

## **Introduction**

These guidelines are a statement of best practice for the provision of legal services by solicitors/paralegals in respect of international protection cases. Solicitors/paralegals should broadly comply with the Guidelines. Circumstances may arise where a solicitor/paralegal does not follow these guidelines. In such circumstances the specific reasons for not doing are to be noted in writing on the applicant's file. This is necessary for effective risk management/quality assurance purposes and to protect the Board where complaints are made to the Board and/or proceedings are initiated against the Board alleging negligence in the provision of services.

The Board will endeavour to allocate cases to solicitors in a timely manner so as to ensure compliance with statutory deadlines. Should a case be allocated within close proximity to a deadline, the solicitor will be contacted so as to ensure that they are in a position to deal with it.

## **Authority to act for a client and additional services**

- One Legal Aid Certificate will be granted to a Private Practitioner on referral, to cover any advice and/or legal aid required from Questionnaire/Interview/Appeal stage until finalisation of the case. For the avoidance of doubt, please note that such legal aid certificate granted to an applicant does not authorise the taking of judicial review proceedings.
- There will be no requirement for a Private Practitioner whose applicant has been granted such a certificate to apply to the Board for an amended legal aid certificate to cover each individual stage of the process.
- Where a Private Practitioner considers it necessary to have a document translated or to obtain a SPIRASI or GP report (or any other report), an application for an amended legal aid certificate must be made in all instances to Head Office in Cahirciveen ([PPUnit@legalaidboard.ie](mailto:PPUnit@legalaidboard.ie)).
- For Legal Aid Board Solicitors, a Legal Aid Certificate is not necessary at the advice stage, however a submission for a Legal Aid Certificate must be made if an appeal to the International Protection Appeals Tribunal is pursued.

## **Key Stage 1 – Approach at First Instance/Pre Questionnaire**

- The applicant will be given general information and advice on the completion of the questionnaire at the first meeting. The applicant should leave this consultation with all of the information they need to enable them to complete the questionnaire.
- Information must be given on possible issues such as : admissibility; nexus; safe country of origin; exclusion; the importance of filling in family details for any potential future family reunification application; implications of 15(3) (a-c) regarding any children born or later entering Ireland and the duties of the International Protection applicant.
- Information must be given on the International Protection process and the basis for granting Asylum Status as per the checklist at [Appendix A](#).
- The applicant must be informed that the basis for granting Subsidiary Protection (SP) is that a person is in need of international protection due to a real risk of serious harm, meaning:

1. Death penalty or execution;
  2. Torture or inhuman or degrading treatment; or
  3. Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.
- The applicant must be informed of the Permission to Remain (PTR) procedure to include consideration at first instance; ongoing duty to inform the Minister of any changes in circumstances that might affect PTR; and 5-day statutory period following receipt of The International Protection Appeals Tribunal decision to file further PTR submissions before final review by the Minister. The importance of the client keeping the Board/PP informed of any change of address should also be highlighted. Further country of origin information (COI) may need to be sought, and further instructions may need to be taken following receipt of the Tribunal decision before any further PTR submissions are made for the Minister's final review. Given the five-day window for reviewing a negative PTR decision, the PTR application should be kept under review and updated where necessary.
  - The information provided should include answers to all of the necessary and important questions relating to, for example, the applicant's family; health information; travel history and personal circumstances, including a synopsis of the details of their claim. The applicant should be provided with a detailed overview of the International Protection process.
  - Inquiries should be made with IPO at the outset regarding any visa/EURODAC hits and instructions must be taken to assess whether a risk of Dublin III transfer arises to any other relevant DIII country and consideration must be given to whether there are any grounds in each client's circumstances to resist such transfer that should be brought to the early attention of the IPO, e.g. if there is family in Ireland; Article 17 discretion in humanitarian cases (submissions must also be made to the Minister in such cases); systemic deficiencies in the International Protection process in the proposed country of transfer.
  - All of the information and advice detailed above must be provided to the applicant during the consultation even in circumstances where they have returned their completed questionnaire to the IPO before the first consultation.
  - At this information and advice session a certain amount of factual information should be obtained from the client including medical details and contact details of the GP as well as an authority to obtain medical information if required.
  - After the information session a query will, if necessary, be raised in respect of relevant Country of Origin Information with the Refugee Documentation Centre (RDC) 1st Floor Montague Court, 7-11 Montague Street Dublin 2 (Telephone : 01-4776250 Email: ([refugee\\_documentation\\_centre@legalaidboard.ie](mailto:refugee_documentation_centre@legalaidboard.ie))). Also consider if further documentary/medical reports may assist and should be obtained.
  - The pre-questionnaire checklist at [Appendix A](#) should be used to ensure that all necessary points were covered during the consultation in terms of information given to the client.
  - A post-attendance letter should be sent to the client synopsing the process as outlined. The letter should also confirm the documents which the client was advised to seek or said they could get.

