

Immigration and Asylum Accreditation Scheme

Standards and guidance – senior caseworker level

July 2009

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Introduction

Immigration advisers can apply for accreditation under the Immigration and Asylum Accreditation Scheme at one of four levels:

- probationer (which allows advisers to work at the probationer level for a period of twelve months after which they must successfully achieve accredited caseworker standard)
- accredited caseworker
- senior caseworker
- advanced caseworker

The scheme is based on a set of standards.

The standards identify the key knowledge and skills an individual must be able to demonstrate in order to be accredited at that level. The knowledge and skills will be assessed against the standards during the formal assessment process. Candidates who do not demonstrate that they meet the standards on assessment will not be accredited.

To assist candidates in preparing for the assessments, some guidance has been prepared on the statutory, policy and judicial material with which candidates might be expected to be familiar. However, it is the candidate's responsibility to ensure that their knowledge is current and addresses all of the areas covered by the standards. The Law Society cannot guarantee that the guidance will remain complete or up to date.

The standards

The broad standards set out the key knowledge and skills advisers should have at each level. The standards also identify the depth of knowledge required for each area at each level of the scheme. In order to identify the depth of knowledge required at each level, the Law Society has specified whether candidates need to have 'awareness', 'knowledge' or 'understanding' of particular areas. For the purposes of these standards, awareness, knowledge and understanding have been defined as follows:

- Understanding** the identification, assimilation and comprehension of information. Members can correctly paraphrase or summarise information and can relate it to other material, including its practical application.
- Knowledge** familiarity with specific information, including facts, definitions, rules, methods, process or settings, without necessarily being able to see its fullest implication or application.
- Awareness** acquaintance with general concepts, topics, rules, methods or procedures, without necessarily being able to summarise or paraphrase information. Members should be able to identify the limits of their awareness and be able to refer to source material for more in-depth knowledge.

For example, if you are applying to become an accredited caseworker, you need to have 'awareness' of 'the structure and sources of immigration law' but if you are applying to become a senior caseworker, you need to have 'knowledge' of the 'structure and sources of immigration law'.

It has been recognised that senior caseworkers may wish to specialise in either immigration or asylum law. To reflect this, generic standards have been drafted which all senior caseworkers must meet together with specific additional standards for either immigration or asylum specialists.

The standards have been divided into key areas:

Immigration law covers the system of immigration control in the UK and the operation of the immigration rules, aside from those matters which have a pure business dimension.

Business immigration covers the commercial dimension to immigration applications.

Asylum law and practice addresses the procedures and substantive laws regarding refugees and their claim to remain in the UK, including issues such as welfare and support whilst in the UK.

Human rights addresses the law regarding the European Convention on Human Rights in so far as it impacts on immigration cases.

EEA free movement law deals with the law of free movement within the European Community.

Nationality comprises the law regarding the acquisition of British Citizenship.

Race relations deals with race discrimination claims within immigration, nationality and asylum work.

Appeals deals with the right of appeal to, and procedures within, the Asylum and Immigration Tribunal.

Detention and bail deals with the loss of liberty sometimes suffered by immigrants and their potential remedies against that loss.

Offences deals with the major criminal offences under the immigration legislation.

Welfare/support requires a basic knowledge of the circumstances in which employment is prohibited for persons subject to immigration control and for asylum seekers.

Ethics sets out the key professional and ethical rules which are relevant to the work of the legal representative.

Public funding indicates the types of public funding available for immigration, asylum and nationality applicants under Legal help and controlled Legal Representation.

Skills cover communications with clients and third parties, evaluation of evidence, problem solving, identification of issues, drafting, research and referral to other professionals.

The guidance

Each of the standards at each level is accompanied by detailed guidance. The guidance is simply intended as a helpful expansion of the standards and is not an exhaustive list of legislation or material. There is no guarantee that you will pass the assessments simply by knowing the material and legislation in the guidance. Equally, there is no guarantee that the questions in the assessments will be restricted to the material in the guidance. The guidance should, however, provide you with a useful reference list for the key areas. You should also be aware that, although the guidance will be updated from time to time, it is the responsibility of individual advisers to make sure that they are aware of any changes in legislation and practice.

The guidance includes details of particular cases, specifically identifying the principle within each case for which it is deemed noteworthy. This case law is intended to provide guidance on the key legal principles of which candidates need to be aware. You will not be assessed on all of the cases. You should be able to research and identify which cases are relevant to a matter.

Standards for senior caseworker level – general

Knowledge of law and procedure

Immigration law

- knowledge of the structure and sources of immigration law, including the personnel exercising immigration control and their powers
- knowledge of who is subject to immigration control
- knowledge of the terms used in immigration control
- knowledge of the primary and secondary legislation relating to immigration in the UK
- understanding of the structure and operation of the immigration rules
- knowledge of the concessions and policies which operate outside the rules and how to use and apply these to individual cases
- knowledge of the procedures in relation to applications to the Home Office and entry clearance officers
- knowledge of leading cases relating to the interpretation of immigration law by the courts, such leading cases to be set out from time to time in the Guidance
- knowledge of the types of immigration decision that may be made in an individual's case dependent on the stage of the entry or expulsion process that they have reached

Asylum law and practice

- knowledge of the definition of a refugee under Article 1(A)(2) of the 1951 Refugee Convention for persons with a single nationality, for the stateless, and for dual nationals

- knowledge of European Community law such as the Refugee Qualification Directive and the domestic implementation of that Directive which impact on asylum seekers
- knowledge of issues which the Home Office routinely raise including statutory issues of credibility
- knowledge of who can be excluded from being a refugee under the 1951 Convention and under the Refugee Qualification Directive and on what basis
- knowledge of the procedure for making an asylum application – applications, screening, substantive interviews, the New Asylum Model
- knowledge of leading cases relating to the interpretation of the Refugee Convention by the domestic courts, such leading cases to be set out from time to time in the Guidance
- knowledge of ‘safe third country’ procedures namely the Dublin (II) Regulation and remedies against third country removal and the grounds which can be argued in the course of such remedies
- awareness of the consequences of making an asylum application within the currency of leave to remain or at any stage of the expulsion process
- awareness of accelerated procedures and to whom they apply
- knowledge of consequences of grant of refugee status - the form of leave to remain granted to refugees, family reunion issues under the immigration rules and under the Home Office policy outside the rules, and the procedure for obtaining travel documents
- knowledge of the procedures for unaccompanied asylum seeking children

Human rights

- knowledge of the rights protected by Articles 2-14 of the European Convention on Human Rights (ECHR) and of the most important Protocol rights
- knowledge of the difference between absolute, limited and qualified rights
- knowledge of leading cases relating to the interpretation of the ECHR by the European Court of Human Rights and the domestic courts, such leading cases to be set out from time to time in the Guidance
- awareness of the consequences of making an application with a human rights dimension within the currency of leave to remain, at any stage of the expulsion process or from abroad
- understanding of the criteria and process for Humanitarian Protection and Discretionary Leave

European economic area (EEA) free movement law

- knowledge of which countries are members of the EEA and which have recently acceded to the EU and are treated as special cases – ie, the ‘A8’ and ‘A2’ countries

- knowledge of the status of EC law treaties, and of the operation of EC free movement law in the UK context in so far as it is set out in the Immigration (EEA) Regulations 2006
- knowledge of the Romanian/Bulgarian and Turkish association agreements
- knowledge of the application procedures for family and residence permits
- knowledge of impact of EC law on third country nationals
- knowledge of leading cases relating to the interpretation of EC Free Movement law by the European Court of Justice and the domestic courts, such leading cases to be set out from time to time in the Guidance
- awareness of EU treaties that impact on reciprocal rights to benefits/healthcare.

Nationality

- awareness of who is entitled to British Citizenship for those born prior to coming into effect of British Nationality Act 1981
- knowledge of who is entitled to British Citizenship under the British Nationality Act 1981 under its provisions regarding birth or adoption in the UK, acquisition by descent through being born abroad, and registration under section 3 of the Act
- knowledge of the different means of acquiring and losing citizenship – through entitlement by operation of law, registration or naturalisation
- knowledge of the criteria/requirements for naturalisation or registration as a British citizen
- knowledge of the procedures for naturalisation or registration as a British citizen
- awareness of the Home Office's Nationality Instructions (NIs)

Business immigration

- awareness of the criteria for the issue of work permits by Work Permits (UK)
- awareness of other categories of business related entry to the UK
- awareness of the programmes that manage business related entry to the UK

Appeals

- understanding of the structure and remedies available in the Asylum and Immigration Tribunal
- understanding of the time limits for appealing
- understanding of the legislative provisions in relation to the right of appeal
- understanding of procedures on appeal, review and reconsideration – including case management review hearings and the importance of compliance with directions

- awareness of the remedies available (judicial review, applications to the Court of Appeal) outside the Asylum and Immigration Tribunal
- understanding of the one-stop process and of the limitations on one-stop appeals contained in the relevant legislation
- knowledge of leading cases relating to the interpretation of the right of appeal, such leading cases to be set out from time to time in the Guidance
- awareness of the Special Immigration Appeals Commission

Detention and bail

- knowledge of the circumstances in which detention is thought justified by the immigration authorities and the factors to be taken into account in determining whether detention is the right course of action
- knowledge of when an application for bail can be made
- knowledge of remedies for detainees – temporary admission, habeas corpus, bail from a chief immigration officer or other authorised person
- knowledge of the procedure for making a bail application to the Asylum and Immigration Tribunal

Offences

- knowledge of what actions may constitute an offence under the immigration legislation including the possibility that offences may be committed by the practitioner, the client or other third parties

Welfare/support

- awareness of the criteria and process relating to travel documents, work, benefits and education for recognised refugees or persons with discretionary leave/humanitarian protection
- knowledge of the main provisions relating to benefits/support for persons subject to immigration control and for asylum seekers, including benefits for children

Ethics

- understanding of the professional and ethical rules relating to confidentiality and conflicts, the independence of the legal representative, their duty to act in the best interests of the client, to maintain a proper standard of work and their duty to the court

Race relations

- awareness of the amendments to the Race Relations Act 1976 and the applicability of race discrimination claims to immigration, nationality and asylum work
- awareness of the remedies available within and outside the immigration appellate structure where claims of racial discrimination by immigration authorities may arise
- awareness of the scope of the provisions relating to race discrimination claims, in particular the limitations on the types of claims available and the permissible exceptions to racially discriminatory behaviour

