

# Immigration and asylum thematic review

23 November 2022

## Executive summary

Users of immigration and asylum legal services can be some of the most vulnerable people in our society. It's common for many to experience stressful or difficult circumstances and have little knowledge of the UK's legal system.

For people who use immigration and asylum services the consequences of poor legal services can be particularly severe, long-lasting and difficult to rectify. Solicitors in the immigration sector therefore play an important role in maintaining the effective administration of justice.

We therefore carried out a thematic review to better understand the challenges facing different segments of this key sector and to investigate the nature, extent and impact of any concerns. This review looked at three areas: the quality of services provided, supervision of those providing services, and complaints and reports of misconduct. We also looked at the continuing competence of those providing the services.

## Key findings

### Quality of services provided

Overall, we were satisfied with the quality of service being provided although there are areas where firms could improve. We found that:

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

Most fee earners were not aware of our guidance and warning notices relevant to immigration and asylum. To help address this we will be promoting this information more widely to those working in this area. This is covered in our updated immigration guidance.

### Supervision



We found:

- Firms needed to have stronger evidence that supervision takes place – on the majority of files reviewed evidence was lacking.
- A significant number of fee earners did not keep an up-to-date training record. While it is not mandatory to have a training record, it is an easy way for fee earners to demonstrate how they are meeting our competence requirements.
- File audits were the most common method of supervision although there are concerns about their scope, the recording of audits and the sharing of outcomes.
- Heads of Department often have a higher caseload than other members of staff, which could impact on their ability to supervise others.
- Not all firms we visited had considered that effective supervision identifies potential learning and development needs.

This is covered in our updated supervision guidance.

## **Complaints**

We found:

- Most firms complied with the requirements set out in our Code of Conduct to provide complaints information.
- Firms and fee earners were reluctant to report misconduct.
- Most did not know how to report a matter, even though they have a duty to do so.
- Most firms did not think that clients faced any barriers in making a complaint.
- Both firms and fee earners were, however, able to identify how potential barriers could be overcome.

In response to the findings of this review we have published new guidance on delivering immigration services for those working in this area.

We have also produced new guidance for all firms on the supervision of staff. While this has been published because of the findings of this report it has relevance to our expectations in all areas of legal services delivery.

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## **Introduction**

Users of immigration and asylum legal services can be some of the most vulnerable in society. The reasons behind how and why they arrive in our jurisdiction 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 immigration and asylum services, the consequences of bad advice can be particularly severe, long-lasting, and difficult to rectify - for example, depriving an individual of certain rights linked to their citizenship or potentially being returned to a country they felt compelled to leave and where they could suffer harm.

Solicitors in the immigration sector play an important role in maintaining the effective administration of justice. It is important that they are and remain competent and deliver services that meet the needs of their clients. They must keep their knowledge up to date in a fast-changing environment. Every immigration adviser must have a supervisor who, under our rules, is responsible for making sure that immigration advice provided by individuals they supervise is up to scratch.

In addition to compliance requirements, getting access to good quality advice first time means that people who use these services are more likely to quickly get to the right result. It can also decrease the likelihood of having to pay additional legal fees or application charges. Accurate, honest advice from the outset of each client's matter helps to make sure that only cases which are most likely to succeed are pursued.

Our work with our stakeholders suggested that not all SRA-regulated firms and solicitors in the immigration sector are meeting the standards we expect.

We therefore carried out a thematic review to better understand the challenges facing different segments of the sector, and to investigate the nature, extent and impact of any concerns.

This report describes our findings and our recommendations. We provide a checklist at the end of each section and include a case study relating to complaints which will help firms understand and meet our regulatory requirements and maintain professional standards. We also include links to useful information and other resources at the end of this report.

## **What we did**

We initially engaged with external stakeholders to gather their views on the sector generally and to identify whether there were any specific issues we should consider. We spoke with:

- the Law Society
- the Legal Ombudsman
- the Office of the Immigration Services Commissioner (OISC)
- the Immigration Law Practitioners' Association
- Refugee Action.



They suggested that not all firms and solicitors in the immigration sector were meeting the standards we expect.

We also asked 70 firms who provide immigration and/or asylum services to complete a short questionnaire. These firms were of various sizes (including sole practitioners) and some held a legal aid contract.

We then selected 40 firms - that provided responses which gave us cause for concern, or who could provide us with interesting insights into the sector.

We held an online meeting with the person responsible for the immigration asylum department. We then decided to visit 38 of the firms in person to speak with a fee earner and review two of their files, meaning that we reviewed 76 files in total. This provided insights into how firms were delivering legal services.

If we identified areas of concern during our visits we referred firms into our internal disciplinary process.

## **Our findings - quality of service**

It is important that clients and the public have confidence in the legal services provided, that solicitors support clients during the legal process and that information is provided in a meaningful way.

