person with overall responsibility for asylum matters (referred to in this report as the 'head of department').
- spoke with the fee earner who dealt with asylum matters.
- reviewed two files handled by a fee earner. If the firm also engaged a consultant, we also reviewed two files handled by the consultant. In total we reviewed 64 files.

## Key findings

### Engaging with clients: Validating claims

Generally we found that firms take a proactive approach to working with prospective clients to consider the merits of a potential asylum claim. This is both in terms of advising clients clearly on likely evidence that may be required to support any claim before it is made, and having their own measures in place to scrutinise the authenticity of client identities and evidence.

- On average, firms we visited rejected around 10 per cent of cases brought to them.
- All fee earners we spoke to took steps to verify a client's identity. This included asking every client to produce hard copy ID documents during initial face-to-face meetings.
- Most fee earners (23/25) typically saw and discussed evidence in support of a client's asylum claim during an initial meeting.
- All firms told us that it was important to examine and discuss any supporting evidence with the client in person. As an example, more than a third use external third-party experts or issuing authorities as additional verification of the authenticity of client evidence.

**Engaging with clients: Ways of working**

We found firms adopting a range of methods through which to communicate with and support their clients, which were generally sympathetic to the needs and circumstances of clients. The importance of meeting claimants face-to-face, explaining the asylum process clearly from the outset, and using technology to keep clients updated were widely acknowledged. Firms also need to explore the possibility of providing support for clients for those that do not speak English as a first language, or speak English at all.

- Just over half of the firms (13) we visited used professional interpreters and offered all clients the option to use one. Firms that did not use interpreters told us this was because they had a fee earner who spoke the same language as the client.
- Across all the firms we visited, we saw extensive use of WhatsApp messaging to communicate with, and update clients, or for clients to submit evidence to firms. While this offers a convenient and effective communication tool, we are concerned at how few firms had formal policies or approaches in place governing the use, storage or filing of data shared in this way, and how work can be properly supervised.

Of the files we reviewed, the majority of clients being provided with support on asylum issues would have been potentially eligible for Legal Aid. However, we found that many were paying for legal support privately.

- Most firms visited (18/25) reported providing asylum services to clients who had chosen to pay for it privately, even though they

would have been eligible for Legal Aid. This was because the perception of Legal Aid-funded work was that it was of a lower quality.
- Anecdotally, some Legal Aid firms had no capacity and were operating waiting lists or having to turn clients away.

## Supervision

Generally, we found all the firms we visited had structures in place to make sure that work was being monitored by a more experienced supervisor to check quality. It was clear that individual fee earners felt able to escalate individual cases and questions to a more senior colleague when needed. However:

- Most heads of department told us that they maintained close oversight of the asylum department's work and had knowledge of all the firm's asylum matters. It was difficult for us to verify this during our file reviews as often there was nothing on file to demonstrate that supervision had taken place.
- Only 62 per cent of files reviewed had evidence of supervision on them. We consider it good practice to evidence supervision has taken place on all files.
- Most supervision is undertaken face to face in the office without notes being taken. Regular file reviews as well as more formal file audits were the most common supervision methods used by firms.

## Continuing competence

We found that the firms we visited generally understood their obligations to make sure their fee earners are staying up to date with their continuing competence obligations. During our visits and review of files we found no competence-related issues of concern. However, we did find inconsistent approaches to evidencing that development needs were being reviewed on a regular basis, or recording of training being subsequently undertaken.

- Most heads of department told us that fee earner competence was checked on a regular basis.
- Most individuals told us that 'on-the-job learning' was the most effective way to address learning and development needs.
- Heads of department told us that regular file reviews gave them a good opportunity to identify areas of learning and development.
- Although many asylum applicants might be vulnerable, might have to recount traumatic experiences or might be suffering from poor physical or mental health, we found very few firms provided their solicitors with training or support in dealing with such individuals.

## Reporting concerns: safeguarding professional standards and ethics

- Most heads of department and fee earners working on asylum matters were aware of our reporting guidance and requirements. Yet few stated that they had in practice come across any behaviour which they believed could amount to a serious breach of our rules or standards.

## Next steps

In response to the findings of this report we will:

- Promote the learnings from this report to firms who undertake immigration and asylum work, working with other stakeholders.
- Consider the findings, especially in relation to areas of concern or lessons to be learnt, as part of any future work in this area.
- Continue to encourage users of asylum services, and those who work with them, to make reports to the SRA if and where they feel solicitors or firms they are working with are not meeting their regulatory obligations.

### Review of training records

Alongside this report, we have also published a review of nearly 150 training records of immigration and asylum solicitors to understand if and how they are maintaining their competence.

We looked to see whether the training record demonstrated they had taken steps to maintain their competence, the extent to which any learning and development related specifically to immigration and asylum practice, if the training record demonstrated that the solicitor had reflected on their practice, and if and how learning and development activity was recorded.

We found solicitors working in immigration and asylum are undertaking learning and development to maintain their competence. However, there is room for improvement, particularly in relation to recording why learning and development is required.

We will now continue to monitor reports we receive to identify any competence-related themes and risks, develop resources to help them maintain competence, and explore if further regulatory intervention is required.

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## Introduction

### What we did

Our thematic review looked at:

- how firms engage with clients and the evidence in asylum matters.
- how firms maintain effective oversight of work and their supervision arrangements.
- how firms ensure the ongoing competence of fee earners.
- the extent to which individuals were reporting concerns about other solicitors and authorised firms to us.

We visited 25 firms who provide asylum legal services. The firms included sole practitioners and firms who held a legal aid contract. Five of the firms had also previously been visited as part of our immigration thematic review [https://beta.sra.org.uk/sra/research-publications/immigration-asylum-thematic-review/] .

At each firm, we:

- spoke with the person with overall responsibility for asylum matters (referred to in this report as the 'head of department').
- spoke with either a consultant (if available) or a fee earner who dealt with asylum matters. We use the term 'consultant' to refer to any fee earner who carries out work on behalf of, or in the name of, a firm but who was not an employee. In this review the term 'consultant' did not include external counsel or any third-party experts. We did this to see whether consultants worked or were supervised in a different way to fee earners.
- reviewed two files handled by a fee earner. If the firm also engaged a consultant, we also reviewed two files handled by the consultant. In total we reviewed 64 files.

More information about our methodology can be found in the 'Our approach' section at the end of this report.

At the end of each section, we have included examples of what we consider to be good and poor practice. There are also questions that heads of department and fee earners can ask themselves to help them reflect on their own practice, as well as links to further information and our resources to help firms comply.

## Our key findings

#### Engaging with clients

- There is widespread use by fee earners of WhatsApp to communicate with asylum clients. While a convenient way of maintaining contact with a client, we noted that firms had not fully considered the implications of using the platform on data protection, supervision, and fee-earner wellbeing.
- Many asylum applicants eligible for legal aid choose to pay privately for legal services. We were told that this is because of a perception

among clients that legally aided representation will be of a lesser quality.
- Some firms are reluctant to represent clients who do not speak the same language as the firm's fee earners, or who do not have a sufficient level of spoken English. Firms should look to adopt a proportionate, client-specific approach if they choose not to represent someone because they speak a different language.

**Supervision**

- Most heads of department told us that they maintained close oversight of the asylum department's work and had knowledge of all the firm's asylum matters. It was difficult for us to verify this during our file reviews as often there was nothing on file to demonstrate that supervision had taken place. Only 62 per cent of files reviewed had evidence of supervision on them. We consider it good practice to evidence supervision.
- Most supervision is undertaken verbally in the office. Regular file reviews as well as more formal file audits were the most common supervision methods used by firms.

**Continuing competence**

- Fee earners were aware of their continuing competence obligations and a broad approach to competence was taken. This meant considering an individual's ability to perform the role and tasks required to the expected standard.
- Few fee earners reflected on whether the steps they had taken had addressed the initial learning and development need, or whether additional needs had been identified. This is an area that fee earners need to improve.