Public funding/legal aid

- understanding of the types of public funding available for immigration, asylum and nationality applicants under legal help and controlled legal representation
- understanding of the relevant tests – sufficient benefits, means and merits – to be applied in order to assess eligibility for legal help and controlled legal representation

For non-publicly funded work

- awareness of the types of public funding available for immigration, asylum and nationality applicants under Legal Help and Controlled Legal Representation
- awareness of the relevant tests – sufficient benefits, means and merits – to be applied in order to assess eligibility for Legal Help and Controlled Legal Representation

Essential skills and abilities

- good analytical skills to enable the representative to identify problems and apply the law accordingly
- good standard of drafting and written skills in order to draft written representations, grounds of appeal and competent and clear instructions to Counsel
- excellent communication skills, including the ability to engender trust with the client and to take clear instructions and to give advice on substantive law and procedure
- the ability to explain complex legal provisions in a clear and straightforward manner applicable to the level of understanding of the client
- the ability to take and prepare clear statements of evidence – at initial application and appeal stage – the ability to include all pertinent and relevant information
- ability to identify the need for and use of appropriate interpreters
- ability to identify and refer problems relating to other matters such as welfare, mental health, community care, benefits, housing, family, debt or other social care matters to the appropriate agencies
- ability to identify, obtain and use relevant and appropriate information such as country information or other evidence including the ability to exclude irrelevant information
- ability to identify or advise where referral to other professionals may be appropriate and an ability to instruct appropriate experts and to have regard to the ethical problems which might arise such as confidentiality or conflict of interests
- ability to appreciate the importance of obtaining corroborative medical evidence 26.1-26.17 of the ILPA Best Practice Guide on Presenting Asylum and Human Rights Appeals, and the key points in instructing an expert in the 'key points' at chapters 21–23 thereof
- Awareness of the existence of the 'Istanbul Protocol', the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- ability to appreciate the importance of obtaining corroborative country expert evidence as set out in the key points at chapter 20 of the ILPA Best Practice Guide on Presenting Asylum and Human Rights Appeals

Aptitude and ethics

- ability to instruct and work with other professionals
- understanding of and ability to comply with the relevant professional obligations and duties
- understanding of guidance issued by the Solicitors Regulation Authority and others in relation to duties to clients, the courts and the Home Office or other official bodies
- ability to identify issues or events that give rise to a conflict of interest and the ability to act appropriately
- sensitivity to understand cultural, gender and disability issues that may arise in the course of a case
- ability to deal appropriately with particularly vulnerable clients and sensitive issues

Standards for senior caseworker level – immigration specialist

Knowledge of law and procedure

Immigration law

- understanding of the structure and sources of immigration law, including the personnel exercising immigration control and their powers
- understanding of who is subject to immigration control
- understanding of the terms used in immigration control
- understanding of the primary and secondary legislation relating to immigration in the UK
- understanding of the structure and operation of the immigration rules
- understanding of the concessions and policies which operate outside the rules and how to use and apply these to individual cases
- understanding of the procedures in relation to applications to the Home Office and entry clearance officers
- understanding of the types of immigration decision that may be made in an individual's case dependent on the stage of the entry or expulsion process that they have reached
- understanding of leading cases relating to the interpretation of immigration law by the courts, such leading cases to be set out from time to time in the Guidance

European economic area (EEA) free movement law

- understanding of the status of EC law treaties, and of the operation of EC free movement law in the UK context in so far as it is set out in the Immigration (EEA) Regulations 2006, including rights of appeal and restrictions thereon
- understanding of the Turkish association agreement (the Ankara Agreement)
- understanding of impact of EU law on third country nationals
- knowledge of EU treaties that impact on reciprocal rights to benefits/healthcare
- understanding of leading cases relating to the interpretation of EC Free Movement law by the European Court of Justice and the domestic courts, such leading cases to be set out from time to time in the Guidance

Business immigration

- knowledge of the structure and operation of business related entry to the UK including the managed migration programme
- knowledge of other categories of business related entry to the UK
- knowledge of the programmes that manage business related entry to the UK

Standards for senior caseworker level – asylum specialist

Knowledge of law and procedure

Asylum law

- understanding of the definition of a refugee under Article 1(A)(2) of the 1951 Refugee Convention for persons with a single nationality, for the stateless, and for dual nationals
- understanding of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
- understanding of issues which the Home Office routinely raise including statutory issues of credibility
- understanding of the procedure for making an asylum application – applications, screening, substantive interviews
- understanding of the consequences of making an application at a port of entry or after entry
- understanding of accelerated procedures and to whom they apply
- understanding of the criteria and the process for family reunion for refugees inside and outside the immigration rules
- knowledge of the criteria and process relating to travel documents, work, benefits and education for recognised refugees

- knowledge of the processes involved if the immigration authorities raise issues of national security
- knowledge of the Special Immigration Appeals Commission
- knowledge of 'safe third country' procedures namely the Dublin (II) Regulation and remedies against third country removal and the grounds which can be argued in the course of such remedies
- understanding of the procedures for Accompanied and Unaccompanied Asylum Seeking Children
- understanding of leading cases relating to the interpretation of the Refugee Convention by the domestic courts, such leading cases to be set out from time to time in the Guidance

Human rights

- understanding of the rights protected by Articles 2-14 of the European Convention on Human Rights and of the most important Protocol rights
- understanding of the difference between absolute, limited and qualified rights
- understanding of leading cases relating to the interpretation of the European Court Human Rights (ECHR) by the ECHR and the domestic courts, such leading cases to be set out from time to time in the Guidance
- understanding of the consequences of making an application with a human rights dimension within the currency of leave to remain, at any stage of the expulsion process or from abroad
- understanding of the criteria and process for humanitarian protection and discretionary leave

Detention and bail

- understanding of the circumstances in which detention is thought justified by the immigration authorities and the factors to be taken into account in determining whether detention is the right course of action
- understanding of when an application for bail can be made
- understanding of other remedies for detainees – temporary admission, habeas corpus, bail from a chief immigration officer (CIO) or other authorised person
- understanding of the procedure for making bail applications to the Asylum and Immigration Tribunal

Welfare/support

- knowledge of the main provisions relating to benefits/support for asylum seekers, including benefits for children

Guidance for senior caseworker standards – general

The guidance is simply intended as a helpful expansion of the standards and is not an exhaustive list of legislation or material. You should also be aware that, although the

guidance will be updated from time to time, it is the responsibility of individual advisers to make sure that they are aware of any changes in legislation and practice. The Home Office policies are a living document and the references given here will not necessarily remain current.

Immigration law

Knowledge of the structure and sources of immigration law, including the personnel exercising immigration control and their powers

- the content of the Immigration Directorate instructions
 - specifically chapter 1 section 5 (Section 3C of the 1971 Act), chapter 1 section 15 (Authority to Marry in the United Kingdom);
 - regarding students: IDIs Apr 07 chapter 3 paragraph 3.2 (fees), 3.4 (DfES' Register of Education and Training Providers), 11–11.2.2 (student switching), 17.4 (student earnings), 18.1 (student employment),
 - regarding spouses: IDIs Mar 06 chapter 8 section 1 (spouses) chapter 8 section 4 paragraphs 1–4 'Victims of Domestic Violence', Annex F to chapter 8 section 1 (maintenance and accommodation of spouses, civil partners and fiancés) paragraphs 3–6.3
 - regarding children: IDIs Aug 03 Annex M to chapter 8 section 3 (Children) paragraphs 5–9 on children, and paragraphs 4.1–4.4 of Annex M to chapter 8 section 3 (children) on 'Sole Responsibility',
 - chapter 13 section 2 para 3 (administrative removal) 'Factors to be taken into account'
 - IDIs Feb 04 chapter 20 section 1 paragraphs 1–2.2 (illegal entrants)
 - IDIs Apr 06 chapter 24 section 10 paragraphs 1–3 (Data Protection Act, Subject Access Requests),
 - IDIs Apr 06 chapter 24 section 11 paragraphs 1–2.2 (Freedom of Information Act))
- the content of the operational enforcement manual
 - specifically chapters 10 (persons liable to administrative removal under section 10, paras 10.1–10.3) and 36 (extenuating circumstances [regarding the removal of persons who have entered the United Kingdom unlawfully], paras 36.1–36.4)
- the content of the Diplomatic Service Procedures
 - specifically paragraphs 1.3 (leave to enter), 1.4 (validity of entry clearance and leave to enter), 1.6 (where is entry clearance obtained), 1.9 (what happens on arrival in the UK), 7.2 (fees: who pays and how much), 8.10 (undertakings by the applicant, sponsor or others), 9.3 (maintenance: general requirements), 9.5–9.12 (maintenance and accommodation, excluding the content of letters to local authorities), 10.6 (business (or employment-related) visits), from chapter 12 on studies: 12.3.1–12.3.2 (what type of entry clearance to give), 12.17 (evidence of acceptance on a course), 12.19 (ability to follow a course), 12.21 (switching and extensions),

12.22 (employment during periods of study), 12.24 (evidence of ability to fund accommodation), 13.9–13.14 (evidence of freedom to marry and impediments to marriage in the UK, validity of marriages, requirement to have met, intention to live together: residence after arrival in the UK, unmarried and same-sex partners and how they qualify), 14.5–14.6 ('sole responsibility' and 'serious and compelling family or other reasons'), 15.3–15.4 ('no close relatives to turn to for financial support' and 'living alone outside the UK in the most exceptional compassionate circumstances'), 16.1–16.3(i) (family reunion: introduction, eligibility of applicants for family reunion, and eligibility for sponsoring family members where sponsor has full refugee status), 18.3–18.4 (au pairs and working holiday makers), 20.3–20.5 (returning residents - assessing the application, exception to the two year rule for those who have strong ties with the UK and exception to the two year rule for holders of certain UK passports), 21.4.2–21.4.3 (re EEA nationals, work seekers and benefits), and 26.2–26.2.2 (applications which do not attract the right of appeal, processing non-appealable applications and review of non-appealable refusals)

- the interaction between the immigration rules and the Immigration Directorate Instructions, the Operational Enforcement Manual and the Diplomatic Service Procedures
- the powers of arrest and search held by immigration officers

Knowledge of who is subject to immigration control

- key principles of immigration control - the right of abode, entry clearance and the relevance of being a visa national, leave to enter and leave to remain

Knowledge of the terms used in immigration control

- the common terms encountered in immigration as appear from time to time in the Glossary of the Immigration, Nationality and Refugee Law Handbook of the Joint Council for the Welfare of Immigrants

Knowledge of the primary and secondary legislation relating to immigration in the UK