Solicitors have regulatory obligations to act in a way which [upholds the proper administration of justice](#) [/solicitors/standards-regulations/principles/#principle-1] and [not to waste the court's time](#) [/solicitors/standards-regulations/code-conduct-solicitors/#rule-2]. There is also a public interest to make sure the legal system is not overburdened with poorly drafted applications or totally without-merit cases. If solicitors fail to deliver good quality legal services, this can lead to inefficiencies and lengthy delays for the client.

## **Information provided to clients about their matter**

### **Why this is important**

Clients should be provided with enough information to understand how their matter will progress as well as the strengths and weaknesses of their case. This is even more important where a client is vulnerable.

It is particularly important in this area to make sure that clients are made aware of the merits of their case to help avoid meritless claims being pursued. It can be helpful, due to language barriers and vulnerabilities, to discuss the strengths and merits of a case verbally with clients. It is also good practice for firms to keep a record of the assessment on file and send it to the client, and to send clients written confirmation of what



was discussed during the initial client meeting. This gives clients the opportunity to review and reflect on what was discussed, the advice (with assistance if required), and costs information.

Firms should also consider how they are making sure that the client understands the written information provided. For example, making sure documents are written in plain English, using a translator or interpreter if required, where possible, getting family or friends to help translate documents, or recommending an online translation service such as Google Translate.

Fee earners could also check directly with the client whether they understood the written information provided.

## **What we found**

We asked firms what they discussed during an initial meeting with the client. They told us:

'Other' included:

- tribunal location
- personal history and background information
- firm's complaints procedure
- firm's independence from the Home Office
- client's objectives
- health issues
- journey to the UK

Similar responses were provided by fee earners. During our review of 76 files we saw evidence of the client's legal issues being discussed during the initial interview on 71 files and costs being discussed on 65 files.

Some fee earners told us they would not cover all these issues because they did not want to overwhelm the client with too much information.

We found that 33 firms out of 40 firms said they required fee earners to send the client written confirmation of what was discussed (our file reviews broadly reflected this).

One example of good practice that we saw was a firm's standard letter to the client that contained a section - 'Actions you agreed to take' - that clearly set out what the client needed to do next.

We also asked firms how they made sure clients fully understand the strengths and merits of their case. They did this using a variety of methods including:



'Other' included:

- Getting an opinion from a barrister. This helps explain the position to a client from somebody who regularly presents cases at tribunal/court.
- Asking the client to bring a friend/relative to explain the merits to them.
- Using an interpreter.
- The firm providing a note during the meeting so the client can review and reflect on it later.

Most firms told us they discussed the strengths and merits of a case verbally, but we did not see evidence of this recorded on all the files we reviewed. 59 out of 76 files contained a record of the strengths and merits of a case being discussed with a client which was set out in writing (for example in a follow up letter or email) to the client.

To make sure the firm can be sure they are not pursuing a meritless claim,, fee earners should record the strengths and merits of a claim and should regularly reassess this as the case progresses to make sure that they are satisfied that the client still has prospect of success. It is particularly important to continue to reassess the strengths and merits of a claim if the client did not provide key information and documentation during an initial meeting.

In addition, most firms (26 out of 40) did not provide clients with information in their language of choice. Eight firms rarely did, four firms did sometimes with only two firms saying they did this most of the time or always. Fee earners gave broadly similar responses.

## **Review of key documentation by clients**

### **Why this is important**

Clients should be given the opportunity to review and amend key documentation (for example witness statements) prepared on their behalf as these set out the client's claim and personal circumstances. If documents contain mistakes, this could impact the client's prospects of success, cause delays and lead to the client incurring more costs.

It is important that firms record whether clients have had an opportunity to review key documentation. A record on the file:

- Resolves any issues that may later be raised by the client, court, or tribunal.
- Allows firms to readily check whether the client has been afforded this opportunity, and if not, rectify the position.



## **What we found**

Out of 40 firms 39 told us that clients were given the opportunity and time to review key case documentation. The remaining firm left this for each fee earner to determine. All fee earners we interviewed said they gave clients the opportunity to review case documentation. However, this could not be evidenced on 12 out of 76 files.

## **Compliance with court/tribunal directions**

### **Why this is important**

An important part of progressing an immigration or asylum matter is timely compliance with directions ordered by the court/tribunal, otherwise this can lead to inefficiencies and lengthy delays. It also helps the court/tribunal deal with claims fairly and justly. The [JUSTICE \[https://files.justice.org.uk/wp-content/uploads/2018/06/06170402/JUSTICE-Immigration-and-Asylum-Appeals-Report.pdf\]](https://files.justice.org.uk/wp-content/uploads/2018/06/06170402/JUSTICE-Immigration-and-Asylum-Appeals-Report.pdf) report was greatly concerned with the extent of non-compliance with rules and directions. Solicitors have a regulatory obligation to act in a way which upholds the proper administration of justice and not to waste the court's time.