**Reporting concerns: safeguarding professional standards and ethics**

- Fee earners are aware of our reporting guidance and requirements, but few have encountered any behaviours that may amount to a serious breach of our rules or standards.
- Fee earners were able to give examples of specific behaviours and risk areas within the asylum sector which might prompt them to make a report to us.

## Engaging with clients

### Why this is important

Establishing and maintaining effective and professional relationships with clients is key to being able to deliver high-quality legal services. Users of asylum legal services are also among the most vulnerable in our society.

Many have experienced difficult circumstances and have little knowledge of the UK's legal system. Asylum clients might also face poor mental or physical health, language barriers and financial hardship. The consequences of poor legal services for individuals seeking asylum can therefore be particularly severe, long-lasting, and difficult to rectify.

Knowing who a client is, understanding how they travelled to the United Kingdom and the reason they are claiming asylum all help a fee earner to present accurate and well-supported applications. It helps to assess a client's prospect of success, as well as safeguarding solicitors against the potential for pursuing a fabricated or misleading case.

**What we expect**

We expect firms and solicitors to comply with our Principles [https://beta.sra.org.uk/solicitors/standards-regulations/principles/] . These set out the core principles of ethical behaviour that we expect everyone we regulate to uphold and the framework within which asylum legal services should be provided. In particular:

- Principle 1 - act in a way that upholds the constitutional principle of the rule of law and the proper administration of justice.
- Principle 2 - act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.
- Principle 3 - act with independence.
- Principle 4 - act with honesty.
- Principle 5 - act with integrity.

Should the Principles come into conflict, those which safeguard the wider public interest take precedence over an individual client's interests. The wider public interest includes the rule of law, public confidence in a trustworthy solicitors' profession, and a safe and effective market for regulated legal services.

Solicitors should, where relevant, inform their clients of the circumstances in which their duty to the court and other professional obligations will outweigh their duty to them as clients.

Our Code of Conduct for Solicitors, RELs and RFLs [https://beta.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] and Code of Conduct for Firms [https://beta.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/] also place obligations on firms and solicitors. The following rules are particularly relevant in the delivery of asylum legal services:

- you do not mislead or attempt to mislead clients, the court, or others (paragraph 1.4 of the Code of Conduct for Solicitors, RELs and RFLs)

- you do not misuse or tamper with evidence or attempt to do so (paragraph 2.1 of the Code of Conduct for Solicitors, RELs and RFLs)
- you do not seek to influence the substance of evidence, including generating false evidence or persuading witnesses to change their evidence (paragraph 2 of the Code of Conduct for Solicitors, RELs and RFLs)
- you only make assertions or put forward statements, representations or submissions to the court or others which are properly arguable (paragraph 2.4 of the Code of Conduct for Solicitors, RELs and RFLs).

## Our findings

#### Client referrals and identification checks

Knowing how clients are referred to a firm and verifying their identity (ID) is key to understanding a client's background and circumstances. It also helps to identify individuals who may have been coerced or misled into seeking asylum, and to safeguard those making genuine claims.

Most heads of department told us that they received new instructions because of local word-of-mouth recommendations, or from current or previous clients. Two firms we visited received referrals from consultants. The matter would not be handled by the referring consultant - this was to make sure the clients' interests took priority over that of any referrer.

It is important that any referral arrangement, however informal, does not compromise a fee earner's independence. We found no instances of inappropriate referrals to firms.

Heads of department were asked how many potential asylum instructions they rejected. Firms typically rejected around 10 per cent of asylum instructions, but this varied from firms who did not reject any claims to one firm who rejected approximately 40 per cent of potential asylum instructions.

All fee earners we spoke with took steps to verify a client's identity. This included asking every client to produce hard copy ID documents. Fee earners told us that they do this as part of an initial face-to-face client meeting and in which they also discuss the key areas of any potential asylum application.

Examples of ID documents that firms ask clients to provide include:

- photographic ID such as a passport, ID card or driver's licence from the client's home country.
- identification papers such as a birth or marriage certificate, or academic records
- official UK documentary evidence issued by the Home Office such as a BAIL 201 letter, an IS96 form, or an application registration card

(ARC).
- proof of address such as a utility bill, bank statement or housing support letter from a local authority.

Photographs or digital scans of ID documents were not accepted because of the risk that they can be electronically manipulated. Other verification methods include matching the person to ID photos, seeking expert opinions, and physically examining ID documents for signs of tampering or forgery. This is an important way of checking that a person is who they claim to be. All firms were clear that if they had any doubt as to a client's identity, then they would stop acting for that client.

#### How firms and solicitors engage with evidence in asylum claims

Our Principles set our expectations of how firms and fee earners should engage with any evidence presented.

How fee earners engage with the evidence in asylum cases is crucial. Successful asylum applications must show that a client has a well-founded fear of persecution. There should also be a reasonable degree of likelihood that the client will be persecuted if returned to their home country. Upholding our Principles therefore helps make sure that asylum clients receive the representation and protection they need as part of the asylum process.

A decision-maker in an asylum case – whether it be the Home Office or a judge – will assess the risk that a client is facing based on the credibility of their oral and documentary evidence. Fee earners must therefore be satisfied as to the authenticity of any evidence clients provide and that the evidence supports the risk that the client claims to be facing.

Solicitors who are complicit with their client in misleading the court, or who do so themselves, risk serious consequences. The courts have made it very clear that they regard this as 'one of the most serious offences that an advocate or litigator can commit'. Such behaviour also undermines public trust and confidence in the broader asylum law sector. As one fee earner told us: 'My role is to facilitate an asylum claim; not to fabricate one'.

We also expect solicitors, as officers of the court, to act in a way which upholds the proper administration of justice [https://beta.sra.org.uk/solicitors/standards-regulations/principles/#principle-1] and not to waste the court's time [https://beta.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/#rule-2]

### Evidence gathering

Most fee earners (23) we spoke with typically saw and discussed evidence in support of a client's asylum claim during an initial client

meeting. This helps them decide whether there is a proper evidential basis for a claim, and to identify potential weaknesses or inconsistencies in an asylum application before it is submitted. It also manages a client's expectations.

Firms that did not ask clients to bring evidence to an initial meeting said they did so because they did not wish to overwhelm the client. This approach however carries a risk, as a fee earner has no more than a client's account to assess their prospects of success.

We heard how clients would often return to provide further evidence in support of their claim after the initial meeting. Where this occurs, almost all firms (23) stated they would revisit the previous merits assessment. Our file reviews showed that where a fee earner had revisited their initial merits assessment, they had recorded the outcome of this on file and communicated this to the client.

#### Assessing the evidence

Some fee earners told us that they had once been asylum seekers themselves or had friends or relatives who had claimed asylum. They could draw on their own experiences to help support and engage with clients. It is important however that fee earners maintain a professional working relationship with clients and manage their expectations. As one fee earner told us, clients with a similar background to them will often expect that the fee earner will be able to 'get them asylum'.

It is important that fee earners check that any new evidence is consistent with what a client has previously told them about their circumstances. If a fee earner does not review any evidence or explore with the client why they might not be able to produce any evidence, then they could find themselves unwittingly being drawn into advancing a misleading or fabricated case.

A fee earner told us of how they will 'always set aside at least 10 minutes' immediately before any meeting with the client to remind themselves of the case. This meant they were then able to check for any inconsistencies and be prepared to explore these with the client.

All firms and fee earners told us that it was important to examine and discuss any supporting evidence with the client in person. None of the firms we visited reviewed evidence with a client virtually. They felt that a face-to-face meeting allows fee earners to rigorously test the evidence presented. It gives them the opportunity to check whether anybody is influencing the client's evidence and to see the client's body language when responding to questions.