- how to determine which provisions of primary and secondary legislation are relevant to the client's case

Understanding of the structure and operation of the immigration rules

- all categories of entry under the immigration rules
- the key concepts within the immigration rules – maintenance, accommodation, public funds, intention to leave the country at the end of a period of leave, intention to live together permanently
- how to identify whether a particular category of entry can lead to settlement, whether switching is permitted, and what period of leave an applicant under a particular rule can anticipate receiving
- the mandatory and discretionary general grounds for refusal within part 9 of the Immigration Rules
- ability to identify how to determine the criteria for a grant of leave for a particular category of applicant under the rules

- the procedures that people who are subject to immigration control who wish to marry in the UK must follow

Knowledge of the concessions and policies which operate outside the rules and how to use and apply these to individual cases

- how to identify whether there is a policy outside the immigration rules that is relevant to the facts of a client's case
- where to locate policies outside the immigration rules
- the Home Office policy on students and working (Diplomatic Service Procedures Chapter 12 para 12.22)
- the Home Office policies regarding the concession granting indefinite leave to remain for asylum seekers with children (API One-Off Exercise To Allow Qualifying Asylum Seeking Families To Stay In The UK)
- the concession for families with children who have been in the UK for seven years (found in the case of *Tozrukaya R (on the application of) v Secretary of State for the Home Department* [2006] EWCA Civ 379)
- Home Office policy DP3/96 (OEM Chapter 36)
- the policy on elderly dependent relatives and young women living alone (IDI of September 2005, Chapter 8 Section 6 para 3.2)
- the policy on carers (IDI of June 2001, Chapter 17 Section 2 para 1–4.1)
- the concession regarding degree-level and certain other students and their intention to leave the UK (DSP 12.21), and other key policies as notified from time to time in the mailshots of the Immigration Lawyers Practitioners Association

Knowledge of the procedures in relation to applications to the Home Office and entry clearance officers

- the appropriate application form for each category of entry, knowledge of fees for immigration applications, and knowledge of what documentation should be obtained to ensure that a criteria of the immigration rules is satisfied
- the consequences of failure to make an application within time or on the appropriate prescribed form

Knowledge of leading cases relating to the interpretation of immigration law by the courts, such leading cases to be set out from time to time in the Guidance

- the principle in *KA and Others (Adequacy of maintenance) Pakistan* [2006] UKAIT 00065 that the level of income support represents the minimum level at which the maintenance requirements of the rules will be satisfied
- the principle in *Saghir Ahmed (8260)* that the 'exclusive occupation' requirement within those rules that refer to 'accommodation' is satisfied by shared accommodation provided that the couple have at least a room to themselves
- the principle in *OS (10 years' lawful residence) Hong Kong* [2006] UKAIT 00031 that the terms of the concession are not necessarily to be used as an aid to interpretation of the rules: however a person who does not meet the requirements of

the rules may have the benefit of the Secretary of State's exercise of discretion in his favour under the concession

- the principle in Kwok On Tong that an Immigration Judge cannot allow an appeal on the ground that the decision was not in accordance with the Immigration Rules unless satisfied that the requirements of the Immigration Rules were (or are, as appropriate) met: see RM (Kwok On Tong: HC395 para 320) India [2006] UKAIT 00039
- the principle in TB (Student application, variation of course, effect) Jamaica [2006] UKAIT 00034 that a student immigration appeal cannot succeed where the nature of the change of course between application and appeal was such that the Appellant could not comply with the requirements of the Immigration Rules in relation to the course for which she had initially applied
- the principle in TD (Paragraph 297(i)(e): 'sole responsibility') Yemen [2006] UKAIT 00049 that Sole responsibility' is a factual matter to be decided upon all the evidence, the test being whether the parent has continuing control and direction over the child's upbringing, including making all the important decisions in the child's life
- the principle in JL (Domestic violence: evidence and procedure) India [2006] UKAIT 00058 that where a valid application has been made under the domestic violence rule, the immigration judge is not confined on an appeal to the evidence 'required' by the Secretary of State
- the principle in SW and Others (Paragraph 60 (v): meaning of 'including') Jamaica [2006] UKAIT 00054 that at applicant for extension of leave as a student is required to show that they have both taken and passed any 'relevant examinations'
- the principle in AK & Others (Long-term third party support) Bangladesh [2006] UKAIT 00069 that the evidence needed to establish the availability of short term third party support may be satisfied comparatively readily by satisfactory evidence of the genuineness of intent and the present existence of sufficient surplus funds, but that a long term commitment to third party funding, especially to one who is neither an ascendant nor descendant relative, requires more detailed and broader evidence
- the principle in EA (Section 85 (4) explained) Nigeria [2007] UKAIT 00013 that an appeal on immigration grounds can succeed only by showing that the application that he made would be successful at the date of the hearing
- the principle in SZ (Applicable immigration rules) Bangladesh [2007] UKAIT 00037 that there is no general duty on the Tribunal to consider whether a claimant's case if differently presented or if made the subject of a different application might have succeeded on a different basis from that on which the application or claim was made; however that exceptionally the facts of a case or the terms of a notice of decision may require the Tribunal to consider the appeal on a number of alternative bases
- new cases of fundamental importance to the practitioner from when they are identified as such via resources such as the Electronic Immigration Network and mailshots of the Immigration Lawyers Practitioners Association

Knowledge of the types of immigration decision that may be made in an individual's case dependent on the stage of the entry or expulsion process that they have reached

- extensions, variations and curtailments of leave, illegal entry, overstaying, administrative removal and removal directions, and deportation orders
- indefinite leave to remain and the grant of citizenship

Asylum law and practice

Knowledge of the definition of a refugee under Article 1 (A) (2) of the 1951 Refugee convention for persons with a single nationality, for the stateless, and for dual nationals

- the constituents of the Refugee Definition – ie, the meaning of well founded fear, persecution, Convention reason, state protection, including an ability to recognise which facts of a client's claim are relevant to each of these concepts
 - Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Preamble 10–12, 14–15, Articles 1–33, 38)
 - The Refugee or Person in Need of International Protection (Qualification) Regulations 2006
 - Immigration rules HC 395 Parts 11, 11A and 11B
 - the application of the Refugee Convention to clients who are stateless
 - the application of the Refugee Convention to clients who are dual nationals
 - the main sources of country information
 - the existence of the Anti-terrorism, Crime and Security Act 2001 and the Terrorism Act 2000
 - the Asylum Policy Instructions (APIs)
 - the Asylum Policy Instructions (APIs), specifically the following APU Notices
 - Amendment to Discretionary Leave Policy relating to Asylum Seeking Children
 - one-off exercise to allow qualifying asylum seeking families to stay in the UK
- and the following Asylum Policy Instructions:

Discretionary leave

- Appeals – one-stop procedure
- Applications from abroad (para 1.1)
- Application registration card (paras 1–2.1)
- Humanitarian protection (API Oct 2006: paras 1–5, 7–12.)

- Illegal entry (paras 1–2)
 - Interviewing (API 2006 paras 1–15.7, and the protocol governing the conduct of substantive interviews and the roles of interviewing officers, representatives and their interpreters)
 - Medical Foundation (paras 1–2.2)
 - Non-compliance (Version 6 021006 para 1.1)
 - Refugee leave (Version 2 131006)
 - Section 31 and Article 31 (API Oct 2006 paras 1–2, 5, 8–10)
 - United Nations' High Commissioner for Refugees (UNHCR) (para 1)
- best practice surrounding vulnerable people, including minors and those who are mentally incapacitated, including the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, paragraphs 206–219

Knowledge of issues which the Home Office routinely raise including statutory issues of credibility

- the importance of taking instructions without creating discrepancies
- the importance of addressing issues of plausibility when preparing statements
- the contents of immigration rules 339I and 339L–M, and section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004

Knowledge of who can be excluded from being a refugee and from humanitarian protection and on what basis

- the operation of the exclusion clauses under section 1(F) of the Refugee Convention, under the immigration rules 339A, 339D–H
- the operation of section 72 of the Nationality Immigration and Asylum Act 2002

Knowledge of the procedure for making an asylum application – applications, screening, substantive interviews

- the procedure for claiming asylum in the United Kingdom up to but not including refusal of asylum within normal procedures, but excluding accelerated procedures such as the 'fast track'
- procedures at Home Office interviews
- the meaning of key terms such as 'Statement of Evidence Forms' (SEFs)
- the 'one-stop' procedure
- the circumstances in which fresh claims for asylum might be made
- the availability of judicial review as a means of challenging refusal to accept a fresh claim
- the key concepts of the New Asylum Model – 'Asylum application process' within the 'Applying' section of the Home Office Border and Immigration Agency website

- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status

Knowledge of leading cases relating to the interpretation of the Refugee Convention by the domestic courts, such leading cases to be set out from time to time in the Guidance

- the principle in *Karanakaran v SSHD* [2000] Imm AR 271 that the benefit of the doubt should be given to an asylum seeker
- the principle in *R v Secretary of State for the Home Department, ex p Sivakumaran* [1988] Imm AR 147 that a fear of persecution is well founded if there is 'a reasonable degree of likelihood' of its occurrence
- the principle in *R v Uxbridge Magistrates' Court ex parte Adimi* [2001] QB 667 that there is no absolute requirement in international law that a refugee claim asylum in the first safe country they reach
- the principle in *Ahmed v Secretary of State for the Home Department* [2000] INLR 1 that future conduct in the country of origin is relevant to the existence of a risk of persecution
- the principle in *Horvath v Secretary of State for the Home Department* [2000] UKHL 37 that persecution is best defined as the sustained or systemic failure of state protection in relation to a core human right
- the principle in *Sepet and Bulbul v Secretary of State for the Home Department* [2003] UKHL 15 that there is no core human right regarding conscientious objection against military service
- the principle in *Krotov v Secretary of State for the Home Department* [2004] EWCA Civ 69 (11 February 2004) that an asylum seeker who faces personal association with military service breaching international standards could be entitled to refugee status
- the principle in *R v Secretary of State for the Home Department ex parte Adan* [1998] Imm AR 338 that a person who faces human rights abuses that arise from a civil war must show a risk of persecution over and above the normal risks of civil war – a 'differential impact'
- the principle in *Danian v Secretary of State for the Home Department* [1999] EWCA Civ 3000 that risks generated by actions carried out in bad faith, eg those brought about by making an unmeritorious asylum claim, do not exclude a person from refugee status
- the principle in *Shah and Islam v Secretary of State for the Home Department and Immigration Appeal Tribunal and Another* [1999] UKHL 20; [1999] 2 AC 629; [1999] 2 All ER 545 that persecution cannot define membership of a particular social group, that discrimination is relevant to the identification of a particular social group, and that women and homosexuals may be members of a particular social group depending on the circumstances of the society from which they come
- the principle in *K and Fornah* [2006] UKHL 46 that the family is a particular social group