### **What we found**

We found that fee earners used a variety of methods to make sure they met deadlines and progressed matters:

Most firms used a combination of the above methods. Other methods mentioned also included:

- Keeping a hard copy diary or using a calendar on a personal mobile phone.
- Using white boards in the office, visible to the entire team.
- Dates recorded in a client instruction questionnaire.
- Reviewing all files after three months of activity.

Fee earners told us that they were using these methods, however, they were often unable to demonstrate it because it was not recorded on the file. Recording that post or an application to court has been checked or that a case review has happened is a relatively straightforward exercise to confirm court/tribunal directions are being met and provides evidence of supervision taking place.

## **Warning notices and guidance**

### **Why this is important**



Our warning notices and guidance help firms understand their obligations and how to comply with them (links to these can be found at the end of this report). We can also refer to warning notices when exercising our regulatory functions.

Our guidance note on risk factors in immigration work sets out what information firms need to provide clients with about their right to complain and how to go about it. We found issues of inadequate complaints information provided at five firms.

We have updated our guidance on immigration in response to the findings of this thematic and will promote this to firms working in this area.

### **What we found**

Only a small number (18 firms and 15 fee earners) said they were aware of these. We expect firms to read all our warning notices and guidance, and to take steps to make sure they comply with them.

## **Cash payments and receipts**

### **Why this is important**

Concerns were raised to us by the Legal Ombudsman that some fee earners may be taking advantage of consumers by accepting cash payments, often outside the office, without providing a receipt or with the intention of overcharging the client over the course of a matter. It is important that firms keep an appropriate record of cash payments received from clients and provide clients with a receipt so they can keep an audit trail of any cash payments made by them.

### **What we found**

We found that most firms only allow cash payments to be made in the office. Most firms told us that they would accept payment by cash, although most clients preferred to pay by bank transfer or debit/credit card.

One firm was reported into our disciplinary process for not being able to demonstrate that it had appropriately recorded the receipt of a cash payment from the client.

## **Online hearings**

### **Why this is important**





With more hearings being held online, firms need to consider the practicalities of these for clients. This is to make sure the case is properly presented, especially if the court/tribunal is being asked to assess the client's credibility. This is even more important if the client is vulnerable, relying on an interpreter, lacks the necessary technological skills, or does not have access to suitable equipment.

### **What we found**

Out of 40 firms 23 had considered the practicalities for clients and taken steps to prepare for online hearings. This was because some clients did not have access to their own computer, had a poor internet connection, or did not have somewhere private they could use, especially if living in shared accommodation.

Some examples of good practice included firms that had:

- A dedicated client laptop which could not access the firm's main systems.
- Set up an appropriate space in the office for clients to use – for example making sure an appropriate background was used and using an echo free room.
- Updated their own hardware or software so they could attend online hearings.

## **Client vulnerability**

### **Why is this important**

Immigration and asylum clients can be particularly vulnerable, or can become vulnerable as a matter progresses, so it is important that fee earners review any assessment of vulnerability regularly and keep a record of this on file. Some fee earners also told us that a client's vulnerability can form a part of their claim, for example if they are fleeing persecution, so it is important to be aware and explore this with them.

### **What we found**

We found both firms and fee earners had a good understanding of what could make a client vulnerable. We were told that some clients will be more susceptible to harm because of:

- Their personal background - for example being trafficked, tortured, or abused.
- The situation giving rise to the need for advice, for example, involvement in a sensitive matter.



- The effect of a poor outcome leading to a greater impact, such as deportation in an asylum case.
- Their personal attributes or circumstances, such as a health issue or having limited financial means.

Most fee earners were required to make their own assessment of whether a client was vulnerable or not. This then allowed firms and fee earners to start thinking about what support the client might need and whether a referral to another organisation was necessary, for example to a medical professional or a housing organisation.

One firm used a rating system (high, medium, or low) on each matter to determine the client's level of vulnerability. For example - a high rating would be given if a client was at risk of suicide - a medium rating if the client had a mental health condition which was being managed - and a low rating if the client was generally in good health.

Firms and fee earners gave good practical examples of how they support vulnerable clients:

- Making sure not to overwhelm the client during a meeting by giving them too much information.
- Trying to keep the number of times a client had to recount a traumatic event to a minimum.
- If an application is refused, asking the client to come into the office to discuss rather than sending an email.

## **Checklist**

- Has the client been advised about progress and the strengths and weaknesses of their case?
- Has this assessment been recorded on the file and sent to the client?
- Has the client been provided with an opportunity to review key documentation and a record made on the file?
- Do fee earners keep a list of all active matters and record when each file was last reviewed to show how a matter is progressed and whether any action was required?
- Have you recorded that incoming post or key documentation has been checked or that a case review has happened?
- How are court/tribunal directions recorded and are these dates visible to other members of the team including supervisors?
- Are all clients given receipts, especially when payments are made in cash?
- Have you checked whether your arrangements for conducting online hearings are suitable and appropriate?
- Do you assess, and then record, whether a client is vulnerable?