We found a variety of methods to assess the credibility of client evidence being used including:

- obtaining statements from witnesses to support a client's account.
- requesting medico-legal reports from medical or psychological experts.
- examining Home Office country guidance and information notes, along with country reports produced by international human rights organisations.
- arranging for unaccompanied minors to be referred for age assessment (where necessary).

Our review of client files also showed that just over a third of fee earners (9) verify the authenticity of client evidence with an external third-party expert or issuing authority. Documents verified include, for example, overseas arrest warrants, foreign court transcripts and marriage certificates.

The remaining two-thirds of fee earners relied on their own judgment gained through their professional experience to assess if a document is genuine. It is important that fee earners who use this approach do not become complacent. There is a risk that they make assumptions about the authenticity of evidence. All evidence should be properly scrutinised, regardless of whether a fee earner has seen that type of document before.

**Case study – a client's evidence changes**

Firm A specialises in asylum law and represented Mr Z, an asylum seeker who said he was fleeing political persecution. During the initial client meeting, Mr Z provided evidence supporting his asylum claim. The fee earner also took a witness statement from Mr Z. This captured Mr Z's personal details, his reasons for seeking asylum, a chronology of events including his travel history, and an explanation of all supporting evidence.

Two months later Mr Z returned to see the fee earner at Firm A and provided two pieces of evidence. Mr Z also gave the fee earner a witness statement from an individual in Mr Z's home country. Mr Z claimed that the individual was his friend and that they had witnessed the persecution that Mr Z alleged to have experienced.

The fee earner handling Mr Z's case carefully examined the new evidence and the friend's witness statement. The fee earner then compared the new evidence with what Mr Z had initially provided and Mr Z's own witness statement. The later evidence and the friend's witness statement contradicted some of the information Mr Z initially provided.

The fee earner at Firm A, recognising the inconsistency, discussed the conflicting pieces of evidence with Mr Z. He was unable to provide a convincing explanation for the inconsistency.

Firm A identified that there was a risk that it may end up submitting a meritless claim, or that it may knowingly or unknowingly mislead the court if it continued with Mr Z's application. The firm could not simply ignore the inconsistencies in the evidence. It therefore decided to stop acting for Mr Z.

## Providing costs information

Clients should receive the best possible information about the likely overall cost of the matter, both at the time of engagement and as the matter progresses (paragraph 8.7 of our Code of Conduct for Solicitors, RELs and RFLs).

Being upfront about costs supports clients to make informed decisions and plan how to fund their matter. Transparency about costs also helps to build trust between a client and their solicitor.

Most client care letters we reviewed contained costs information in writing. Most heads of department (21) also said they expected fee earners to discuss costs during an initial client meeting. We found this to be the case during our file reviews.

### Eligibility for legal aid

Checking a client's eligibility for legal aid at an initial meeting was also cited as being important. Doing so helps to safeguard fair access to legal representation, especially for those with limited financial means. Asylum applicants are also often unfamiliar with the UK's legal system and might not be aware of their eligibility for legal aid. Assessing eligibility early on helps to bridge potential gaps in understanding and facilitates better access to legal support for those that need it.

During our review of client files, just over three quarters of fee earners confirmed that the clients were eligible for legal aid. However, most firms (18) we visited did not provide their services on a legal aid basis because the client had chosen to fund the cost of legal advice privately.

Fee earners should be proactive in considering whether a client is eligible for legal aid. Where clients are eligible, they should be afforded the opportunity to go to a firm who holds a legal aid contract before proceeding to instruct the firm on a private fee-paying basis. Some firms we visited did assist clients to do this if they decide to be represented by a legal aid firm.

It is important that fee earners monitor clients' eligibility for legal aid throughout a matter. This will depend on the nature of their case and their financial circumstances, both of which could change. This helps to minimise disruption to legal representation and lets fee earners address any changes in eligibility promptly.

It is good practice for fee earners to record in attendance notes and in the initial client care letter the reasons why, despite being eligible for legal aid, a client has chosen to pay privately for legal services. Doing so is a good way of ensuring transparency. Our review of client files shows that less than half of firms record this information.

Fee earners told us anecdotally that some clients chose to pay for representation even where they were eligible for legal aid. One reason for this was because of a perception that services provided by legal aid firms were of a lesser quality. It is important for firms and solicitors to dispel such misconceptions to protect the public interest by making sure asylum clients can access legal services.

Several firms also mentioned the shortage of legal aid providers in their area. This meant some firms with legal aid contracts were having to operate waiting lists, while others were having to turn clients away.

Firms did express a willingness to be flexible about payment where the client instructed them, but it then transpired they could not afford their fees. Examples of this include offering a phased payment plan, reducing fees based on financial circumstances, or exploring pro bono options for clients.

**Firms' use of WhatsApp**

The use of WhatsApp by fee earners to communicate with asylum applicants is widespread. This reflects the use of WhatsApp within broader society. The platform provides a fast and safe way for messages to be exchanged in circumstances where clients only method of communication is a mobile telephone.

Firms typically use WhatsApp to update clients about the progress of their case and to share administrative details, including appointment reminders and confirmations. We saw no evidence that the firms or fee earners we spoke with were providing legal advice via WhatsApp. If legal advice is provided via WhatsApp, firms should make sure that the advice is properly supervised and that a record of that advice is on the client file. Our expectations are the same if legal advice is provided via any other text-based messaging service.

Clients mainly use the platform to send evidence to support their case to fee earners, including photos or electronic documents. Typically, the hard copy version of these documents would then be discussed and scrutinised by a fee earner in a face-to-face meeting with the client.

While using WhatsApp is a convenient way of meeting clients' needs, we noted that firms had not fully considered its implications. For example, most firms lacked a clear written usage policy for fee earners about whether they should be using WhatsApp on their personal mobile phones

to contact clients. This poses data protection risks and the potential for exploitation of vulnerable clients.

We advised firms to mitigate this, and other risks, by establishing a clear usage policy for the use of WhatsApp by fee earners. This will make sure that communication follows professional standards and stays consistent and confidential. It is also important so that there is oversight of fee earner communication with clients.

Areas that a usage policy may cover include:

- using personal mobile phones to contact clients on WhatsApp.
- what fee earners can/can't talk about with clients via WhatsApp.
- how to keep WhatsApp conversations with clients confidential (especially if a fee earner is using their personal mobile phone).
- when and how WhatsApp conversations should be saved to client files.
- what documents should/shouldn't be shared via WhatsApp.
- the security of any client data stored on a personal device.
- when it is appropriate to use voice notes or in-app audio/video calls.
- expectations about responding to clients and at what time of day.
- what information should be included in a business profile if the firm uses a WhatsApp business account.
- whether the read receipt function should be turned on or off.
- professional conduct and use of language.

Most case management systems also do not automatically save messages sent via instant messaging apps like WhatsApp. This means fee earners must be proactive in remembering to add those conversations to the client file. There are clearly risks associated with this. For example, clients or fee earners might edit or delete messages before they are saved, or a fee earner might forget to save the conversation or lose the mobile phone they are using. If a matter does not accurately reflect all communication between a fee earner and a client, this can also adversely impact a supervisor's ability to oversee the matter.

One example of good practice we saw included a fee earner who mitigated this risk by using a browser version of WhatsApp on the firm's computer. This meant that messages were then regularly backed up to the firm's secure cloud service account and added to the client file once a matter had been concluded.

WhatsApp might also provide message senders with delivery and read receipts. Firms should carefully consider the impact of this on fee earner wellbeing, particularly if a fee earner is using their personal mobile phone. Constant connectivity might lead to increased expectations for immediate responses, challenging work-life balance. Setting clear boundaries and expectations for WhatsApp use, along with strategies for managing workloads, is key to protecting fee earner wellbeing. We have

already published guidance on workplace environment [https://beta.sra.org.uk/solicitors/guidance/workplace-environment/] .