## **Key Stage 2 – Pre-Interview Consultation**

- A further consultation between the applicant and a solicitor should be arranged when the questionnaire/translated questionnaire has been received from the International Protection Office. The focus in this meeting is on legal advice based on all of the information contained in the completed questionnaire.
- The solicitor, in taking the client's instructions and in advising the client shall have regard to the checklists at Appendix B-J:

[-Appendix B: Credibility Assessment](#)

[-Appendix C: IPA Pre-Interview Checklist](#)

[-Appendix D: Determining Nationality, Former Habitual Residence and Article 1E Countries](#)

[-Appendix E: Persecution Flowchart](#)

[-Appendix F: State Protection Flowchart](#)

[-Appendix G: Internal Protection Alternative Checklist](#)

[-Appendix H: Section 15\(c\) Analytic Flowchart](#)

[-Appendix I: Standards of Probability and Assessment of Future Risk](#)

[-Appendix J: Article 1\(F\) Exclusion Checklist 1 and 2](#)

- Written submissions may be made to the IPO following consultation with the applicant and review of the applicant's file. Submissions should be made where a client has an arguable claim for refugee status or subsidiary protection status, and the submission should set out the basis for contending that the client is entitled to such status. The submission should include a brief synopsis of the facts and link those facts to a statement of the law. If possible the applicant will approve the submissions prior to the submissions being sent to the IPO. These submissions might include: a reference to nexus; internal relocation and state protection issues; address any inconsistencies or reasons for absence of documentation; include relevant COI; and address any potential issues that might risk a 'papers only' or 'accelerated appeal'. Submissions should also include Permission to Remain issues. Submissions in relation to Dublin III might include for example arguments in relation to the exercise of Article 17 discretion or submissions in relation to family applicants in accordance with Article 10. Submissions may be made in relation to language analysis reports if it is considered necessary.

Drafting the submission may commence after receipt of the questionnaire and carrying out COI and other relevant research. They can be completed following the pre-interview client consultation and further review of the file.

### **Key Stage 3 - Outcomes at First Instance**

- If a positive Refugee Status (RS) recommendation is received, the client should be written to confirming: the outcome of the application; the fact that they will receive further correspondence from the Department of Justice and Equality (DJE) explaining the implications of Protection status; and that the solicitor will be closing the file.
- If a negative Refugee Status recommendation is received and positive Subsidiary Protection (SP) recommendation is received, the client should be written to confirming: the outcome of the application; the fact that they will receive further correspondence from the Department of Justice and Equality (DJE) explaining the implications of Subsidiary Protection status; and take the applicant's instructions re. the possibility of appealing the negative Refugee Status recommendation.
- Negative RS/SP and positive Permission to Remain (PTR) recommendation: the client should be written to confirming: the outcome of the application; the fact that they will receive further correspondence from the Department of Justice and Equality (DJE) explaining the implications of being granted PTR; and take the applicant's instructions re. the possibility of appealing the negative RS/SP recommendation.
- Negative RS/SP/PTR: The Solicitor shall review the recommendation of the International Protection Office and take the applicant's instructions as to whether they wish to appeal the negative RS/SP recommendation to the IPAT. If the client instructs that they want a review by the Minister of their PTR claim, the request must be made within 5 days of the negative RS/SP appeal decision from the IPAT.
- IF the client is not appealing or seeking a review - a letter should be sent to the client notifying them that the case is completed and file will be closed.

### **Key Stage 4 – Filing an Appeal**

- The Solicitor shall review the recommendation of the IPO and arrange a consultation within the timeframe for lodging an appeal to advise on the reasons for refusal and take the applicant's instructions.
- Where an applicant fails to attend for a consultation, the office should attempt to contact the applicant by telephone and to give them an opportunity to explain their reasons for missing the appointment.
- A further appointment may be offered should there be sufficient time prior to the expiry of the time period for filing a Notice of Appeal.
- No Appeal should be filed in the absence of any current clear instruction in that regard. The instruction can only be made after the recommendation of the IPO has been notified to the client.
- Solicitors must be mindful of the urgency of making an appeal and that specified deadlines must be met.