## **[Our findings - supervision](#)**



Solicitors and firms are accountable for the actions of those they supervise and should have a structure which allows for regular and effective supervision of everybody within the firm. Our [Code of Conduct \[solicitors/standards-regulations/code-conduct-firms/#rule-2\]](#) requires firms to keep and maintain records to demonstrate compliance with their obligations.

## Why is this important

Good supervision is important because it:

- Checks that services provided are of good quality.
- Helps identify any issues and provides an opportunity to address these before they escalate
- Provides an opportunity to identify individual training needs and develop skills, making sure fee earners remain competent
- Reassures clients that matters will be progressed and gives them confidence in the service they receive

Effective and regular supervision can also help firms and individuals identify any training and development needs across the business.

As well as being a regulatory requirement, effective supervision is also a requirement under the Immigration and Asylum Act 1999 (IAA). This permits provision of immigration services or advice by a qualified person including someone authorised by us or someone acting on behalf of and under the supervision of someone authorised by us, whether or not under a contract of employment ([s84\(2\)\(e\)](#) [\[https://www.legislation.gov.uk/ukpga/1999/33/section/84\]](https://www.legislation.gov.uk/ukpga/1999/33/section/84)).

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.

## Supervision methods

Firms must make sure that staff are effectively supervised. The most common method of supervision for fee earners we met were file audits:

Some fee earners told us that they received informal supervision, for example the firm had an 'open door' policy or supervision was provided verbally but never recorded.

These informal measures should be supported by more structured supervision so that staff feel able to seek advice and support if they need it. It is also easier for firms to evidence that supervision has taken place if there is a way of recording it.

We found:



- 3 fee earners told us they received no supervision at all
- 8 heads of department (20 per cent) told us that they themselves received no supervision
- Only 1 in 4 heads of department had one-to-one meetings
- 2 firms said they used external consultant solicitors but they were not supervised. This creates a risk to both the client and the firm especially if a consultant undertakes work on their own, for example meeting the client, or the firm cannot access the consultants' files.

We reviewed 76 files but only found evidence of supervision taking place on 29 files.

We referred five firms into our internal disciplinary process because we were not satisfied with the supervision of fee earners who were not directly authorised by us.

The [JUSTICE](https://files.justice.org.uk/wp-content/uploads/2018/06/06170402/JUSTICE-Immigration-and-Asylum-Appeals-Report.pdf) [\[https://files.justice.org.uk/wp-content/uploads/2018/06/06170402/JUSTICE-Immigration-and-Asylum-Appeals-Report.pdf\]](https://files.justice.org.uk/wp-content/uploads/2018/06/06170402/JUSTICE-Immigration-and-Asylum-Appeals-Report.pdf) report also expressed concern about unsupervised, unqualified persons giving advice. We therefore expect firms to have considered and to have in place effective supervision structures.

## **File audits**

File audits are a useful way for firms to check the quality of work and that matters are being progressed. Firms can also use file audits to make sure ongoing compliance with legal and regulatory requirements are being met and that their own supervision is being carried out effectively.

Almost all of the firms we visited told us that they conduct file audits, including on open matters, every month. Most audits were carried out by heads of department or senior fee earners although we did hear of some internal compliance teams and practice managers undertaking these roles.

However, we also found areas for improvement including:

- Firms should make sure that fee earners understood the purpose of a file audit.
- The outcome of an audit should be kept on file or shown to the fee earner so that remedial action can be taken and recommendations can be followed by the fee earner.
- Firms should make sure that they select a representative selection of files for audit.
- Audits should consider the quality of legal work and whether matters had been progressed as well as administrative and financial matters.



- Lessons learned and action points from audits should be shared with the wider team.

## **Supervision structure and case allocation**

Firms should make sure that whoever deals with a matter is competent and has sufficient capacity, especially if the firm uses outside consultants. Where appropriate, firms should also consider whether there is potential for staff learning and development opportunities when allocating matters.

We found that most heads of department had on average a higher caseload than other members of staff. Heads of department should make sure that a high caseload does not impact their ability to supervise other matters and how readily staff can access supervision.

Where matters are supervised by a partner not in the immigration or asylum department firms should make sure that supervisors have sufficient experience as they remain accountable for the actions of those they supervise. This is to make sure clients receive accurate legal advice and that the firm is acting in their best interests. It also helps prevent cases without merit being pursued.

We also found that firms approached the allocation of work in several ways including:

- Senior fee earners had primary responsibility with junior fee earners assisting on files.
- The firm operated a rota system, so the file was allocated to the next fee earner on the rota.
- Some firms left fee earners to allocate matters between themselves.
- Some firms allowed fee earners to conduct the matter if they had the initial contact with the client either by telephone or online.
- Any website enquiries initially went to a partner.