**Language barriers and use of interpreters**

A language barrier between an asylum applicant and a fee earner can be a significant risk. An inability to understand the information and nuances of a client's case might lead to poor decisions or outcomes. We asked firms how they manage this risk.

Just over half of the firms (13) we visited use professional interpreters and offer all clients the option to use one. Firms that do not use interpreters, or who do not offer clients the choice, told us this was because they had a fee earner who spoke the same language as the client. Some clients also chose to bring a friend or family member along to help translate.

Conversely, some firms told us that they would always use an interpreter and that the idea of a fee earner/firm staff member translating on behalf of a client could lead to a conflict of interest.

Over a third of firms select interpreters based on their professional qualifications/memberships or because the firm had previously instructed the same language services provider.

Some firms required any potential interpreter to be accredited and certified with the National Register of Public Service Interpreters. Legal aid firms similarly would only instruct an interpreter who was registered with the Legal Aid Agency (LAA) as an accredited provider.

Firms that do not use professional interpreters told us that they feel that that there is some or a lot of risk involved in using an interpreter. The concerns raised included:

- The risk that an interpreter might take advantage of a vulnerable client by meeting them in a personal capacity.
- Clients feeling uncomfortable or nervous because they don't always see the same interpreter when meeting with a fee earner. This then impacts on how much information a client is ready to disclose, affecting the prospects of their case.
- The risk that an interpreter might give an inaccurate translation of what a fee earner or client is trying to communicate, made more complicated by legal terminology.
- The risk that an interpreter who speaks the same language might in fact speak a different dialect, making communication with the client difficult.
- The risk that an interpreter might disclose what a client has told a fee earner, particularly if the interpreter is a member of the same community as the client.

- The risk of interpreter bias where an interpreter takes on more of an advocacy role or interjects their own personal opinions when communicating between a client and fee earner, undermining the legal advice being given.
- Logistical challenges due to the availability of sometimes finding suitably qualified interpreters. This could then lead to a delay for the client.

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:

- The friend or family member might themselves have a poor level of English.
- The friend or family member might attempt to influence or embellish a client's response. They might be trying to be helpful, but they could also be trying to exert pressure or seek to influence a client.
- Further work had to be undertaken to check the identity, relationship, and motivation of the friend or family member.

One firm we spoke with had a policy of always asking the client whether they consented to that friend or family member interpreting on their behalf. This was always asked when the friend or family member was not present.

Some heads of department and fee earners were hesitant to represent clients who did not speak the same language as the firm's fee earners, or who did not have a sufficient level of spoken English.

This was because they were concerned that difficulties communicating with a client could be a barrier to understanding the client's circumstances which could affect the quality of service they provided. In these situations, firms would often refer clients elsewhere rather than instructing an interpreter.

There is a balance to be struck here between enabling asylum applicants to access legal services and making sure that fee earners can communicate well enough with an asylum client to represent their interests and provide a high-quality service.

We encourage firms to adopt a client-specific approach to managing language needs and to think carefully about the proportionality of choosing not to represent someone because they speak a different language.

If faced with a client language barrier, firms ought to consider if this can be addressed by using an interpreter, or with the aid of a friend or family member. Fee earners might also explore with the client the availability of other legal service providers who might be better placed to act for them.

A firm with a fixed policy (however informal) of turning clients away based solely on the languages they do/don't speak risks conflicting with their professional responsibilities. For example, the need to act in a way that encourages equality, diversity, and inclusion (SRA Principle 6). In all cases, firms should be able to justify any decision they take not to represent someone because of their spoken language(s).

**Good practice -** Building trust and understanding with clients through an appropriate professional relationship.

**Poor practice -** Accepting referrals from consultants or interpreters who are then allocated the matter.

**Good practice -** Discussing the client’s evidence with them to better understand the client’s background and their claim for asylum.

**Poor practice -** Failing to set out the options available to the client and their potential consequences.

**Good practice -** Explaining to the client what documents or evidence they need to support their claim. Giving them the opportunity to discuss the evidence after any initial meeting.

**Poor practice -** Submitting a claim if you are concerned that the evidence may be fabricated or misleading.

**Good practice -** Exploring with the client why documents might not be available.

**Poor practice -** Failing to properly test the client’s evidence.

**Good practice -** Providing the client with clear costs information at the outset, including whether the client is eligible for legal aid.

**Poor practice -** Failure to provide proper costs information to a client.

**Good practice -** Adopting a client-specific approach to managing needs and considering whether a client requires a professional interpreter.

**Poor practice -** Not exploring whether a client is eligible for legal aid or not telling a client whether they may be eligible for legal aid.

**Questions for heads of department and/or fee earners to consider**

- How do you make sure that a client's claim has a reasonable likelihood of succeeding?
- How do you test or verify any evidence presented by your client?
- Have you assessed and noted on file if the client has any individual needs or vulnerabilities that should be considered?
- Have you set out clearly to the client the costs involved in progressing their case and whether they are eligible for legal aid?
- Do your asylum files reflect all your interactions with the client?

## Supervision

### Why this is important

Having an effective supervision structure allows for the proper oversight and progress of matters. This gives firms, fee earners, and clients comfort that appropriate and good quality legal advice is being given and any issues are dealt with early. This is especially important when dealing with asylum clients who are likely to have limited knowledge and understanding of the legal process.

Effective supervision also provides an opportunity to identify learning and development needs to make sure fee earners remain competent.

### What we expect

We expect firms to have an effective system for supervising clients' matters (paragraph 4.4 Code of Conduct for Firms). This is likely to involve adopting a risk-based approach to supervision.

Our Effective Supervision – guidance [https://beta.sra.org.uk/solicitors/guidance/effective-supervision-guidance/] sets out things to consider and gives examples of good practice to help firms meet both statutory and our regulatory requirements.

Paragraph 3.5 of our Code of Conduct for Solicitors, RELs and RFLs [https://beta.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] also states that where you supervise or manage others providing legal services, you remain accountable for the work carried out through them and you effectively supervise work being done for clients.

As well as being a regulatory requirement, effective supervision is also a requirement under the Immigration and Asylum Act 1999 (IAA). Under the IAA, you must be a ‘qualified' person (section 84(1)) to provide asylum advice and services. Solicitors, RELs and RFLs with a valid practising certificate and SRA-authorised bodies are 'qualified' under the IAA.

A failure to supervise someone who is not authorised and acting on your behalf risks contravening the IAA general prohibition, which is a criminal

offence.

## Our findings

### Policies and procedures

Having formalised policies and procedures can help set expectations around how an asylum matter should be supervised.

The more comprehensive policy packages we reviewed often set out:

- How matters should be allocated. For example, considering a fee earner's skill, experience, and competence when allocating files.
- Areas to consider when taking on new asylum clients. For example, whether they are eligible for legal aid, how to assess the client's prospect of success, and whether the firm has the expertise to deal with the matter.
- How matters should be progressed and supervision expectations. For example, a fee earner should carry out day to day tasks and be the main point of contact for a client, but the supervisor would retain overall responsibility. Another firm had a defined procedure for signing off documents.
- How fee earners could identify and support vulnerable clients. For example, one firm had a checklist of questions fee earners could ask themselves to make sure they had undertaken a robust assessment of client vulnerability.
- The asylum process and specific practical steps which needed to be taken or considered with the client. For example, when to instruct an interpreter and how to conduct online hearings.

Only a few policies referred to our warning notices and guidance. We consider this a missed opportunity to bring the key messages to the attention of fee earners.

## Supervisors

We found that solicitors with at least six years of post qualification experience were the most likely to have authority to sign off asylum work. These individuals were supervisors because they were considered suitable to perform the role.

This mirrored the responses we got when we asked how much supervision a fee earner needs – a fee earner's post qualification experience and competence were often the two main factors which determined the level of supervision required.