- the principle in *Horvath v Secretary of State for the Home Department* [2000] UKHL 37 that the adequacy of protection against persecution is to be established by factors such as a criminal law which makes violent attacks punishable by sentences commensurate with the gravity of the crimes, the victims as a class not being exempt from the protection of the law, and the presence of a reasonable willingness by the law enforcement agencies, that is to say the police and courts, to detect, prosecute and punish offenders
- the principle in *AH (Sudan) & Ors v Secretary of State for the Home Department* [2007] EWCA Civ 297 that the reasonableness of internal relocation is to be assessed by a comparison between the asylum seeker's place of habitual residence and conditions in any place of relocation, based on the individual's own characteristics: If under those conditions the asylum-seeker cannot live a relatively normal life according to the standards of his country it will be unduly harsh to expect him to go to the safe haven
- the principle in *SM (Section 8: Judge's process) Iran* [2005] UKAIT 00116 that the evidence regarding the credibility of an asylum claim must be considered as a whole, notwithstanding that a factor identified in section 8 of the Asylum (Treatment of Claimants etc) Act 2004 may be present in the claim
- the principle in *HK v Secretary of State for the Home Department* that in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue in asylum cases where much of the evidence will be referable to societies with customs and circumstances which are very different from those of which decision makers have any experience
- the principle in *J v Secretary of State for the Home Department* [2006] EWCA Civ 1238 that before finding that an asylum seeker could on return to their country be expected to act with 'discretion' regarding their sexual identity the question must be asked whether that is something that they can reasonably be expected to tolerate
- new cases of fundamental importance to the practitioner from when they are identified as such via resources such as the Electronic Immigration Network and mailshots of the Immigration Lawyers Practitioners Association

Knowledge of 'safe third country' procedures namely the Dublin (II) Regulation and remedies against third country removal and the grounds which can be argued in the course of such remedies

- the Home Office policy to remove asylum seekers to safe third countries
- the lists of safe countries within Schedule 3 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004
- the limited grounds on which such decisions can be challenged the availability of judicial review as a means of challenging third country removal

Awareness of the consequences of making an asylum application within the currency of leave to remain or at any stage of the expulsion process

- the consequences of making an asylum application within the currency of leave to remain including the possibility of curtailment of existing leave to remain and the consequences for rights of appeal
- the consequences of making an asylum application at any stage of the expulsion process

Awareness of accelerated procedures and to whom they apply

- the accelerated procedures regarding 'clearly unfounded' asylum claims with non-suspensive rights of appeal, and of the 'fast track' in-country appeals process
- the grounds on which an asylum seeker might be dealt with under those processes, and the grounds which might permit their removal from the process

Knowledge of consequences of grant of refugee status - the form of leave to remain granted to refugees, family reunion issues under the immigration rules and under the Home Office policy outside the rules, and the procedure for obtaining travel documents

- the form of leave to remain granted to refugees
- family reunion under the immigration rules and under the policy outside the rules within paras 16.2–16.3 of the Diplomatic Service Procedures
- the procedure for obtaining travel documents

Knowledge of the procedures for asylum seeking children

- the procedures and principles regarding for Accompanied Children and Unaccompanied Asylum Seeking Children as set out in the Home Office Asylum Policy Instructions on Children
- the principle that the welfare of the child is the paramount consideration in decision making the need to ensure referral to the Refugee Council Children's Panel

Human rights

Knowledge of the rights protected by Articles 2-14 of the European Convention on Human Rights and of the most important Protocol rights

- ability to identify whether any of Articles 2-14 of the ECHR are applicable to the facts of their client's case regarding leave to enter or remain in the UK
- the relevance of Articles 3, 5 and 8 to the treatment of the client within the UK regarding issues such as support and detention
- the five components of ECHR Article 3 (inhuman treatment, degrading treatment; inhuman punishment, degrading punishment; torture), how the facts of a client's claim might fit into them, and the need to show a minimum level of severity for the Article to be engaged
- ECHR Article 2
- Article 8 ECHR covers the right to family life and the right to private life, which might include medical issues
- Article 8 ECHR is a qualified right and that interference with it will normally be permissible unless exceptional circumstances are present
- Articles 4, 5, 6, 9, 10, 11 and 14 of the ECHR
- Articles 1 and 2 of the Third Protocol (regarding the protection of property and the right to education) and Articles 1 and 2 of the Sixth Protocol (regarding abolition of the death penalty and the death penalty in time of war)

- the standard of proof for human rights arguments
- the circumstances in which fresh claims on human rights grounds might be made

Knowledge of the difference between absolute, limited and qualified rights

- the difference between absolute, limited and qualified rights including which rights fall into which categories
- the meaning of an interference with a qualified right including the grounds on which an immigration decision might not constitute an interference, as where an application can be made under the immigration rules from abroad or where parties to a relationship can continue that relationship abroad
- the meaning of 'legitimate aim', 'in accordance with the law' and 'necessary in a democratic of society' (proportionality)

Knowledge of leading cases relating to the interpretation of the ECHR by the European Court of Human Rights and the domestic courts, such leading cases to be set out from time to time in the Guidance

The text of these cases will be found on the Electronic Immigration Network (www.ein.org.uk)

- the principle in *Arman Ali* [2000] INLR 89 that the immigration rules need to be construed compatibly with the ECHR (so as arguably to permit long term third party support)
- the principle in *Chahal v United Kingdom* (1997) 23 EHRR 413 that Article 3 of the ECHR is absolute and available to anyone at risk of an infringement of it, irrespective of their conduct
- the principle in *Ireland v United Kingdom* (1978) 2 EHRR 25 that ill-treatment must attain a minimum level of severity to cross the threshold for Article 3 to be breached
- the principle in *R v Secretary of State for the Home Department ex parte Limbuela and Ors* [2004] EWCA Civ 540 that a denial of support and accommodation in the UK can constitute an Article 3 breach, depending on factors such as age and infirmity, illness or accident, and a lack of shelter
- the principle in *N v Secretary of State for the Home Department* [2005] UKHL 31 that, where health issues are relied upon as preventing removal from the UK, that only the most extreme cases can succeed, for example where the claimant is dying
- the principle in *Huang and Others v Secretary of State for the Home Department* [2007] UKHL 11 that, the ultimate question for the appellate immigration authority is whether the refusal of leave to enter or remain, in circumstances where the life of the family cannot reasonably be expected to be enjoyed elsewhere, taking full account of all considerations weighing in favour of the refusal, prejudices the family life of the applicant in a manner sufficiently serious to amount to a breach of the fundamental right protected; and that on appeal an immigration judge must make up their own minds on whether a removal is disproportionate
- the five stage test for approaching Article 8 claims set out in paragraph 17 of *Razgar* [2004] UKHL 27

- the principle in MNM (00/TH/02423; 1 November 2000) that Article 6 of the ECHR (right to fair trial) is not available in proceedings relating to immigration status
- the principle in Ullah [2004] UKHL 26 that Articles of the ECHR may be relevant in terms of breaches of human rights committed abroad, but aside from breaches that involve the absolute rights, such breaches have to be 'flagrant' to overcome the normal operation of immigration control
- the principle in Saadi [2002] UKHL 41 that detention for limited periods for reasons of administrative processing of asylum claims is not inconsistent with Article 5 ECHR
- the principle in Singh v ECO New Delhi [2004] EWCA (Civ) that family life should be given a broad meaning
- the principle in Abdulaziz and Ors [1985] ECHR 7 (28 May 1985) that family life is presumed to include the relationship that arises from a lawful and genuine marriage
- the principle in Berrehab v Netherlands (1988) 11 EHRR 322 that cohabitation is not essential to the existence of family life between parents and minor children and that from the moment of the child's birth and by the very fact of it, there exists between him and his parents a bond amounting to 'family life', even if the parents are not then living together
- the principle in Niemietz v Germany (1992) 16 EHRR 97 that respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings
- the principles in Mahmood v SSHD [2001] INLR paragraph 55 regarding the potential conflict between the respect for family life and the enforcement of immigration controls
- the principle in Shala [2003] EWCA Civ 233 that factors such as a legitimate claim to enter the UK at the time the claim should have been considered and delays in decision making may be relevant to the proportionality of an interference with family life
- the principle in East African Asians v UK (1981) 3 EHRR 76 that discrimination based on race could, in certain circumstances, of itself amount to degrading treatment
- the principle in Nadarajah v Secretary of State for the Home Department [2003] EWCA Civ 1768 that the law regarding policies on detention must be adequately accessible to those subject to them
- The principle in R (Ahmadi) v Secretary of State for the Home Department [2005] EWCA Civ 1721 that the obligations under Article 8 require a state not only to refrain from interference with existing life, but also from inhibiting the development of a real family life in the future
- the principle in MS (Ivory Coast) v Secretary of State for the Home Department [2007] EWCA Civ 133 that depending on the circumstances it may be disproportionate to remove a parent from the United Kingdom while contact proceedings regarding their child remain unresolved

- the principle in *R (Tozhlukaya) v Secretary of State for the Home Department* [2006] EWCA Civ 379 that if one of the Home Office's policies tells in favour of the person concerned being allowed to stay in this country, it may affect the balance under article 8(2)
- the principle in *HB (Ethiopia) & Ors v Secretary of State for the Home Department* [2006] EWCA Civ 1713 that delay must have very substantial effects on a case if it is to influence the outcome under Article 8 where an individual does not fit into a Home Office policy; and that delay in the case of an individual who does fit into such a policy can, in an extreme case, militate against applying procedural rules such as requiring prior entry clearance
- new cases of fundamental importance to the practitioner from when they are identified as such via resources such as the Electronic Immigration Network and mailshots of the Immigration Lawyers Practitioners Association

Awareness of the consequences of making an application with a human rights dimension within the currency of leave to remain, at any stage of the expulsion process or from abroad

- the consequences of making a human rights application within the currency of leave to remain including the possibility of curtailment of existing leave to remain and the consequences for rights of appeal
- the consequences of making a human rights application at any stage of the expulsion process
- the possibility of relying on the European Convention on Human Rights in an application from abroad
- the possibility of making fresh claims on human rights grounds
- the availability of judicial review as a means of challenging refusal to accept a fresh claim