When allocating matters many firms also considered:

- The complexity of a matter
- Whether the fee earner had previously dealt with a similar matter.
- Being able to communicate in the same language as the client.
- Whether the client would prefer a male or female representative.

## **Supervision and technology**

Recently firms have made greater use of video conferencing, telephone, and messaging services to supervise staff working remotely. Most fee earners told us that they had adapted well to this, although some said the move had been challenging as supervisors were not always available or there was a perception that they were not available.



Some firms also relied more on technology, for example a greater use of a shared drive to store documents, and implementing a case management system which allowed work to be supervised and approved remotely.

There is therefore an opportunity for firms to demonstrate, using technology, that supervision is taking place. For example:

- Supervision meetings have been scheduled in online calendars.
- Instructions given or actions approved – these could be contained within emails.
- Documents have been amended and approved – this could be evidenced by email, in a case management system or by saving updated versions of documents. Firms should however remember that documents amended in real time or while being shared might not always save as different versions.

Of the 40 firms 17 told us of an increased use of texts and WhatsApp messages to communicate with both clients and with colleagues. While this can help overcome language barriers (for example, the client can then use google translate or ask family and friends to translate), details of text or WhatsApp messages were not always held on file.

With an increased reliance on technology firms should:

- Make sure that a file is a true reflection of the whole matter and include all contact with the client.
- Make sure that everybody who requires access to an electronic file can do so.
- Consider including any handwritten notes on file or creating an attendance note.
- Check that client confidentiality is being maintained, especially if staff are using their own devices.
- Review the accreditation and security of potential cloud suppliers and check their privacy settings. This is to make sure client data is being held securely. Further information can be found at the end of this report.

## **Background checks**

Firms should check if those who act on behalf of clients (whether employed directly by the firm or not) are subject to disciplinary action or have been struck off by another regulator. Undertaking periodic checks could help firms satisfy themselves that this remains the case. Where an individual working at a firm has been subject to disciplinary action by another regulator, firms should take steps to mitigate the risks associated with this by, for example, putting in place enhanced supervision arrangements.



We asked firms what background checks they undertook on staff. The three most common methods included requesting references from previous employers, undertaking a Disclosure and Barring Service check, and checking an individual's qualification or education history. Most firms carried out these checks before an individual joined but these were not then updated unless specifically required, for example under a legal aid contract.

## **Training and competency**

### **Why this is important**

Solicitors must be able to demonstrate that they know [they have the competence](#) [\[solicitors/standards-regulations/code-conduct-solicitors/#rule-31\]](#) to do their job, and have taken any necessary steps to maintain this competence. This means regularly reflecting on their quality of practice and identifying how their learning and development needs will be addressed.

Immigration and asylum law can be a complex, fast-paced and politically sensitive area of law, so solicitors must keep their knowledge up to date to remain competent and make sure that clients receive adequate legal advice.

### **What we found**

In most firms, the head of department was responsible for the oversight of training and competence within the department. In three firms, oversight support was also provided by a member of the internal compliance team, the firm's overall training partner or the office manager.

Only one firm said that the immigration and asylum department had a different training regime compared with other departments within the firm. This was because of the pace of change in immigration and asylum law and the need for staff accreditations to be updated regularly.

We asked firms what training staff received and found online training to be the most popular method:

While most fee earners said they used at least one of the above methods, a significant number were unable to show us a copy of their training records. Four firms out of 40 (10 percent) were referred into our internal disciplinary process because of this. Solicitors must continually reflect on their practice and undertake regular learning and development, so their skills and knowledge remain up to date. If solicitors do not, this places clients at risk of receiving poor or incorrect



legal advice. While it is not mandatory for solicitors to have a training record, it is an easy way to demonstrate how they are meeting our competence requirements.

Some fee earners also mentioned listening to podcasts, which appears to be a relatively new training method. The benefit of podcasts, like some online courses and webinars, is that fee earners can access these at a time which suits them and can be listened to more than once.

Some fee earners still adhered to the outdated 16 continuing professional development hours approach or did not consider 'training' as anything other than attending a paid external course.

Fee earners should consider if they are genuinely meeting their obligations to maintain their competence on an ongoing basis if they only attend the occasional training course.

## **Checklist**

- Is your supervision structure (for both employees and external consultants) effective?
- Are supervisors competent and accessible?
- If you use consultants, how is their work supervised and would you have access to their files if they were unavailable?
- How do the firm and fee earners show that supervision has taken place?
- What background checks have you carried out on staff?
- Audits
  - Does the firm have an audit system in place?
  - Does everybody understand the purpose of an audit function?
  - Does the fee earner see a copy of the audit so any recommendations or actions can be taken?
- Consider the frequency of your audits, the type of file which is reviewed (open, closed or archived) and what is reviewed during the audit.
- Do all your fee earners have an up-to-date training record?
- Do your files accurately reflect everything that has happened on a matter?