Six fee earners mentioned having a piece of work they thought was beyond their capability in the last year. All six had felt confident

approaching their supervisor for advice, which suggested that the firms' supervision structures were effective.

Being able to disclose when work is beyond an individual's capability and knowing when to seek the advice of others is a requirement of our statement of solicitor competence [https://beta.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/] . It is also important as it means clients will receive timely and properly considered advice.

All fee earners we met told us that their supervisor was also their line manager. Although this is not a requirement, the benefit is that as well as being able to assess the quality of the legal work produced, they can also contribute to the wellbeing and development of those they supervise.

Those who supervised others mentioned several factors when deciding whether a piece of work needed to be signed off, including:

- The legal complexities of a matter.
- Whether the matter was novel in nature or unfamiliar to the fee earner.
- Whether a client's witness statement was particularly complex or contained sensitive information. An example given was of a client who had previously worked for the coalition forces in Afghanistan and whose case was sensitive in nature due to security concerns.
- Whether the matter was deemed to be higher risk than others. Higher-risk matters were described by heads of department as ones where the client might be vulnerable (in particular, issues affecting the client's mental health) or where there was a risk of loss of liberty or life.

Heads of department told us that key documents in a matter, such as initial letters of advice to a client, applications, and appeal documentation were the most likely to require supervisor approval before being sent. We could not however verify this during our file reviews, as not all files had evidence of supervision.

Supervision can be evidenced by keeping attendance notes, documentation created during file reviews, or comments on draft documents (for example handwritten notes or electronic track changes).

#### Who is supervised?

Most fee earners said their work was supervised at least once a week on average and this felt like the right amount of supervision to receive.

Heads of department felt that regular supervision was important given the potential vulnerability of clients and offered practical support as well as supervision to fee earners. It also helped create a culture of personal

development for fee earners, especially when dealing with a difficult client or matter.

The supervision of heads of department varied. Six heads of department told us that they would get their work reviewed or signed off by somebody else, often another partner or senior member of the asylum department. Typically, this was reserved for more complex work or where the head of department wanted a second opinion from a colleague. The benefit of a peer review is to sense check the validity of a proposed course of action and help maintain the quality of legal services.

Firms should regularly review their supervision arrangements to make sure they are beneficial for supervisors and fee earners. One head of department did this by encouraging fee earners to provide feedback on both the supervision structure and arrangements. This could be done confidentially. The head of department would then consider any feedback and discuss with the supervisor to see if any changes were necessary. This helped make sure that any supervision arrangements remained effective for both the supervisor and the supervisee.

It is important to remember that what effective supervision looks like will vary from practice to practice and a risk-based, proactive approach should be adopted. Most firms told us they had no immediate plans to change their supervision arrangements as they felt they were working well. It is important for firms to periodically review the delivery of supervision to make sure it remains effective. For example if a firm sees an increase in the number of asylum instructions or they employ more staff.

#### Fee earner and consultant working arrangements

All individuals we met typically worked in the firm's office. Few worked remotely, and those who did, only did so occasionally. Heads of department explained that having fee earners work in the office helped them maintain regular oversight of work and see how fee earners interacted with clients.

The use of consultants by firms was low. Almost all heads of department considered there to be specific risks they would need to mitigate if they did use consultants. For example:

- Ensuring clear oversight of a consultant's work. This related to both signing off work and seeing how they interacted with clients.
- Consultants might feel a sense of split loyalty if working for more than one firm and prioritise work according to how they were remunerated.
- There could be issues of client confidentiality if a consultant deliberately or inadvertently disclosed information to another firm.

#### What does supervision look like?

Regular file reviews as well as more formal file audits were the most common supervision methods used by firms. These typically involved the fee earner who supervised a matter reviewing a file to see whether:

- The correct procedural steps had been taken.
- The client had been provided with important information, for example costs information, including whether they were eligible for legal aid.
- The file was being managed on a day-to-day basis in accordance with the firm's policies and procedures.
- There were any issues which needed to be rectified. Where this was the case, corrective action would be recommended and discussed with the fee earner.

While file reviews are useful, they are often done after work has been carried out. Supervisors should make sure they have clear oversight of work being done while it is live and at all key stages of a matter.

Other supervision methods mentioned included:

- Discussing applications during regular team meetings and sharing any lessons learnt.
- Regularly discussing applications with a supervisor. This predominately happened verbally and on ad-hoc as almost all fee earners worked in the office, but it could also be in more formal weekly or monthly meetings.

Most heads of department told us that they maintained close oversight of the asylum department's work and had knowledge of all the firm's asylum matters. It was difficult for us to verify this during our file reviews as often there was nothing on file to demonstrate that supervision had taken place.

Only 15 heads of department told us that they expected fee earners to keep a file note to demonstrate that supervision had taken place. An even lower number said that there should be emails on file between a supervisor and supervisee evidencing supervision (6) or documents on file showing track changes (6).

Of the 64 files we reviewed, we were told that 50 files were being supervised. Of those 50 files, only 31 (or 62 per cent) had evidence of supervision on file, while 19 (38 per cent) files had no evidence.

The most common reason given for being unable to evidence supervision on files was that supervision was done verbally or face to face in the office. While it may not be necessary to capture every instance of supervision, such as ongoing informal discussions or where the supervisor is working directly with the fee earner, the supervision should reflect the risk-based reasons behind the approach the firm has taken.

**Barriers to effective supervision**

Some heads of department chose to check every piece of work and correspondence before it was sent out. While this could be time consuming, they did so because they acknowledged the high risk and detriment to the client if poor legal services were provided. They also acknowledged that, as supervisors, we will hold them accountable for the actions of those they supervise, or as one head of department put it ‘the buck stops with me'.

Most heads of department told us that if work was not signed off correctly then they would review the file themselves. Where errors were found, they would then personally take any corrective action required and inform the client that this had been done. We understand that such instances are rare, and we did not find any during our file reviews.

The key thing, as one head of department told us, is that if a decision is taken to check every piece of work, it should not negatively impact the delivery of legal services. For example, a client's application should not risk being delayed because a piece of work is waiting to being reviewed. That is why it is important for firms to take a risk-based approach and decide what correspondence or documents need to be signed off.

Most heads of department told us that they would set aside dedicated time to supervise matters.

To help manage this pressure, one head of department told us that after reading our effective supervision guidance he had appointed a deputy to supervise work when he was not available. This was to safeguard against work not being signed off at all or a delay in signing off work.

Other firms had a less structured approach to supervising matters and would often designate another fee earner on an ad-hoc basis to temporarily undertake that role. There can be risks associated with this approach. For example, the chosen individual might not be fully aware of the responsibility to make sure supervision is effective, or they might not have enough time to supervise (especially if they maintain a full caseload). It is also likely that they won't be as familiar with matters as the head of department.

## Case study - individual supervision plans

Firm A is a small firm, which directly employs solicitors and engages a consultant to handle its asylum matters.

The head of department took a risk-based approach to supervision by putting in place individual supervision plans which set out the scope of each person's authority when dealing with a matter.

These plans considered the experience and competence of each solicitor to try and make sure supervision was effective. For example, the more experienced members of staff did not require as much supervision as newly qualified solicitors. This lessened the likelihood of matters being delayed while they were waiting for supervisor approval. It also made clear to everybody the firm's expectations around supervision.

**Background checks on fee earners**

Background checks serve as a vital precaution to check a legal professional's work experience and character. Trust and integrity are important given that asylum applications typically involve vulnerable clients, including unaccompanied minors.

We recognise that firms who hold a legal aid contract must carry out a Disclosing and Barring Service (DBS) check on fee earners every two years. However, we found that most firms who do not hold a legal aid contract also choose to carry out DBS checks on fee earners and these took place before an individual was permitted to work on files. We consider this to be good practice.