Understanding of the criteria and process for Humanitarian Protection and Discretionary Leave

- the different forms of leave to remain (Humanitarian Protection (HP), Discretionary Leave to Remain (DLR)) that may be given under the Asylum Policy Instructions depending on the human rights application in question, including the impact of the exclusion criteria
- the implications for family reunion and travel documents of HP and DLR
- the 'one-stop' procedure

European economic area (EEA) free movement law

Knowledge of which countries are members of the EEA and which have recently acceded to the EU and are treated as special cases – ie, the 'A8' and 'A2' countries

- which countries are members of the EEA and which countries are the 'A8' countries
- the treatment of Bulgarian and Romanian nationals under the Accession (Immigration and Worker Authorisation) Regulations 2006

Knowledge of the status of EC law treaties, and of the operation of EC free movement law in the UK context in so far as it is set out in the Immigration (EEA) Regulations 2006

- the principle of free movement for individuals who are exercising Treaty rights under European Community law
- the principle that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States
- the principle that European Community law is directly effective and that instruments such as the Citizens Directive (Council Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States) are the ultimate source of free movement law
- where to find which European Directives and Regulations are relevant to the client's case
- the Immigration (EEA) Regulations 2006 and the meaning of key concepts within those Regulations: 'qualified persons' including the Community law meaning of 'worker', and the definitions of 'self sufficient person' and 'student'; the meaning of 'family members' and 'extended family members', the initial, extended, permanent and retained rights of residence, residence cards, residence certificates, family permits and family member residence stamps, and the meaning of 'marriage of convenience'
- the grounds on which a person can be expelled under European Community law
- ability to identify which, if any, treaty rights are applicable to the facts of the client's case
- the procedure set out in the Immigration (EEA) Regulations 2006 whereby family members not previously lawfully resident in the EEA will qualify for family permits only if they fit into the immigration rules

Knowledge of the Romanian/Bulgarian and Turkish Association Agreements

- which countries enjoy/have enjoyed Association Agreements with the EEA
- the immigration rules which address settlement relating to former beneficiaries of the Romanian/Bulgarian Association Agreements
- the Ankara Agreement
- the criteria for applications to be made for workers and the self employed who are Turkish nationals
- the means of making an application relying on European Community law for a Turkish national exercising Association Agreement rights

Knowledge of the application procedures for family and residence permits

- the appropriate application forms for applying for residence documents, residence permits, and family permits for EEA nationals and their family members
- the fees and supporting documentation for such applications

- paragraph 3.2 of Chapter 7 section 3 'Procedure where no EEA family permit, residence document or family member residence stamp is held'
- Chapter 7 Section 1 para 5 of the European Directorate Casework Instructions regarding family members of A8 nationals; Chapter 7 Section 2 para 2.7 of the European Directorate Casework Instructions regarding family members of A2 nationals

Knowledge of impact of EC law on third country nationals

- the impact of European Community law on family members of EEA nationals
- the impact of European Community law on dependants and members of the household of EEA nationals

Knowledge of leading cases relating to the interpretation of EC Free Movement law by the European Court of Justice and the domestic courts, such leading cases to be set out from time to time in the Guidance

- the principle in Lawrie Blum (1986) ECR 2121 that work for Community law purposes needs to be genuine and effective
- the principle in Surinder Singh Case C-370/90 that a British national who has returned to the UK having exercised Treaty rights abroad may rely on European Community law principles to bring his family with him regardless of their nationality
- the principle in Chen and Others (Free movement of persons) [2004] EUECJ C-200/02 (19 October 2004) that a non-EEA national primary carer or relative may live in the UK with their EEA national infant child when their child is exercising a treaty right in the UK so long as the former is self supporting and will not have recourse to public funds or the UK labour market
- the principle in Case 316/85 Centre Public d'Aide Sociale v Lebon [1987] ECR 2811 that dependency in European Community law is a question of fact rather than necessity
- the principle in Mouvement contre le racisme, l'antisémitisme et la xénophobie ASBL (MRAX) (C-459/99, 25 July 2002) that a Member State may not refuse to issue a residence permit to a third country national married to an EU national who entered its territory lawfully on the sole ground that the visa expired before they applied for a residence permit
- the view of the Tribunal in GM and AM (EU national; establishing self-sufficiency) France [2006] UKAIT 00059 that a third country national family member cannot reside in the UK with an EU national child in order to establish the child's right, as opposed to assisting them to exercise an existing right, and hence an EU national child cannot establish a right of residence based upon self-sufficiency where the resources relied upon would come from the employment of a non-EU national parent/carer who has no independent right to be present in, or work in, the UK

Awareness of EU treaties that impact on reciprocal rights to benefits / healthcare

- the existence of Regulation 1408/71 and its requirement for equality of treatment for the classes of persons to which it applies

Nationality

Awareness of who is entitled to British citizenship for those born prior to coming into effect of British Nationality Act 1981

- the circumstances in which a child born in the UK may obtain British citizenship prior to the coming into effect of the British Nationality Act 1981
- the circumstances in which a child born overseas to a British father would possess British citizenship prior to the coming into effect of the British Nationality Act 1981
- the circumstances in which a child born overseas to a British mother and a foreign father would possess British citizenship prior to the coming into effect of the British Nationality Act 1981

Knowledge of who is entitled to British citizenship under the British Nationality Act 1981 under its provisions regarding birth or adoption in the UK, acquisition by descent through being born abroad, and registration under section 3 of the Act

- the circumstances in which a child born in the UK may obtain British citizenship under the British Nationality Act 1981
- the circumstances in which a child born abroad may obtain nationality under section 2 of the British Nationality Act 1981
- the concept of 'citizenship otherwise than by descent'
- registration under section 3 of the British Nationality Act 1981
- the provisions regarding Legitimated Children within section 47 and 50(9) of the British Nationality Act 1981 and the British Nationality (Proof of Paternity) Regulations 2006
- the effect of Paragraph 2 of Schedule 2 of the Immigration (EEA) Regulations 2006 on the entitlement to British citizenship of a child born to an EEA national present in the UK

Knowledge of the different means of acquiring and losing citizenship – through entitlement by operation of law, registration or naturalisation

- the differences between acquiring citizenship through operation of law, registration and naturalisation, and which means of acquiring citizenship are discretionary and which are available to an applicant as of right
- the possibility of revocation of British citizenship
- ability to identify when research and/or referral to an expert is needed

Knowledge of the criteria/requirements for naturalisation or registration as a British citizen

- the modes of obtaining nationality – by operation of law, by registration, and naturalisation

Knowledge of the procedures for naturalisation or registration as a British citizen

- the procedure for making an application for naturalisation as a British citizen

- the procedure for making an application for registration as a British citizen for children

Awareness of the Home Office's Nationality Instructions (NIs)

- the existence of the Home Office's Nationality Instructions (NIs)

Business immigration

Awareness of the criteria for the issue of work permits by Work Permits (UK)

- the main categories of work permit
- how to determine the criteria for a work permit via Work Permits (UK)
- how to apply for a work permit
- system of review of work permit refusals
- provisions in the Diplomatic Service Procedures regarding work permits (Chapter 17, 17.13 Assessing work permit entry clearance applications)

Awareness of other categories of business related entry to the UK

- the immigration rules regarding persons seeking to enter or remain in the United Kingdom for employment
- the immigration rules regarding persons seeking to enter or remain in the United Kingdom as a businessman, self-employed person, investor, writer, composer or artist

Awareness of the programmes that manage business related entry to the UK

- the main components of managed migration such as the Highly Skilled Migrants Programme, the Sectors Based Work Scheme, the Science and Engineering Graduate Scheme
- the right of review regarding refusals by Work Permits (UK)

Appeals

Understanding of the structure and remedies available in the Asylum and Immigration Tribunal

- the structure of the Asylum and Immigration Tribunal
- the grounds on which an immigration judge can allow an appeal
- the consequences of a successful appeal including the possibility of further challenges by the Home Office
- the procedure for making an application for review, both to the Asylum and Immigration Tribunal under the 'filter' provision and directly to the High Court under the 'opt in' procedure

Understanding of the time limits for appealing

- calculating the date of deemed service of a decision at first instance, and the time limit for any subsequent appeal, and the provisions for extension of time for an appeal
- calculating the date of deemed service of a decision of an immigration judge, and the time limit for any application for review, both to the Asylum and Immigration Tribunal under the 'filter' provision and directly to the High Court under the 'opt in' procedure

Understanding of the legislative provisions in relation to the right of appeal

- which immigration decisions are capable of appeal
- which decisions relating to nationality are capable of appeal
- the grounds of appeal that might be appropriate when an application is refused including appeals 'not in accordance with the law'
- what evidence is admissible on appeal, including the circumstances in which evidence concerning a matter arising after the date of the decision is admissible
- the circumstances in which those refused immigration applications might be ineligible to bring an appeal
- the circumstances in which appeals can be brought only from outside the country
- the consequences of certification (for 'third country' cases and 'clearly unfounded' claims) for asylum and human rights appeals
- the right to seek review of the determination of an immigration judge
- the grounds on which review of the determination of an immigration judge may be sought – but not to include an ability to draft such grounds

Understanding of procedures on appeal, review and reconsideration – including case management review hearings and the importance of compliance with directions

- Case management review hearings
- the powers of an immigration judge to give directions and the possible consequences of failure to comply with directions
- the procedure rules regarding variation of grounds of appeal; adjournments; the authority to represent an appellant and maintain the court record regarding beginning to, or ceasing to, act for an appellant; the hearing of two or more appeals together; and the procedures for the giving of a determination
- the rules regarding procedures and evidence on seeking review of the determination of an immigration judge and on the reconsideration of appeals
- the Consolidated Practice Directions regarding appeals, namely the following paragraphs: 6 on CMR Hearings, 8 on Trial Bundles, 8A on Expert Evidence, 8B on Sponsors, 14–15 on Reconsideration, 17 on Reported Cases, 18 on Starred and Country Guidance Determinations, 19 on Bail Applications, 20 on Race Discrimination, 23 on Refugee Qualification Directive

Awareness of the remedies available (judicial review, applications to the Court of Appeal) outside the Asylum and Immigration Tribunal

- the right of appeal to the Court of Appeal
- the time limits for applications to the Court of Appeal
- the availability of judicial review as a remedy in cases where there is no right of appeal
- the IDIs Chapter 27 section 1 paragraphs 1.1–1.6
- the time limit for judicial review
- the grounds (illegality, irrationality, procedural unfairness) for judicial review