## **Our findings - complaints**

### **Encouraging feedback**

Despite clients having the right to complain to the firm, to us, and the Legal Ombudsman, we know that they rarely do (of the 76 files we reviewed, none had a complaint). Few clients will be able to judge whether their legal adviser is providing a good quality service.





However, if an individual receives poor advice, the consequences could be significant and long-lasting and might not be remedied by, for example, financial compensation.

Giving clients the opportunity to provide meaningful feedback and encouraging them to do so could lead to greater engagement and improvements to the system. Enabling them to make complaints is part of that process. Firms should therefore regularly review whether there is anything preventing clients from challenging the way their case is being handled or from making complaints.

Firms and fee earners in our review were asked if they thought clients faced any barriers to making a complaint. They identified a range of issues, including:

- Fear that making a complaint might impact on the progress or outcome of a case.
- Clients think they must 'stick with one solicitor' or will run out of resources if they start elsewhere.
- Concerns that their solicitor would report them to the Home Office, or the solicitor is working with the Home Office.
- Fear they will be persecuted if they make a complaint.
- Vulnerability which makes it hard for clients to trust people.
- Language as clients might not understand the complaints process.
- Cultural factors – clients come from countries where they dare not make a complaint, they are grateful for any assistance from a professional or they don't want to be perceived as causing trouble.

To overcome barriers firms were doing a number of things. They were:

- Engaging in constant communication with the client to explain the process and prevent any misunderstanding.
- Providing reassurance that a complaint wouldn't impact their case.
- Providing reassurance that they were independent of the Home Office or other external agencies.
- Half of firms told us that their complaints procedure made it clear that there would be no legal repercussions or detriment to the client or the matter if the client made a complaint.
- Asking an interpreter, where possible, to explain the complaints process in the client's own language.
- Telling clients that they will be supported even if they make a complaint.
- Building trust with clients so they feel they can complain.
- Telling clients they will not be punished for making a complaint.

## **Providing complaints information**

Our Codes of Conduct [require firms \[solicitors/standards-regulations/code-conduct-firms/#rule-7\]](https://www.sra.org.uk/sra/about/codes-of-conduct-firms/#rule-7) to provide clients with information about:



- Their right to complain to the firm about their services and charges.
- How a complaint can be made and to whom.
- Any right they have to make a complaint to the [Legal Ombudsman](#) [\[/solicitors/standards-regulations/glossary/#Legal-Ombudsman\]](#) and when they can make any such complaint.

We have also [issued guidance](#) [\[/solicitors/guidance/publishing-complaints-procedure/\]](#) to help firms meet their obligations in this area.

Also, if firms have a website, they [must publish how and when a complaint can be made](#) [\[/solicitors/standards-regulations/transparency-rules/#rule-2\]](#) to us under our [transparency rules](#) [\[/solicitors/standards-regulations/transparency-rules/\]](#). Firms offering non-asylum immigration services must also [publish costs information](#) [\[/solicitors/standards-regulations/transparency-rules/#rule-1\]](#) on their website.

As well as the above, firms told us they made clients aware of their complaints process in several ways.

This included reminding clients of their right to complain in the closing letter or handing the client a hard copy of the complaints information if they suggested something wasn't right. The fee earner interviews and file reviews confirmed these were the main methods used.

However, during our file reviews we saw one example of a firm advising clients to complain to the Legal Complaints Service, which has been closed for more than a decade, and another which stated that clients could complain to the Law Society.

At one firm no complaints information was provided on either of the files we reviewed and a further two firms provided clients with incomplete complaints information. We referred firms into our disciplinary processes because of this.

Firms should check that they are providing information about how to complain and that this information is accurate and follows our rules and guidance.

If clients wanted to make a complaint, we identified some good practice by fee earners to help make clients feel comfortable including:

- Putting time and effort into relationships with clients so they felt comfortable and reassured.
- Explaining that clients have the right to complain and that complaints will be dealt with fairly, independently, and seriously.
- Initially speaking to clients in person about a concern or a complaint.



- Telling clients that making a complaint will not have a negative impact on their case or prejudice it in any way.
- Providing a leaflet to the client about the complaints process which is written in plain English.

## Reporting misconduct

Our Codes of Conduct place obligations on the [firms \[/solicitors/standards-regulations/code-conduct-firms/#rule-31\]](#) and [individuals \[/solicitors/standards-regulations/code-conduct-solicitors/#rule-71\]](#) we regulate to report to us any facts or matters which they reasonably believe could amount to a serious breach of our standards or requirements. These include a duty to report, in similar circumstances, to another legal services regulator where a breach of their regulatory requirements is indicated.

### Why this is important

Reporting behaviour that presents a risk to clients, the public, or the wider public interest, goes to the core of the professional principles of trust and integrity. It is important that solicitors and firms let us know about any serious concerns promptly. This is so we can act where necessary to protect clients. Reporting concerns can also help us build our knowledge of the sector and monitor firms in future for patterns of poor behaviour.