**Good practice -** Policies and procedures mention our Warning Notices and Guidance.

**Poor practice -** Staff using their personal devices to communicate with clients through WhatsApp.

**Good practice -** A risk-based approach is taken towards supervision.

**Poor practice -** File reviews do not happen or happen infrequently.

**Good practice -** Keeping your supervision structure and arrangements under review to make sure they remain suitable.

**Poor practice -** Adopting a supervision process which leads to unreasonable delays for clients.

**Good practice -** Key decisions and legal advice are recorded on file.

**Poor practice -** Unable to demonstrate whether matters are being appropriately supervised.

**Good practice -** Making sure that only suitable individuals act as supervisors.

**Poor practice -** Failing to identify, or not mitigating risks you identify, if you choose to use a consultant solicitor.

**Questions for heads of department and/or fee earners to consider.**

- Does your firm use a risk-based approach to supervising matters?
- How could you improve your supervision structure to make sure that it remains effective?
- How would firms and fee earners be able to demonstrate that appropriate supervision takers place?
- If evidence of supervision should be on file, are you satisfied that fee earners are doing this in practice?
- If you use consultants, have you identified any risks involved and taken steps to mitigate them?

## Continuing competence

### Why this is important

Asylum can be a complex, fast-paced and politically sensitive area of law. Clients rightly expect solicitors to provide them with a competent service and act in their best interest. This is especially important given the potential vulnerability of asylum clients, who often place a great amount of trust in their solicitor to guide them through the legal process and to secure an outcome which could profoundly impact their life.

Public confidence in the asylum system requires that solicitors will not pursue meritless claims or mislead the court. Solicitors should be mindful of their professional obligations so as not to give clients false hope and overburden the legal system.

### What we expect

Solicitors must maintain their competence and keep professional knowledge and skills up to date (paragraph 3.3 of the Code of Conduct for Solicitors, RELs and RFLs). They should also be able to demonstrate the steps they have taken to do this.

This means they must reflect on their practice and undertake regular learning and development, so their skills and knowledge remain up to date. Solicitors responsible for managing individuals who provide asylum legal services must also make sure those people are competent to carry out their role.

We also expect solicitors to act in accordance with our regulatory requirements. This means being familiar with our warning notices and guidance. Firms and solicitors which deliver asylum legal services are

less likely to understand their professional obligations unless they read and understand the following:

- Warning Notice on immigration work [https://beta.sra.org.uk/solicitors/guidance/immigration-work/]
- Immigration work - guidance [https://beta.sra.org.uk/solicitors/guidance/immigration-work-guidance/]
- Effective supervision guidance [https://beta.sra.org.uk/solicitors/guidance/effective-supervision-guidance/]
- Reporting a solicitor or firm to us [https://beta.sra.org.uk/consumers/problems/report-solicitor/] .

## Our findings

#### Approach towards continuing competence

We asked heads of department and fee earners about their understanding of their continuing competence obligations and what they thought made a competent solicitor.

All were aware of their continuing competence obligations and a broad approach to competence was taken. This meant considering an individual's ability to perform the role and tasks required to the expected standard. Responses given typically fell into four categories:

1. **Legal and technical knowledge** - for example keeping up to date with changes in legislation, tribunal processes and procedures, or Home Office guidance. Given the fast pace of asylum law, one head of department commented that he would ‘quickly be out of date if I didn't update myself' and another commented that he felt ‘an obligation towards my client to ensure my knowledge is correct in an area I claim to be an expert in.'
2. **Ability to apply the law to a real matter** - heads of department and fee earners both considered this to be important to be able to assess a client's prospects of success. It also meant being aware of any forthcoming or potential changes and thinking how these may impact a client.
3. **Understanding clients** - for example understanding what challenges clients from a particular country may be facing, how to support vulnerable clients, or how to fairly assess the credibility of a client from a different culture. For example, some clients might instinctively not question the advice of a solicitor at all, or incorrectly expect a solicitor to present a case on their behalf without much input from them. Being able to, professionally and constructively, question a client's evidence and authenticity of documents is important. We also heard how a better understanding of clients helped fee earners decide on a client's prospect of success and whether the client had maintained a consistent narrative throughout.

4. **Practical case management skills** - such as how to submit an asylum claim, making sure clients are kept updated, or arranging interpreters.

**Reflecting on fee earner competence**

We understand that firms and solicitors regularly face having to deliver services in an environment where procedural requirements and precedent can often change. It is therefore important that fee earners regularly reflect on the quality of their practice to identify any learning and development needs as and when they arise. This will help make sure that fee earners are competent to carry out their role.

Fee earners can use our learning and development template [https://beta.sra.org.uk/solicitors/resources/continuing-competence/cpd/continuing-competence/templates/] to help them reflect and record any learning and development needs.

We heard how asylum clients often recount traumatic experiences and some might suffer from poor physical or mental health. Despite this, few fee earners could demonstrate how and when they had reflected on their competence and ability to support clients. Working with other people, which includes establishing and maintaining effective and professional relations with clients, is part of our statement of solicitor competence.

Most heads of department told us that fee earner competence was checked on a regular basis. One reason for doing this was so that heads of department could share their own learning with colleagues and make sure the team remained competent.

Heads of department told us that regular file reviews gave them a good opportunity to identify areas of learning and development. Other methods of testing competence included:

- Asking a fee earner to explain to another fee earner a proposed course of action. This allowed fee earners to reflect and learn from their own practice as well as learning from other people.
- Asking a fee earner to present or deliver training on a particular area during a team meeting.
- Reporting back to the wider team about any training an individual has attended.

We also heard how some firms incorporated checking fee earner continuing competence activity into their processes and procedures by:

- Checking a fee earner's learning and development record as part of the appraisal process
- Checking that a fee earner has reflected on their practice and addressed any identified learning and development need before applying for a practising certificate.

- Including a specific section on learning and development on the firm's appraisal form.
- Discussing a fee earner's work and development needs during catch-up meetings.
- Discussing any training undertaken at team meetings.
- Delivering in-house training at team meetings or discussing certain cases.

**Addressing learning and development needs**

Most individuals told us that 'on-the-job learning' was the most effective way to address learning and development needs. This was not surprising given that rules and procedures can change quickly in asylum law.

Heads of department recognised this and said they often use the process of allocating matters to help support the personal development of fee earners. For example:

- Allocating new matters to certain fee earners. The fee earner, with appropriate support, could then gain a good understanding of the whole process from start to finish.
- Giving a fee earner the opportunity to develop a specialism, for example dealing with a particular nationality. This then required them to be familiar with any country-specific guidance.
- Giving a fee earner exposure to a particular client vulnerability, for example a client who had fled domestic violence or been politically persecuted. Again, the fee earner would be appropriately supported to make sure that the client received a quality service.

Other more structured methods of continuing competence mentioned included:

- Attending training sessions run by external providers or barrister chambers (online or in person) on changes in the law, procedural changes, updates on caselaw, or SRA updates and guidance.
- Undertaking online training courses, some of these included a knowledge test at the end of the course.
- Reading guidance and external resources provided by compliance consultants or companies.
- Attending the SRA's annual compliance conference.

**Our file review findings**

During our file reviews we looked at whether fee earners:

- identified the client's legal issue(s).
- assessed the merits of a claim or the client's prospects of success.
- set out the legal options available to a client.
- revisited the initial assessment of merit during the matter.

Overall, we did not identify any competence-related issues when reviewing these areas and practices conformed with our warning notices and guidance.

**Recording and evaluating competence**

Most heads of department and fee earners were able to show us a record or list of the learning and development activities they had undertaken. These typically set out when and what action had been taken, along with brief notes or commentary on what had been covered. Steps taken to maintain technical legal knowledge were the most likely to be recorded.