### **Oral appeals and appeals on the papers**

The applicant should confirm whether they wish to have an oral hearing and the solicitor should:

- Explain the procedure of the oral hearing to the applicant. If the client instructs that they do not wish to avail of an oral hearing, take instructions as to the

reasons and have the applicant sign an Authority confirming that they do not wish to avail of an oral appeal hearing.

- If a solicitor forms the view that, notwithstanding an applicant's right to opt for an oral appeal, it is in the applicant's best interests to opt for an appeal on the papers, the solicitor should prepare a detailed attendance setting out the advice to the applicant and confirm that advice by letter. A Notice of Appeal submitted in such a case must be submitted in as much detail as if the applicant had not been entitled to an oral appeal.
- In the event that the matter is proceeding to an oral hearing, outline the type of questioning and the issues that may arise at the hearing; have the client sign the Notice of Appeal; ascertain whether an interpreter is required for the oral hearing and if so, seek specific details in relation to language and dialect.

### **Documentation**

A solicitor should ask the applicant to provide any documentation, including any identity and supporting documentation, and official documents/ correspondence relating to their application, including the envelope in which the documents were received.

### **Appeal Forms**

The solicitor should select the correct appeal form. Appeals must be submitted within the required time-limit indicated on the refusal letter.

#### **Notice of Appeal - Refugee and Subsidiary Protection Status Appeal (Form 1)**

This form is used if the applicant is appealing the recommendation not to grant Refugee Status, or the recommendation to grant neither Refugee Status nor Subsidiary Protection Status.

#### **Notice of Appeal - Inadmissible Status Appeal (Form 2)**

This form is used if the applicant is appealing the decision that their international protection application was deemed inadmissible

#### **Notice of Appeal - Subsequent Status Appeal (Form 3)**

This form is used if the applicant is appealing the decision that a subsequent protection application should not be accepted.

#### **Notice of Appeal - Dublin III**

This form is used if the applicant is appealing the decision not to grant Refugee Status under the Dublin III System Regulations.

The solicitor should clarify with the applicant whether any documentation or other proofs may be obtainable prior to the submission of the Notice of Appeal/oral hearing.

**All Notices of Appeal must:**

(a) Contain the applicant's name; applicant's temporary residence certificate number; country of origin; date of birth; ethnic group; religion; area of former habitual residence in country of origin; profession.

(b) Set out any other bio-data relevant to the claim; identify any changes to the biodata previously provided in relation to the claim as well as explanations of differences where they arise.

(c) Be responsive to the grounds of refusal.

(d) Be case specific.

(e) Identify the Convention reason(s).

(f) Cite relevant COI information that supports the claim. This information must be specific to the applicant's claim and be set out in a detailed and nuanced manner.

(g) Where submissions in relation to errors of law are made include a statement of the law, including UNHCR Handbook, relevant legislation, jurisprudence (national and international) and any relevant statements from leading scholars. The stated position of the law should be applied to the facts of the applicant's case.

(h) Where submissions are made in relation to errors of fact arising from the International Protection Office (IPO) recommendation, including negative/adverse credibility findings, these must be clarified and specifically addressed. The Notice of Appeal should incorporate a summary of the error of fact; the clarification provided by the applicant (in his or her words); and an explanation for the error of fact where applicable.

(i) Address any procedural issues arising from the first instance interview. The procedural irregularity should be explained, as well as a statement provided from the applicant regarding how this affected his or her ability to present his/her claims.

(j) Make a case as to why the applicant should be recognised as a refugee and/or beneficiary of subsidiary protection.

(k) Identify any witnesses who are required to attend the oral hearing; and

(l) Identify the language and dialect of interpreter if required for oral hearing.

(m) Be accompanied by relevant and clearly marked Country of Origin Information and redacted decisions. In the event that same is unavailable at the time the Notice of Appeal is lodged, the COI should be made available at the earliest opportunity thereafter, particularly where no oral hearing is to take place. The IPAT should be advised that further documentation shall follow in the cover letter.