Understanding of the one-stop process and of the limitations on one-stop appeals contained in the relevant legislation

- the importance with complying with the notice requirements and adequately making a one stop statement
- the consequences of certification regarding earlier rights of appeal for asylum and human rights appeals

Knowledge of leading cases relating to the interpretation of the right of appeal, such leading cases to be set out from time to time in the Guidance

- the principle in *Kehinde* (01/TH/02668, starred, 19 December 2001) that only an Appellant's human rights are directly relevant to the determination of an appeal
- the principles set out in *Devaseelan* [2002] UKIAT 00702 regarding 'second appeals'
- the principle in *AH (Scope of s103A reconsideration) Sudan* [2006] UKAIT 00038 that a reconsideration is to proceed by reference to the findings of fact of the original Tribunal which will be departed from only 'in very exceptional cases'
- the principle in *FP (Iran) v Secretary of State for the Home Department* [2007] EWCA Civ 13 (23 January 2007) that there is no general principle of law which fixes a party with the procedural errors of their representative, and that Rules of Procedure which prevent parties themselves innocent of wrongdoing from having an oral hearing of their appeal may be invalid
- the system of starred, reported and Country Guidelines cases but not to include familiarity with all such cases except in so far as identified within this Guidance, except in so far as identified within the next criterion
- cases of fundamental importance to the practitioner from when they are identified as such via resources such as the Electronic Immigration Network and mailshots of the Immigration Lawyers Practitioners Association

Awareness of the Special Immigration Appeals Commission

- the provisions for certification that can lead to appeals being heard in the Special Immigration Appeals Commission

Detention and bail

Knowledge of the circumstances in which detention is thought justified by the immigration authorities and the factors to be taken into account in determining whether detention is the course of action

- the procedures that accompany detention including the giving of reasons for detention as set out in paragraphs 38.6.3 of Chapter 38 of the Operational Enforcement Manual (Chapter 38: Detention and Temporary Release)
- the reasons for detention as set out in paragraph 1 of Chapter 38 of the Operational Enforcement Manual
- the factors to be taken into account by the Immigration Service in determining whether detention is the right course of action as set out in paragraph 38.3 of Chapter 38 of the Operational Enforcement Manual
- the special cases regarding detention as set out in paragraphs 38.9–38.10 of Chapter 38 of the Operational Enforcement Manual

Knowledge of when an application for bail can be made

- how to apply for bail from an immigration judge or chief immigration officer and temporary admission from the Immigration Service

Knowledge of remedies for detainees – temporary admission, habeas corpus, bail from a CIO or other authorised person

- the remedies of bail from an immigration judge or immigration officer and temporary admission from the Immigration Service;
- the procedure to make such applications
- the likely conditions to be set on bail and temporary admission
- the circumstances in which there will be no power to detain an individual
- the remedies of judicial review and habeas corpus

Knowledge of the procedure for making a bail application to the Asylum and Immigration Tribunal

- under the Procedure Rules of how to file an application notice for bail with the Tribunal
- the duties of the Tribunal once it has received such a notice

Offences

Knowledge of what actions may constitute an offence under the immigration legislation – including the possibility that offences may be committed by the practitioner, the client or other third parties

- offences under the Immigration Act 1971 – illegal entry, overstaying and breaching conditions (section 24(1)(a)–(c), deception (section 24A(1)–(3)), facilitating (section 25(1)–(1A), harbouring (section 25(2)), assisting entry in breach of a deportation or exclusion order (section 25B(1–3) and offences regarding administration of 1971 Act (section 26(1))

- offences under sections 2 and 35 of the Immigration and Asylum (Treatment of Claimants Act 2004)
- offences connected with support under section 105 of the Immigration and Asylum Act 1999
- offences regarding employment under section 8 of the Asylum and Immigration Act 1996
- ability to determine the possible range of sentences expressed by the statute for each offence

Welfare/Support

Awareness of the criteria and process relating to travel documents, work, benefits and education for recognised refugees or persons with discretionary leave/humanitarian protection

- the criteria and process relating to travel documents for recognised refugees or persons with discretionary leave/humanitarian protection
- the criteria and process relating to permission to work for recognised refugees or persons with discretionary leave/humanitarian protection
- the criteria and process relating to benefits for recognised refugees or persons with discretionary leave/humanitarian protection
- the criteria and process relating to education for recognised refugees or persons with discretionary leave/humanitarian protection including the entitlement of refugees and their spouses and children to education at the home fees rate

Knowledge of the main provisions relating to benefits/support for persons subject to immigration control and for asylum seekers, including benefits for children

- Familiar with the principle that the effect of the main provisions on welfare and support is to exclude certain persons subject to immigration control from obtaining certain benefits
- eligibility for NASS support to a person making an asylum claim for the first time
- eligibility for NASS support for a person with child dependants
- the availability of support from local authorities under Section 21 of the National Assistance Act 1948 and under the Children Act 1989
- which decisions of NASS are capable of appeal and which can only be challenged by way of judicial review

Ethics

Understanding of the professional and ethical rules relating to confidentiality and conflicts, the independence of the legal representative, their duty to act in the best interests of the client, to maintain a proper standard of work and their duty to the Court

- Law Society guidance on conflicts of interest and confidentiality

- Law Society rules on the independence of the legal representative, the duty of the representative to act in the best interests of the client, to maintain a proper standard of work and the duty of the representative to the court

Race relations

Awareness of the amendments to the Race Relations Act 1976 and the applicability of race discrimination claims to immigration, nationality and asylum work

- the prohibition on discrimination on racial grounds
- direct and indirect discrimination, victimisation and harassment

Awareness of the remedies available within and outside the immigration appellate structure where claims of racial discrimination by immigration authorities may arise

- remedies against race discrimination in the county court
- the availability of the ground of appeal raising race discrimination before an immigration judge for claims relating to the immigration decision

Awareness of the scope of the provisions relating to race discrimination, claims, in particular the limitations on the types of claims available and the permissible exceptions to racially discriminatory behaviour

- the immigration exception regarding treatment on grounds of nationality
- the availability of race discrimination claims against public authorities the exception for public authorities carrying out authorised immigration functions

For publicly funded work

Public funding / legal aid

Understanding of the types of public funding available for immigration, asylum and nationality applicants under legal help and controlled legal representation

- key concepts of public funding – legal help and controlled legal representation, the unique client number, cost limits, extensions, and the importance of determining the costs of legal advice given by previous representatives

For non-publicly funded work

Awareness of the types of public funding available for immigration, asylum and nationality applicants under legal help and controlled legal representation

- key concepts of public funding – legal help and controlled legal representation, the unique client number, cost limits, extensions, and the importance of determining the costs of legal advice given by previous representatives

Awareness of the relevant tests – sufficient benefits, means and merits – to be applied in order to assess eligibility for legal help and controlled legal representation

- merits tests for legal help and controlled legal representation, the funding code criteria including the prospects of success and the costs and benefits of granting funding

Guidance for senior caseworker standards – immigration specialist

The guidance is simply intended as a helpful expansion of the standards and is not an exhaustive list of legislation or material. You should also be aware that, although the guidance will be updated from time to time, it is the responsibility of individual advisers to make sure that they are aware of any changes in legislation and practice.

Immigration law

Understanding of the structure and sources of immigration law, including the personnel exercising immigration control and their powers

- the content of the Immigration Directorate Instructions
- specifically those IDIs identified elsewhere in this guidance as relevant for all senior caseworkers, in addition paragraphs
- Chapter 4 Annex A paragraph 1 ('Discretion to admit first arrivals aged 28 years or over'),
- Chapter 4 Annex C paragraph 1.5 'Intentions',
- paragraph 2 and 3.2-3.3 of Chapter 5 section 12 'Domestic Workers in Diplomatic Households',
- Chapter 7 section 2 British Overseas Citizens,
- paragraph 4–4.7 of Chapter 7 section 3 'Switzerland' 2.3.1–2.3.2,
- Annexes G, H and I to Chapter 7 section 4 'Financial Requirements', 'Close connection to the United Kingdom and the Intention to make it the Main Home', and 'Discretion' regarding Retired Persons of Independent Means,
- Chapter 8 section 1 (Spouses) paragraph 3.4 'Interviews/Home Visits',
- Annex B Chapter 8 section 1 (Spouses) paragraphs 2–6 on Marriage Overseas, Transnational Marriages, Recognition of Overseas Divorces, and Types of Overseas Divorce, and Annex D to Chapter 8 section 1 paragraphs 1-2 on Domicile,
- Annex J to Chapter 8 section 3 (Fiancés) on 'Requirement to have met'
- Chapter 8 section 1 and Chapter 8 section 2 paragraph 4.3 'Delayed Travel on Entry clearances conferring leave to enter',
- Chapter 8 section 3 (Fiancés) paragraph 3.2 regarding Further Guidance on exceptional compassionate circumstances,
- Chapter 8 section 6 (Dependant Relatives) paragraph 2.2 regarding Further Guidance on exceptional compassionate circumstances,
- Annex P to Chapter 8 section 4 (Children born in UK who are not British citizens), paragraphs 1–1.1,
- Annex Q to Chapter 8 section 5 (Adopted Children) paragraphs 1–6, and paragraph 9 ('General Guidance'),

- Annex R to Chapter 8 section 5 (De Facto Adoptions) paragraphs 1–2.2
- Annex S to Chapter 8 section 5 (Children coming for Adoption) paragraphs 6–7, 8.6,
- Annex Z to Chapter 8 section 9 (Unmarried Partners)
- paragraphs 1–4, Chapter 14 section 1 (Persons exempt from Control)
- Chapter 17 section 2 (Carers) paragraphs 1–4.2, 5–7
- Awareness of the content of the Operational Enforcement Manual except in so far as knowledge and understanding is specified below
- the content of the Operational Enforcement Manual Chapter 10, paragraph 10.6.2 Regularisation Scheme for Overstayers
- the content of the Diplomatic Service Procedures

As for all senior caseworkers, in addition:

- paragraphs 14.8-14.13 (provisions regarding adopted children))
- 18.14 (United Kingdom ancestry)
- 18.20 (Those who may qualify under special concessionary arrangements outside the Immigration Rules though not the list of recognised festivals)
- Annex 26.3 to Chapter 26 (Rehabilitation of Offenders Act - 'spent' sentences)
- 27.10-27.12 ('Post decision evidence', 'When an appeal is allowed' and 'Refusing those who have had appeals allowed')
- 28.1-28.2 (Compensation for Claims Arising from Visa Section Decisions)
- the interaction between the immigration rules and the Immigration Directorate Instructions, the Operational Enforcement Manual and the Diplomatic Service Procedures
- the powers of arrest and search held by immigration officers