Few fee earners evaluated whether the steps they had taken had addressed the initial learning and development need or whether additional needs had been identified. This is an area that fee earners need to improve. Reflection should be completed on a regular basis so that learning and development needs can be identified as they arise.

We reminded solicitors that continuing competence is more than attendance at paid or offsite training sessions. Dealing with client matters and gaining on-the-job training under appropriate supervision can be a valuable way to maintain competence.

Four heads of department did not know whether all other fee earners dealing with asylum matters had an up-to-date learning and development record. Three of these heads of department also told us that no central record of the training undertaken by fee earners were kept. Keeping a centralised record helps give the head of department an overview of fee earner competence.

**Our warning notices and guidance**

We publish warning notices and guidance to help firms and individuals understand their obligations and how to comply with them. These are important. We can, and do, refer to these when exercising our regulatory functions.

While we did not find any examples of non-compliance with our warning notices and guidance, firms are unlikely to understand their professional obligations unless they read and understand these.

Those who had read the guidance and warning notices said they were good reminders of the risks they faced. Some had made some changes to their working practices as a result. For example, appointing a deputy to sign off work when the head of department is not available, and asking clients to write out their case in their own language and sign this so there can be no dispute if the client later claims that the case presented is not correct.

## Case study - Internal training on our warning notice

Following publication of our immigration warning notice and immigration thematic report, the head of department decided to deliver internal training on these. The training was compulsory for every fee earner who worked on asylum matters.

The training reminded fee earners of their professional duties, the importance of complying with the warning notice, and discussed the areas of concerns identified by us. Fee earners could then raise questions and discuss any areas they were unsure about, with some even referring to real life instances where they had cause for concern.

The training also allowed the head of department to bring the warning notice and thematic report to the attention of relevant fee earners, and check that they understood the content.

**Good practice -** Regularly consider the quality of your legal practice and reflect on whether you have any learning and development needs.

**Poor practice -** Not being familiar with, or disregarding, our warning notices and guidance.

**Good practice -** Regularly updating your learning and development record, making sure it accurately captures the steps you have taken to maintain your competence.

**Poor practice -** Not being familiar with the requirements of our Competence Statement.

**Good practice -** Reflecting on your learning and development needs and whether any steps taken have addressed the initial need.

**Poor practice -** Taking a narrow view of competence. For example, concentrating only on keeping your technical legal knowledge up to date.

**Good practice -** Recognising that competence can be approached in a variety of ways, and not just through attending formal training.

**Poor practice -** Not affording fee earners learning and development opportunities. For example, on the job learning as well as through more structured methods.

**Good practice -** Embedding continuing competence into the firm's processes and procedures so it is considered on a regular basis.

**Poor practice -** Failing to take responsibility for your own learning and development.

### Questions for heads of department and/or fee earners to consider

- What approach do you and your fee earners take towards continuing competence?
- How would you demonstrate that you and your fee earners are meeting our continuing competence requirements?
- How often do you reflect on your own competence and/or the competence of fee earners?
- How can you use your supervision processes and procedures (such as file reviews) and 'on-the-job learning' to reflect and identify learning and development needs?
- What personal and professional learning and development opportunities can you and your fee earners access?

## Reporting concerns: safeguarding professional standards and ethics

### Why this is important

Firms and fee earners must promptly report to us any matters that may amount to a serious breach of our Standards and Regulations. This is not just a formality; it is a fundamental obligation rooted in the professional principles of trust and integrity.

Timely reporting is important because it allows us to take decisive action to protect clients and the public by making sure that solicitors adhere to the highest professional standards. Retaining confidence in those providing legal services is paramount. Moreover, reporting helps us to build our knowledge of the asylum sector and monitor firms' ongoing compliance with our regulatory rules and requirements.

### What we expect

Under paragraph 7.7 of the Code of Conduct for Solicitors, RELs and RFLs and paragraph 3.9 of the Code of Conduct for Firms, solicitors and firms must promptly report any facts or matters they reasonably believe could amount to a serious breach of our Standards and Regulations.

There is no room for ambiguity. Understanding what may amount to a serious breach and how to report concerns to us is crucial. Detailed guidance on these matters is available in our Enforcement Strategy [https://beta.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/] and in our Reporting and Notification Obligations guidance [https://beta.sra.org.uk/solicitors/guidance/reporting-notification-obligations/] .

Regulated solicitors have no excuse; you must be familiar with these requirements and expectations. If you are unsure about whether to make a report, you should err on the side of caution and do so.

**Our findings**

We found that 17 out of the 25 heads of department acted as the firm's compliance officer for legal practice (COLP) but had not read our warning notices and guidance. Some were aware of the key messages but only after they had read about these in the legal press. This resulted in some misunderstanding about their professional obligations. For example, thinking that client consent was always required before reporting a matter capable of amounting to a serious breach of our Standards and Regulations to us. We reminded heads of department and fee earners of our expectations and key messages.

A COLP must take all reasonable steps to make sure that the firm and its employees do not cause or substantially contribute to a breach of our regulatory arrangements. We consider reading our warning notices and guidance - and disseminating them to others in the firm - essential steps to take in fulfilling the role of COLP.

Most heads of department and fee earners working on asylum matters were aware of our reporting guidance and requirements. Yet few stated that they had in practice come across any behaviour which they believed could amount to a serious breach of our rules or standards.

We asked heads of department and fee earners what factors and behaviour(s) would prompt them to report a matter to us. How serious they believed something to be was found to be a key determining factor in whether they would or would not report a matter.

Examples of what fee earners considered would amount to a serious breach included if a firm or solicitor had:

- Acted dishonestly by providing false or misleading information to a client or submitting applications with zero prospects of success or fraudulently.
- Been negligent by providing fundamentally incorrect legal advice or missing key deadlines as part of the asylum process.
- Breached confidentiality rules by meeting clients in public spaces to discuss cases or discussing applications with third parties including interpreters.
- Taken advantage of vulnerable clients. For example, by charging clients' money without then carrying out the work promised.
- Acted unethically by encouraging clients to lie about their case or to embellish their accounts, fabricating evidence themselves or asking clients to produce fake documents.

- Committed financial misconduct by overcharging clients, charging excessive amounts for routine tasks, or being unclear about fee arrangements.

These responses demonstrate that fee earners are aware of specific behaviours which might prompt them to make a report to us. Yet despite this there continues to be a reluctance to report matters to us. It is unclear whether this was because they had not encountered these behaviours, or they had but then chose not to report.

Heads of department and fee earners gave several examples of what they thought prevented them from reporting a matter to us:

- Whether the firm had all the necessary facts to evidence a potential serious breach.
- The time and resources needed to make a report.
- The impact that making a report might have on a firm's working relationship with another firm or solicitor.
- There was a requirement to raise their concerns with the other firm first.
- Attempting to resolve a matter amicably with another firm first before reporting the matter.
- Whether it would be in the client's best interests to report the matter.

None of these reasons justify not reporting a matter to us. If a matter can amount to a serious breach, then firms and individuals we regulate are under a duty to report the matter to us. We reminded all firms of this obligation during each of our visits and the requirement to report matters to us promptly.

Whether or not a concern should be reported is a matter of judgment which will depend on the individual facts and circumstances. If you are unsure about whether to make a report, you should err on the side of caution and do so. Further guidance on what you should consider before deciding to report a matter to us is available in our Reporting and Notification Obligations guidance [https://beta.sra.org.uk/solicitors/guidance/reporting-notification-obligations/] .

If a firm or a solicitor does not report a serious breach to us when they should have done, then we may take enforcement action against that firm or solicitor.