(n) Once the Notice of Appeal is drafted, the solicitor should sign as legal representative. Should the applicant fail to return/ to sign his/her Notice of Appeal, submit the unsigned Notice of Appeal to the IPAT in any event where you have received instructions from the applicant.

**Appeal forms can be submitted to:**

The International Protection Appeals Tribunal

6/7 Hanover Street East

Dublin D02 W320

Tel: +353 (0) 1 474 8400

Scanned by Email to: [info@protectionappeals.ie](mailto:info@protectionappeals.ie)

**Key Stage 5 – IPAT Hearings and Recommendations**

The IPAT will notify the Law Centre once a date for the oral hearing has been scheduled. The solicitor is expected to represent the applicant at the hearing which will be held in the offices of the IPAT in Hanover Street on the date specified.

**Recommendations from International Protection Appeals Tribunal (IPAT)**

If IPAT affirms the negative recommendations from the IPO the solicitor should advise the applicant of options open to them including:

- The possibility of voluntary repatriation
- Advice regarding any possible grounds for judicial review;
- 5 day statutory time-limit for review of refusal of PTR.

**Permission to Remain Applications**

The applicant should be asked to keep the Minister and the solicitor informed of significant changes in circumstances that might affect the application (and provide supporting documentation) - in particular, but not limited to:

- Any changes to their family's circumstances or composition;
- Any changes to their marital status; and
- Any major changes to their health.

Sections 49(6) (b) and 49(9) (b) of the IPA 2015 not only allow but *oblige* an applicant to inform the Minister of any change in circumstances which occurs (i)

between the initial application for protection and the making of the IPO protection recommendation and (ii) during the 5 day period following the receipt by the applicant of the protection appeal decision by the IPAT. A permission to remain refusal under s.49(4) is covered by the special provisions relating to judicial review contained in s.5 of the *Illegal Immigrants (Trafficking) Act 2000*, and it therefore must be challenged by way of judicial review within 28 days.

### **Statutory Deadline Missed**

In the unlikely event of a statutory deadline being missed, either through your or the applicant's fault, the solicitor should immediately furnish the IPAT with an application for an extension of the time within which to lodge the appeal (which is available in the body of the appeal form). The Managing Solicitor must be notified immediately if it is an in-house Board client. PPs should notify the Board immediately in circumstances where a request for an extension is refused.

### **Judicial Review**

General advice to the applicant should include at all stages whether there are grounds for the institution of judicial review proceedings. If you are of the view that judicial review issues arise at any stage you should notify the applicant immediately.

### **Withdrawals from the process**

If the applicant wishes to withdraw from the International Protection process you should advise him/her of the consequences and seek the applicant's written instructions and reasons for withdrawal.

### **Identifying potential victims of human trafficking**

The solicitor should be aware of the definition of a victim of trafficking.

A victim of trafficking is a person who:

- Has been transported, recruited, and/or harboured [either] within a country and/or across transnational borders;
- By the use or threat of: fear, fraud, force, deception, coercion, and/or abduction;
- For the purposes of abuse, or the giving or receiving of payments and/or benefits;
- For the purpose of being exploited for labour, sexual exploitation or removal of organs.

When children and mentally impaired persons are trafficked, no violence, deception, or coercion needs to be involved. In such exploitative conditions simply transporting or harbouring constitutes trafficking.

Where it appears to a solicitor that a client may be a victim of trafficking, the client should be immediately referred to An Garda Síochána. The solicitor may also need to consider referring the client to a relevant agency.

### **Unaccompanied Minors**

If a solicitor becomes aware that a client may actually be an unaccompanied minor they should contact the Board's Unaccompanied Minor's Unit-  
smithfieldseparatedchildren@legalaidboard.ie.

### **Post IPO Interview/Review Positive Permission to Remain Recommendations**

If a positive Permission to Remain (PTR) recommendation is received following a Ministerial review, the client should be written to confirming:

- The outcome of the application;
- The fact that they will receive further correspondence from the DJE explaining the implications of their status; and
- That the law centre will be closing its file.

If a positive PTR recommendation is received at IPO interview stage, the applicant may wish to let the PTR stand if appealing negative Refugee Status or Subsidiary Protection recommendations.

A client is not to be assisted in the registration process with the Garda National Immigration Bureau following a positive decision as this is an administrative matter to be addressed by the client.