Whether or not a matter 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.

We asked heads of department how willing they would be to report unacceptable advice or representation given by another firm. Only a quarter of heads of department said they would be very willing to report unacceptable advice or representation given by another firm.

We also asked fee earners how willing they would be to report unacceptable advice or representation given by another firm:

Out of 38 fee earners 14 said they would be very willing to report another firm. This is slightly higher than the number of heads of department who gave the same response.

The duty to report serious misconduct is clear and is not subject to client consent or the duty of confidentiality. 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.

The responses given were also reflected in the low number of reports made by firms and fee earners. Most told us that they had not reported another firm in the last three years. Of those which had made a complaint:

- 20 reports had been made to another firm
- 12 reports had been made to the OISC
- 6 reports had been made to the SRA
- 3 reports had been made to the Legal Ombudsman

**Complaints were about:**

- A client not being notified of the outcome of an application or a general lack of contact by the firm.
- Making an application without the client's knowledge.
- Failure to submit an appeal.
- Failure to transfer files or charging for the transfer.
- Poor or inadequate work done (for example insufficient detail provided in an application or an application was not made).
- Giving incorrect advice – the new firm complained and used the complaint as part of the client's appeal.
- Overcharging or charging a client when they were eligible for legal aid.

Anecdotally firms told us that it is not unusual for consumers of immigration and asylum legal services to change solicitors. This gives newly instructed firms an opportunity to review the work done by the previous solicitors. Firms told us that in some instances the work done on the files fell below their standards, although this did not prompt them to report a concern.

We found that many fee earners said they did not know how to make a complaint to us. This is an issue we will continue to seek to address through further communications and engagement with the profession.

## **Feedback**

One method of finding out if clients had concerns about how their case was handled, even if they did not complain, is to ask for feedback. Firms were asked if they offer clients the opportunity to provide feedback.

Most firms told us they asked clients for feedback every time. They did this in a variety of ways including providing a feedback form or a link to an online review. Firms said that response rates from clients were generally low. Three of the 76 files we reviewed had feedback, all of



which was broadly positive.

The chance to provide feedback provides the firm with an opportunity to gain views from the client and where necessary, improve processes and procedures. Some firms gave examples of how they were trying to improve this:

- Asking for feedback at different times throughout the matter, not just at the end
- Providing clients with a pre-paid envelope to return a feedback form
- Asking clients to leave online reviews which they could do anonymously if they wanted.

Several fee earners (28 of 38) told us that when feedback was received this would be shared among the team, usually at team meetings.

## **Checklist**

- Is your complaints information up to date?
- Does your complaints information include everything required by our rules?
- Does your complaints information make it clear that there will be no legal repercussions or detriment to the client or the matter if the client makes a complaint (for example details will not be passed to the Home Office)?
- Do you tell clients that any complaint will be handled confidentially and not disclosed to any third party?
- How and when can clients provide feedback?
- Have you reported any serious misconduct you have come across by another firm/solicitor to us?
- Have you made sure everyone in your firm is aware of the obligation to report regulatory breaches to us and that they know how to do so?

## **Case study: reporting concerns to us**

Firm A specialises in immigration and asylum claims. They act for Mrs Y, an asylum seeker who was trafficked to the United Kingdom. Mrs Y previously instructed a firm of solicitors, Firm B. When Mrs Y's file was transferred from Firm B to Firm A, the solicitor at Firm A noticed that Mrs Y:

- Was entitled to legal aid but this was never discussed with her.
- Received poor legal advice.
- Had an application made on her behalf by Firm B which was missing key information and was submitted out of time.
- Did not provide instructions on major decisions in the case.



Firm A raised these issues with Mrs Y. Given the delay and her current mental health, Mrs Y is not interested in making a complaint and wants Firm A to focus on her asylum application. Firm A reassures Mrs Y that they will not take any further steps against Firm B. They tell Mrs Y she can complain to Firm B later.

## **Our position**

We consider that it would be appropriate to make a report to us as the concerns described are relatively serious, for example acting without instructions.

Firm A has an obligation to report to us promptly facts that they reasonably believe should be brought to our attention for us to investigate whether a serious breach has occurred or otherwise exercise our regulatory powers.

Reporting to us will allow us to investigate to see if the matter is in fact serious – we may be able to piece together issues of incompetence and other failures to act in Mrs Y's best interests. For example, we may have received more than one report about Firm B.

We consider it an important part of our role to protect those who are less able to protect themselves and will consider an allegation to be particularly serious where the client's vulnerability is relevant. In this case, Mrs Y's vulnerability is a factor that compels a report to be made.

## **Next steps, further information and resources**

### **SRA next steps**

In response to the findings of this report we have:

- Issued detailed new guidance on immigration work, developed with input from key partners including the Home Office, the Office of the Immigration Services Commissioner (OISC), the Law Society, Refugee Action, Legal Services Consumer Panel and the Immigration Lawyers Practitioners Association.
- Issued new guidance on supervision, again with input from others.
- Committed to a further thematic review in 12 to 18 months to assess the impact of the guidance.
- Referred firms that fell short into our enforcement processes and brought them into compliance.