Some fee earners expressed concern with reporting matters to us, as they thought it might put them personally or their client at risk of physical harm. While such instances are likely to be very rare, information can be provided to us on a confidential basis by using our Red Alert line. [https://beta.sra.org.uk/solicitors/resources/reporting-misconduct/fraud-dishonesty/]

Anecdotally, firms told us that it was not unusual for consumers of asylum legal services to change law firms. This gives newly instructed firms an opportunity to review the work done by the previous fee earner and report any concerns to us. This could include instances where the level of service and quality of the work undertaken by the previous firm, falls below what can reasonably be expected. Where this is the case, it may amount to a serious breach of our Standards and Regulations and should be reported.

Firms and fee earners should also remember that clients are not always able to complain themselves. Clients often do not have the knowledge to assess the quality of service or advice they are receiving and so may not know to make a report to us or the firm.

This is particularly true of asylum clients who might be unfamiliar with the UK legal system and the regulatory framework governing solicitors. Some clients might also feel that it is culturally inappropriate to voice complaints, or fear that raising concerns might negatively impact on their asylum claim.

Three firms we visited had concerns about the way in which another firm or solicitor had previously handled an asylum matter. The first did not report the matter because further information showed that the matter was unlikely to amount to a serious breach. We were satisfied that the firm did not need to report the matter to us. The second reported their concerns to the Office of the Immigration Services Commissioner (OISC) and the police because the matter related to a non-qualified person who was not regulated by us. The third firm reported their concern to the Legal Ombudsman because the matter related to a service complaint.

Some heads of department and fee earners were unsure about how their duty to report matters to us aligns with any responsibility under data protection legislation. For example, whether they first need to obtain client consent before reporting potential serious breaches to us. We reminded heads of department of our reporting and notification guidance [https://beta.sra.org.uk/solicitors/guidance/reporting-notification-obligations/] which sets out our position on this.

The duty to report serious misconduct is clear and is not subject to client consent or the duty of confidentiality. Reporting potential misconduct to us is in the public interest and disclosing confidential information will be justified if it helps us to fulfil our regulatory role. We clarified and reiterated our position on this during the firm visits and directed individuals to our existing guidance on this matter [https://beta.sra.org.uk/solicitors/guidance/reporting-notification-obligations/] .

> **Good practice -** Being alert to the potential for serious breaches.

**Poor practice -** Not reporting something capable of amounting to serious misconduct to us.

**Good practice -** If you are unsure whether a matter should be reported, discussing this with the firm's Compliance Officer for Legal Practice (COLP).

**Poor practice -** Ignoring completely or not exploring with the client any concerns they may have had about the conduct of a solicitor or firm.

**Good practice -** When a file is transferred from another firm, checking to make sure there are no serious breaches capable of being reported to us.

**Poor practice -** Incorrectly presuming that data protection legislation prevented making a report to us in all circumstances.

**Good practice -** Read our guidance on reporting a solicitor or firm [https://beta.sra.org.uk/consumers/problems/report-solicitor/] to understand what we can and can't help with.

**Poor practice -** Incorrectly presuming that client consent always had to be obtained before making a report to us.

### Questions for heads of department and/or fee earners to consider

- Are you (and your fee earners) aware of our reporting obligations?
- Are you (and your fee earners) aware of how to report a matter?
- Are there any matters that you are currently aware of which ought to be reported to us? And if, so have they been reported?
- Are fee earners aware of who the COLP is within your firm and understand what their role involves?
- Have fee earners been trained to identify potential breaches within the specific context of asylum law applications?

## Our approach

### Sample

We identified an initial sample of firms who undertake immigration work. We then used turnover and regulatory data we hold to exclude some firms from the dataset.

We selected a sample of 250 firms of varying sizes. We did this by considering firms' level of annual turnover and the distribution of firms that we had visited as part of our previous immigration and asylum

thematic review [https://beta.sra.org.uk/sra/research-publications/immigration-asylum-thematic-review/] .

A short mandatory questionnaire was sent to these 250 firms. This provided us with further information about each firm, including whether the firm undertook asylum work.

Based on the information we gathered from the initial questionnaire we then selected our final sample of 25 firms to visit. This comprised of firms:

- we previously visited as part of our previous immigration and asylum thematic review.
- for which asylum work generated more than 1% of their annual turnover.
- that used external consultants as part of their asylum work.
- from different annual turnover brackets.
- which had a sufficient number of open asylum files and fee earners.

These firms were of various sizes and some which provided legally aided asylum services.

**Firms we excluded**

We did not visit firms that we were currently investigating, or which had an open Solicitors Disciplinary Tribunal matter. This was to avoid prejudicing any open investigation or raise issues as to procedural unfairness.

**Interviews**

At each firm we spoke with the person with overall responsibility for asylum matters.

Where a firm engaged a consultant to handle their asylum work, we arranged to speak with that consultant. Where a firm did not use an external consultant, we spoke with a more junior fee earner who handled asylum work. We did this to better understand how matters were being handled by different members of a firm' s asylum team.

Seven of the firms we visited did not have either a consultant or a more junior fee earner for us to interview. At these seven firms we met with the head of department and reviewed two of their files. In total, we spoke to 25 heads of department, 18 fee earners and seven consultants.

**File reviews**

At each firm, we reviewed client files relating to asylum matters opened within the previous 18 months prior to our visit. Where a firm engaged a

consultant, we reviewed two files belonging to the consultant and two files that had been handled by a different fee earner (four files in total).

Where a firm did not use an external consultant, we reviewed two client files that were handled by a fee earner. Where it was only the head of department doing asylum work at a firm, we reviewed two of their client files.

### Other documents reviewed

In addition, we reviewed any policies or procedures that were relevant to how fee earners dealt with asylum matters. We also reviewed the learning and development records of fee earners and consultants who worked on asylum matters to assess how firms recorded and evaluated their ongoing competence.

### External stakeholders

We spoke to external stakeholders to hear about some of their experiences with those providing asylum legal services. We spoke with representatives from the LAA, the Professional Enabler's Taskforce (PET) at the Home Office and OISC.

## Further information and resources

### Reporting an individual or firm

Solicitors and firms have a duty to report any facts or matters capable of amounting to a serious breach of our Standards and Regulations.

We have provided resources to help individuals make a report [https://beta.sra.org.uk/consumers/problems/report-solicitor/] .

Reports can be made using our report form, by emailing us or by post [https://beta.sra.org.uk/contactus] .

If solicitors/firms need any help in reaching a decision whether to make a report, they can:

- contact our Professional Ethics helpline [https://beta.sra.org.uk/contactus]
- can contact our Red Alert line [https://beta.sra.org.uk/contactus] to make a confidential report.

### SRA Principles and Codes of Conduct

These describe the standards we expect of individuals solicitors and firms:

SRA Principles [https://beta.sra.org.uk/solicitors/standards-regulations/principles/]

Code of Conduct for Solicitors, RELs and RFLs [https://beta.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/]

Code of Conduct for Firms [https://beta.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/]

**Warning Notice, guidance and other resources**

We have published several warning notices and guidance which those delivering asylum legal services should be aware of:

- Warning Notice – Immigration Work [https://beta.sra.org.uk/solicitors/guidance/immigration-work/]
- Immigration work - guidance [https://beta.sra.org.uk/solicitors/guidance/immigration-work-guidance/]
- Effective supervision – Guidance [https://beta.sra.org.uk/solicitors/guidance/effective-supervision-guidance/]
- Case studies about providing proper standards of service for vulnerable consumers [https://beta.sra.org.uk/solicitors/guidance/proper-standard-service/]
- Immigration and asylum thematic review [https://beta.sra.org.uk/sra/research-publications/immigration-asylum-thematic-review/]
- Balancing duties in litigation [https://beta.sra.org.uk/risk/risk-resources/balancing-duties-litigation/]

**Continuing Competency**

Firms and solicitors should familiarise themselves with our resources on:

- Continuing Competency []
- Learning and development record template [https://beta.sra.org.uk/solicitors/resources/continuing-competence/cpd/continuing-competence/templates/] .