Understanding of who is subject to immigration control

- key principles of immigration control - the right of abode, entry clearance and the relevance of being a visa national, leave to enter and leave to remain

Understanding of the terms used in immigration control

- the common terms encountered in immigration as appear from time to time in the Glossary of the Immigration, Nationality and Refugee Law Handbook of the Joint Council for the Welfare of Immigrants

Understanding of the primary and secondary legislation relating to immigration in the UK

- how to determine which provisions of primary and secondary legislation are relevant to the client's case

- the power of removal to certain countries or territories – specified in para 8 of Schedule 2 to the 1971 Act
- the power of administrative removal under section 10 of the Immigration and Asylum Act 1999
- the power to revoke indefinite leave to remain under section 76 of the Nationality Immigration and Asylum Act 2002
- the operation of the Immigration (Leave to Enter and Remain) Order 2000 in respect of entry clearance operating as leave to enter (Regulations 2–4)

Understanding of the structure and operation of the immigration rules

- all categories of entry under the immigration rules
- the key concepts within the immigration rules – maintenance, accommodation, public funds, intention to leave the country at the end of a period of leave, intention to live together permanently
- how to identify whether a particular category of entry can lead to settlement, whether switching is permitted, and what period of leave an applicant under a particular rule can anticipate receiving
- the mandatory and discretionary general grounds for refusal within Part 9 of the Immigration Rules
- ability to identify how to determine the criteria for a grant of leave for a particular category of applicant under the rules

Understanding of the concessions and policies which operate outside the rules and how to use and apply these to individual cases

- how to identify whether there is a policy outside the Immigration Rules that is relevant to the facts of a client's case
- where to locate policies outside the Immigration Rules
- the Home Office policy on students and working
- the policies as set out above in the General Guidance for Senior Caseworkers

Understanding of the procedures in relation to applications to the Home Office and entry clearance officers

- the appropriate application form for each category of entry, knowledge of fees for immigration applications, and knowledge of what documentation should be obtained to ensure that a criteria of the immigration rules is satisfied
- the consequences of failure to make an application within time or on the appropriate prescribed form

Understanding of the types of immigration decision that may be made in an individual's case dependent on the stage of the entry or expulsion process that they have reached

- extensions, variations and curtailments of leave, illegal entry, administrative removal and removal directions, and deportation orders

- indefinite leave to remain and the grant of citizenship
- the principles surrounding deportation orders (including their revocation), as set out in the immigration rules (Part 13) and Chapter 17 of the Operational Enforcement Manual both on grounds of a court recommendation and when the Secretary of State considers deportation to be conducive to the public good, and section 3(5) of the Immigration Act 1971; and the principles surrounding administrative removal (Immigration Rule 395A – Finding)

Understanding of leading cases relating to the interpretation of immigration law by the courts, such leading cases to be set out from time to time in the Guidance

- the cases as set out in the general guidance for senior caseworkers
- the principle in *R v Chief Immigration Officer, ex parte Kharrazi* [1980] 1 WLR 1296 that an intention to pursue further studies after those for which leave is sought may if part of a coherent and definite intention which was reasonably capable of being carried out by its holder
- the principle in *Khan (IAT)* (9416) that where parties to a marriage are not co-habiting, the relevant question is whether there is an intention to cohabit which it can be expected will be fulfilled within a reasonable time
- the principle in *Kasuji (IAT)* (5956) that within those rules that refer to ‘accommodation’ it is not necessary to show legal title to accommodation
- the principle in *Nmaju (C2000-6263)* that, regarding ‘sole responsibility’ for the care of children, it is possible for the sponsor to have had sole responsibility for a short time
- the principle in *Joseph* [1988] Imm AR 329 that the word ‘most’ in ‘most exceptional compassionate circumstances’ is not a surplus word but shows how difficult the test will be to pass

European economic area (EEA) free movement law

Understanding of the status of EC law treaties, and of the operation of EC free movement law in the UK context in so far as it is set out in the Immigration (EEA) Regulations 2006, including rights of appeal and restrictions thereon

- understanding of all EEA matters set out in the General Guidance to Senior Caseworkers
- ability to identify which, if any, treaty rights are applicable to the facts of the client’s case

Understanding of Association Agreements

- understanding of all EEA matters set out in the general guidance to senior caseworkers

Understanding of impact of EU law on third country nationals

- the impact of European Community law on family members of EEA nationals
- the impact of European Community law on dependants and members of the household of EEA nationals

Knowledge of EU treaties that impact on reciprocal rights to benefits/healthcare

- the existence of Regulation 1408/71 and its requirement for equality of treatment for the classes of persons to which it applies

Understanding of leading cases relating to the interpretation of EC Free Movement law by the European Court of Justice and the domestic courts, such leading cases to be set out from time to time in the Guidance

- the cases as set out in the general guidance for senior caseworkers
- the principle in Carpenter (Case C-60/00 – 11 July 2002) that regarding the provision of services across borders, a person might establish themselves as being a family member of an EU national exercising free movement rights notwithstanding that the family had not established itself in another member state
- the principle in Tum & Dari v Secretary of State for the Home Department [2003] EWHC 2745 the Court of Appeal held that the Turkish European Community Association Agreement 'standstill' clause applies to all Turkish nationals wishing to establish themselves in business in the UK, with the exception of persons who have gained entry to the UK by fraud

Business immigration

Knowledge of the structure and operation of business related entry to the UK including the managed migration programme

- the main categories of work permit
- how to determine the criteria for a work permit via Work Permits (UK)
- how to apply for a work permit

Knowledge of other categories of business related entry to the UK

- the immigration rules regarding persons seeking to enter or remain in the United Kingdom for employment
- the immigration rules regarding persons seeking to enter or remain in the United Kingdom as a businessman, self-employed person, investor, writer, composer or artist
- the Diplomatic Service Procedures and Immigration Directorate Instructions that explain the interpretation of the immigration rules
- specifically, knowledge of the following –
 - Annex BB to Chapter 5 Section 12 'The Regularisation Programme for Domestic Workers in Private Households'
 - Chapter 6 Section 2 paragraphs 1–8 of 'In country guidance on persons intending to establish themselves in business under Turkish- EC Association Agreement'

Knowledge of the programmes that manage business related entry to the UK

- the main components of managed migration such as the Highly Skilled Migrants Programme, the Sectors Based Work Scheme, the Science and Engineering Graduate Scheme
- the right of review regarding refusals by Work Permits (UK)

Guidance for senior caseworker standard – asylum specialist

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Knowledge of law

Understanding of the definition of a refugee under Article 1 (A) (2) of the 1951 Refugee convention for persons with a single nationality, for the stateless, and for dual nationals

- the constituents of the Refugee Definition – ie, the meaning of well founded fear, persecution, Convention reason, state protection, including an ability to recognise which facts of a client's claim are relevant to each of these concepts
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Preamble 10–12, 14–15, Articles 1–33, 38)
- the Refugee or Person in Need of International Protection (Qualification) Regulations 2006
- Immigration Rules HC 395 Parts 11, 11A and 11B
- the application of the Refugee Convention to clients who are stateless
- the application of the second clause of Article 1(A)(2) of the Refugee Convention to clients who are dual nationals and of Article 1E of the Refugee Convention to clients who enjoy rights akin to nationality
- the application of the Cessation Clauses in Article 1C of the Refugee Convention and section 76 of the Nationality, Immigration and Asylum Act 2002
- Articles 31 and 33 of the Refugee Convention
- the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status regarding the distinction between prosecution and persecution, paragraphs 56–60, 84–86
- sections 2B9 and 2B10, 3.6, 3.24–3.28, 3.32–3.33, of the Immigration Appellate Authority (IAA) Gender Guidelines, November 2000, by Nathalia Berkowitz and Catriona Jarvis (notwithstanding their withdrawal from the Tribunal's website)

Understanding of issues which the Home Office routinely raise including statutory issues of credibility

- the importance of taking instructions without creating discrepancies
- the importance of addressing issues of plausibility when preparing statements
- the contents of immigration rules 339I and 339L-M, and section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004
- the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, paragraphs 196-204
- section 5 of the Gender Guidelines, November 2000, by Nathalia Berkowitz and Catriona Jarvis

Understanding of the procedure for making an asylum application – applications, screening, substantive interviews

- the main sources of country information
- each of the Asylum Policy Instructions (APIs) of which 'Knowledge' is required for all senior caseworkers
- the key concepts of the New Asylum Model – 'Asylum application process' within the 'Applying' section of the Home Office Border and Immigration Agency website
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status

Understanding of the consequences of making an application at a port of entry or after entry

- the consequences of making an asylum application within the currency of leave to remain including the possibility of curtailment of existing leave to remain and the consequences for rights of appeal
- the consequences of making an asylum application at any stage of the expulsion process

Understanding of accelerated procedures and to whom they apply

- the accelerated procedures regarding 'clearly unfounded' asylum claims with non-suspensive rights of appeal as set out in section 94 of the Nationality Immigration and Asylum Act 2002 including the countries most susceptible to such certification
- the 'fast track' in-country appeals process governed by the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005
- the grounds on which an asylum seeker might be dealt with under those processes, and the grounds which might permit their removal from the process including paragraph 38.4 of the Operational Enforcement Manual regarding 'Fast Track Processes' cases, and rule 30 of the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 regarding 'fast track' appeals cases

- the relevant provisions of the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 that address time limits for steps regarding the appeal to be taken, (rules 7 to 12, 14, 19, 21, 23, 25 and 26) and rule 28 regarding applications for adjournments

Understanding of the criteria and the process for family reunion for refugees inside and outside the immigration rules

- family reunion issues under the immigration rules and under the Home Office policy outside the rules

Knowledge of the criteria and process relating to travel documents, work, benefits and education for recognised refugees

- the form of leave to remain granted to refugees
- the procedure for obtaining travel documents

Knowledge of the processes involved if the immigration authorities raise issues of national security

- the provisions regarding indefinite detention within the Anti-terrorism, Crime and Security Act 2001 and the provisions regarding Support and Membership of Proscribed Organisations within the Terrorism Act 2000

Knowledge of the Special Immigration Appeals Commission

- the provisions for certification that can lead to appeals being heard in the Special Immigration Appeals Commission

Knowledge of 'safe third country' procedures namely the Dublin (II) Regulation and remedies against third country removal and the grounds which can be argued in the course of such remedies