We will:

- Promote the learnings from this report with firms who undertake immigration and asylum work, working with other stakeholders.



- Produce further resources for immigration practitioners, as we did for those practising in the youth courts.
- Work with the other regulators, OISC etc, on public facing information for those using immigration services, including addressing barriers to complaints in this area.

If we identified areas of concern during our visits we referred firms into our internal disciplinary process.

For example, some firms had poor supervision arrangements in place and some fee earners could not demonstrate how they met our continuing competence requirements.

## **Further information and resources**

### **SRA Principles and Code of Conduct**

The Principles and Code of Conduct describes the standards we expect of individuals solicitors and firms:

[SRA Principles \[/solicitors/standards-regulations/principles/\]](#)

[Code of Conduct for solicitors, RELs and RFLs \[/solicitors/standards-regulations/code-conduct-solicitors/\]](#)

[Code of Conduct for firms \[/solicitors/standards-regulations/code-conduct-firms/\]](#)

### **Warning notices and guidance**

We have published several warning notices and guidance which impact directly on firms providing immigration and asylum legal services including:

- [Immigration work - guidance \[/solicitors/guidance/immigration-work-guidance/\]](#)
- [Balancing duties in litigation \[https://www.sra.org.uk/risk/risk-resources/balancing-duties-litigation/\]](https://www.sra.org.uk/risk/risk-resources/balancing-duties-litigation/)
- [Case studies: provision of proper standards of service for vulnerable consumers \[/solicitors/guidance/proper-standard-service/\]](#)

### **Continuing competency and transparency rules**

Firms and solicitors should familiarise themselves with our resources on:

- [Continuing Competency \[/solicitors/resources-archived/continuing-competence/\]](#)
- [Transparency Rules \[/solicitors/resources-archived/transparency/\]](#).

### **Reporting an individual or firm**



We have provided [resources to help individuals make a report](/consumers/problems/report-solicitor/) [\[/consumers/problems/report-solicitor/\]](/consumers/problems/report-solicitor/).

Reports can be made using our report form, by emailing [report@sra.org.uk](mailto:report@sra.org.uk) [\[mailto:report@sra.org.uk\]](mailto:report@sra.org.uk) or by post.

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

- contact our [Professional Ethics helpline](/home/contact-us/) [\[/home/contact-us/\]](/home/contact-us/)
- can contact our [Red Alert line](/home/contact-us/) [\[/home/contact-us/\]](/home/contact-us/) to make a confidential report.

## **Checking an individual's regulatory status**

You can check an individual's regulatory status using the following registers:

- The [Solicitors Register](/consumers/register/) [\[/consumers/register/\]](/consumers/register/) (maintained by the SRA)
- [Register of Regulated Immigration Advisers](https://home.oisc.gov.uk/register_of_regulated_immigration_advisers/register.aspx) [\[https://home.oisc.gov.uk/register\\_of\\_regulated\\_immigration\\_advisers/register.aspx\]](https://home.oisc.gov.uk/register_of_regulated_immigration_advisers/register.aspx) (maintained by the Office of the Immigration Services Commissioner)
- [The Barristers' Register](https://www.barstandardsboard.org.uk/for-the-public/search-a-barristers-record/the-barristers-register.html) [\[https://www.barstandardsboard.org.uk/for-the-public/search-a-barristers-record/the-barristers-register.html\]](https://www.barstandardsboard.org.uk/for-the-public/search-a-barristers-record/the-barristers-register.html) (maintained by the Bar Standards Board)
- The [Chartered Legal Executive Practitioners Directory](https://cilexregulation.org.uk/practitioners-directory/) [\[https://cilexregulation.org.uk/practitioners-directory/\]](https://cilexregulation.org.uk/practitioners-directory/) (maintained by CILEX Regulation).

## **Cyber security and storage of documents online**

The [SRA Risk Outlook](https://www.sra.org.uk/risk/outlook/risk-outlook-2020-21/information-and-cyber-security/) [\[https://www.sra.org.uk/risk/outlook/risk-outlook-2020-21/information-and-cyber-security/\]](https://www.sra.org.uk/risk/outlook/risk-outlook-2020-21/information-and-cyber-security/) highlights the need for firms to have the right controls in place to keep client data secure online.

This [National Cyber Security Centre](https://www.ncsc.gov.uk/news/rise-microsoft-office-365-compromise) [\[https://www.ncsc.gov.uk/news/rise-microsoft-office-365-compromise\]](https://www.ncsc.gov.uk/news/rise-microsoft-office-365-compromise) advisory provides details on the compromise of Microsoft Office 365 and details of mitigation advice organisation should consider adopting.