- the Home Office policy to remove asylum seekers to safe third countries
- the lists of safe countries within Schedule 3 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004
- the limited grounds on which such decisions can be challenged
- the availability of judicial review as a means of challenging third country removal

Understanding of the procedures for Unaccompanied Asylum Seeking Children

- the procedures and principles regarding for Accompanied Children and Unaccompanied Asylum Seeking Children as set out in the Home Office Asylum Policy Instructions on Children
- the principle that the welfare of the child is the paramount consideration in decision making
- the need to ensure referral to the Refugee Council Children's Panel
- the principles in sections 5 (interviewing children and young people) and 8 (hearings and court appearances) of the ILPA Guidelines for Best Practice

Understanding of leading cases relating to the interpretation of the Refugee Convention by the domestic courts, such leading cases to be set out from time to time in the Guidance

The cases as set out in the general guidance for senior caseworkers

- the principle in Gurung [2002] UKIAT 04870 that issues of exclusion may arise on appeal even though the point was not taken in the refusal letter
- new cases of fundamental importance to the practitioner from when they are identified as such via resources such as the Electronic Immigration Network and mailshots of the Immigration Lawyers Practitioners Association

Human rights

Understanding of the rights protected by Articles 2-14 of the European Convention on Human Rights and of the most important Protocol rights

- ability to identify whether any of Articles 2–14 of the ECHR are applicable to the facts of their client’s case regarding leave to enter or remain in the UK
- the relevance of Articles 3, 5 and 8 to the treatment of the client within the UK regarding issues such as support and detention
- the five components of ECHR Article 3 (inhuman treatment, degrading treatment; inhuman punishment, degrading punishment; torture), how the facts of a client’s claim might fit into them, and the need to show a minimum level of severity for the Article to be engaged
- ECHR Article 2
- Article 8 ECHR covers the right to family life and the right to private life, which might include medical issues
- Article 8 ECHR is a qualified right and that interference with it will normally be permissible unless exceptional circumstances are present
- Articles 4, 5, 6, 9, 10, 11 and 14 of the ECHR
- Articles 1 and 2 of the Third Protocol (regarding the protection of property and the right to education) and Articles 1 and 2 of the Sixth Protocol (regarding abolition of the death penalty and the death penalty in time of war)
- the standard of proof for human rights arguments
- the circumstances in which fresh claims on human rights grounds might be made

Understanding of the difference between absolute, limited and qualified rights

- the difference between absolute, limited and qualified rights including which rights fall into which categories
- the meaning of an interference with a qualified right including the grounds on which an immigration decision might not constitute an interference, as where an application can be made under the immigration rules from abroad or where parties to a relationship can continue that relationship abroad

- the meaning of 'legitimate aim', 'in accordance with the law' and 'necessary in a democratic of society' (proportionality)

Understanding of leading cases relating to the interpretation of the ECHR by the European Court of Human Rights and the domestic courts, such leading cases to be set out from time to time in the Guidance

The text of these cases will be found on the Electronic Immigration Network (www.ein.org.uk)

- the principle in Arman Ali [2000] INLR 89 that the immigration rules need to be construed compatibly with the ECHR (so as arguably to permit long term third party support)
- the principle in Chahal v United Kingdom (1997) 23 EHRR 413 that Article 3 of the ECHR is absolute and available to anyone at risk of an infringement of it, irrespective of their conduct
- the principle in Ireland v United Kingdom (1978) 2 EHRR 25 that ill-treatment must attain a minimum level of severity to cross the threshold for Article 3 to be breached
- the principle in R v Secretary of State for the Home Department ex parte Limbuela and Ors [2004] EWCA Civ 540 that a denial of support and accommodation in the UK can constitute an Article 3 breach, depending on factors such as age and infirmity, illness or accident, and a lack of shelter
- the principle in N v Secretary of State for the Home Department [2005] UKHL 31 that, where health issues are relied upon as preventing removal from the UK, that only the most extreme cases can succeed, for example where the claimant is dying
- the principle in Huang and Others v Secretary of State for the Home Department [2007] UKHL 11 that, the ultimate question for the appellate immigration authority is whether the refusal of leave to enter or remain, in circumstances where the life of the family cannot reasonably be expected to be enjoyed elsewhere, taking full account of all considerations weighing in favour of the refusal, prejudices the family life of the applicant in a manner sufficiently serious to amount to a breach of the fundamental right protected; and that on appeal an immigration judge must make up their own minds on whether a removal is disproportionate
- the five-stage test for approaching Article 8 claims set out in paragraph 17 of Razgar [2004] UKHL 27
- the principle in MNM (00/TH/02423; 1 November 2000) that Article 6 of the ECHR (right to fair trial) is not available in proceedings relating to immigration status
- the principle in Ullah [2004] UKHL 26 that Articles of the ECHR may be relevant in terms of breaches of human rights committed abroad, but aside from breaches that involve the absolute rights, such breaches have to be 'flagrant' to overcome the normal operation of immigration control
- the principle in Saadi [2002] UKHL 41 that detention for limited periods for reasons of administrative processing of asylum claims is not inconsistent with Article 5 ECHR
- the principle in Singh v ECO New Delhi [2004] EWCA (Civ) that family life should be given a broad meaning

- the principle in *Abdulaziz and Ors* [1985] ECHR 7 (28 May 1985) that family life is presumed to include the relationship that arises from a lawful and genuine marriage
- the principle in *Berrehab v Netherlands* (1988) 11 EHRR 322 that cohabitation is not essential to the existence of family life between parents and minor children and that from the moment of the child's birth and by the very fact of it, there exists between him and his parents a bond amounting to 'family life', even if the parents are not then living together
- the principle in *Niemietz v Germany* (1992) 16 EHRR 97 that respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings
- the principles in *Mahmood v SSHD* [2001] INLR paragraph 55 regarding the potential conflict between the respect for family life and the enforcement of immigration controls
- the principle in *Shala* [2003] EWCA Civ 233 that factors such as a legitimate claim to enter the UK at the time the claim should have been considered and delays in decision making may be relevant to the proportionality of an interference with family life
- the principle in *East African Asians v UK* (1981) 3 EHRR 76 that discrimination based on race could, in certain circumstances, of itself amount to degrading treatment
- the principle in *Nadarajah v Secretary of State for the Home Department* [2003] EWCA Civ 1768 that the law regarding policies on detention must be adequately accessible to those subject to them
- the principle in *R (Ahmadi) v Secretary of State for the Home Department* [2005] EWCA Civ 1721 that the obligations under Article 8 require a state not only to refrain from interference with existing life, but also from inhibiting the development of a real family life in the future
- the principle in *MS (Ivory Coast) v Secretary of State for the Home Department* [2007] EWCA Civ 133 that depending on the circumstances it may be disproportionate to remove a parent from the United Kingdom while contact proceedings regarding their child remain unresolved
- the principle in *R (Tozhlukaya) v Secretary of State for the Home Department* [2006] EWCA Civ 379 that if one of the Home Office's policies tells in favour of the person concerned being allowed to stay in this country, it may affect the balance under article 8(2)
- the principle in *HB (Ethiopia) & Ors v Secretary of State for the Home Department* [2006] EWCA Civ 1713 that delay must have very substantial effects on a case if it is to influence the outcome under Article 8 where an individual does not fit into a Home Office policy; and that delay in the case of an individual who does fit into such a policy can, in an extreme case, militate against applying procedural rules such as requiring prior entry clearance
- new cases of fundamental importance to the practitioner from when they are identified as such via resources such as the Electronic Immigration Network and mailshots of the Immigration Lawyers Practitioners Association

Understanding of the consequences of making an application with a human rights dimension within the currency of leave to remain, at any stage of the expulsion process or from abroad

- the consequences of making a human rights application within the currency of leave to remain including the possibility of curtailment of existing leave to remain and the consequences for rights of appeal
- the consequences of making a human rights application at any stage of the expulsion process
- the possibility of relying on the European Convention on Human Rights in an application from abroad
- the possibility of making fresh claims on human rights grounds
- the availability of judicial review as a means of challenging refusal to accept a fresh claim

Understanding of the criteria and process for Humanitarian Protection and Discretionary Leave

- the different forms of leave to remain (Humanitarian Protection (HP), Discretionary Leave to Remain (DLR)) that may be given under the Asylum Policy Instructions depending on the human rights application in question, including the impact of the exclusion criteria
- the implications for family reunion and travel documents of HP and DLR
- the 'one-stop' procedure

Detention and bail

Understanding of the circumstances in which detention is thought justified by the immigration authorities and the factors to be taken into account in determining whether detention is the right course of action

- the procedures that accompany detention including the giving of reasons for detention as set out in paragraphs 38.6.3 of Chapter 38 of the Operational Enforcement Manual (Chapter 38: Detention and Temporary Release)
- the reasons for detention as set out in paragraph 1 of Chapter 38 of the Operational Enforcement Manual
- the factors to be taken into account by the Immigration Service in determining whether detention is the right course of action as set out in paragraphs 38.3 of Chapter 38 of the Operational Enforcement Manual
- the special cases regarding detention as set out in paragraphs 38.9–38.10 of Chapter 38 of the Operational Enforcement Manual

Understanding of when an application for bail can be made

- how to apply for bail from an immigration judge or chief immigration officer and temporary admission from the Immigration Service

Understanding of other remedies for detainees – temporary admission, habeas corpus, bail from a CIO or other authorised person

- the remedies of bail from an immigration judge or immigration officer and temporary admission from the Immigration Service
- the procedure to make such applications
- the likely conditions to be set on bail and temporary admission
- the circumstances in which there will be no power to detain an individual
- the remedies of judicial review and habeas corpus

Understanding of the procedure for making bail applications to the Asylum and Immigration Tribunal

- the Procedures set out in the Asylum and Immigration Tribunal (Procedure) Rules 2005 as to how to file an application notice for bail with the Tribunal
- the duties of the Tribunal having received such a notice

Welfare/support

Knowledge of the main provisions relating to benefits/support for asylum seekers, including benefits for children

- the effect of the main provisions on welfare and support is to exclude certain persons subject to immigration control from obtaining certain benefits
- eligibility for NASS support to a person making an asylum claim for the first time
- eligibility for NASS support to a person making an asylum claim for the first time
- eligibility for NASS support for a person with child dependants
- the availability of support from local authorities under Section 21 of the National Assistance Act 1948 and under the Children Act 1989
- which decisions of NASS are capable of appeal and which can only be challenged by way of judicial review