Legal Aid Board Reply to Queries raised by the Chair of the Advisory Group established by the Minister for Justice and Equality which is charged with considering 'the Provision of Support including Accommodation to Persons in the International Protection Process'

As part of its examination of the operation of the direct provision and the international protection processes, the Advisory Group is looking at the legal support process for the international protection applicants which includes the work of the Legal Aid Board and private practitioners. It is likely that the report of the Group will highlight the level of resource provision required to provide a full end to end legal service. The queries are as follows:

1. Queries relating to current numbers and costs of Legal Aid Board own resources and external solicitors:

1) The total number of IP cases LAB dealt with nationwide, annually, over the past 5 years.

2) The total number of IP cases private solicitors dealt with nationwide, annually, over the past 5 years.

3) The current numbers of LAB staff nationwide, dealing with IP applications.

4) The current numbers of external contract solicitors nationwide dealing with IP applications.

5) The annual cost of Legal Aid Board staff and total running costs covering the administration of International Protection (IP) applications, nationwide, over the past 5 years.

6) The annual cost of private contract solicitors dealing with IP applications, over the past 5 years.

2. Queries relating to future funding of Legal Aid Board:

1) Planning for a base application rate of 2,500 to 3,000 per year, what resources/ capacity would the LAB need to be able to provide legal advice on all IP cases

from first instance to deportation stage inclusive on the basis of the end to end service I have described above?

2) Would extra capacity required be best provided by FTE LAB staff or external solicitors?

3) What would the cost be of FTE LAB staff dealing with all cases for this base application rate?

4) What would the equivalent cost be of external solicitors dealing with all cases for this base application rate?

3. Best EU Practice

We would also like to look at best practice in relation to legal support for asylum seekers in other EU States. In this regard, would you have any examples of best practice the Board could recommend?

Legal Aid Board Response – June 2020

Introduction

The Legal Aid Board is the statutory, independent body responsible for the provision of civil legal aid and advice to persons of modest means in the State, in accordance with the provisions of the Civil Legal Aid Act 1995 (the "Act") and the Civil Legal Aid Regulations 1996 to 2017. The Act was amended by Section 54 of the Civil Law (Miscellaneous Provisions) Act 2011 which gave the Board the additional responsibility to provide a family mediation service.

Civil legal aid and advice is provided primarily through a network of law centres by solicitors employed by the Board. There are 30 full time and 12 part-time law centres. Specific law centres in Dublin, Cork and Galway include an international protection speciality. The Board also engages private solicitors to provide services in international protection cases. Indeed, a substantial portion of the Board's international protection cases are handled by private practitioners (see below) but it is worth pointing out that legal aid through private practitioners is not available for bringing judicial review proceedings whether to challenge decisions of the IPO/IPAT or deportation orders.

The Legal Aid Board therefore operates a mixed model of service delivery to persons seeking international protection in the State. The model involves both the use of in-house staff, including solicitor staff, working in law centres and the referral of cases to private solicitors on a panel. Since the commencement of the International Protection Act 2015, the Board is committed to providing all international protection clients with early legal advice on all aspects of their application.

1. **Queries relating to current numbers and costs of Legal Aid Board own resources and external solicitors:**

1-1 The total number of IP cases LAB dealt with nationwide, annually, over the past 5 years.

Persons seeking legal services make their applications through law centres. The Legal Aid Board has designated three of its law centres namely Smithfield (Dublin), Pope's Quay (Cork) and Seville House (Galway) for the purposes of providing services in relation to international protection applications and for the purpose of authorising the retention of private solicitors from the Panel. Any application will be initially processed by one of those centres. Once granted civil legal aid and advice, an applicant will be represented by one of the three law centres or referred to a panel solicitor. Selection of the private practitioner is made on a rota basis by the law centre, although, if a client at the outset requests a particular solicitor from the panel this will be facilitated upon confirmation by the panel solicitor that they are available to take the referral.

International protection clients receive a full information consultation before completing their questionnaire, wherein the key elements of refugee law are set out, their own obligations as applicants are outlined and the requirements of the questionnaire are explained in full. The above service is required in the Board's model of service delivery and best practice guidelines. Variations in the service can occur including where applicants apply for legal aid relatively late in the process. Where necessary the Board provides for the services of interpreters for the conduct of consultations and the provision of advice. The Board also, where necessary, provides for the translation of documents.

All clients are provided with a further consultation with the legal representative pre-interview in which legal advice on the particulars of their claim based on their completed questionnaire and any additional supporting documentation provided by the applicant is given and where it is considered appropriate, submissions may be drafted and made to the IPO. If required, legal representation may also be provided in relation to an appeal to the International Protection Appeals Tribunal of a recommendation that a person not be granted asylum or subsidiary protection status in the State. Copies of the Board's International Protection Service Delivery Model and Best Practice Guidelines are included at Appendix A and Appendix B respectively. The Board has issued guidance to its staff on the provision of services in relation to matters arising from the provision of material reception conditions for applicants for international protection and in relation to labour market access permission. The guidance is included at Appendix C.

Table 1 below shows the number of applications for legal services received by the Legal Aid Board for international protection matters in the past five years.
Table 1 - International Protection Applications

Year	2015	2016	2017	2018	2019
Total No. IP Applications received by LAB	1,537	1,658	1,489	2,079	2,571

Table 2 shows the number of International Protection cases dealt with in-house nationwide, annually by the Legal Aid Board law centres in the past five years.

Table 2 - International Protection Cases Taken On In-House

Year	2015	2016	2017	2018	2019
Total No. IP Cases Taken On In-House	1,537*	1,658*	849	800	576

***** The numbers of cases dealt with in-house is not immediately comparable with the numbers of subsequent years as the International Protection Act 2015, which came into effect on 31 December 2016 prompted the Board to alter its model of service delivery and revise the terms and conditions upon which private practitioners are retained. From 2017, referrals to private solicitors occurred at the outset of the process to ensure applicants received legal advice at the earliest stage. Prior to the commencement of the Act, referrals more typically took place at the Refugee Appeals Tribunal stage. Hence, all applications received were dealt with by the Boards' dedicated offices up to the end of 2016. The use of private solicitors in International Protection cases at the outset of cases increased considerably in subsequent years.

1-2 The total number of IP cases private solicitors dealt with nationwide, annually, over the past 5 years.

Private solicitors who have received specific training are engaged by the Board to provide legal aid services to complement the service provided by law centres. The Civil Legal Aid Act 1995 provides that the Legal Aid Board may establish and maintain a panel of solicitors who are willing to provide legal aid and advice to persons who are in receipt of legal services. Approval of the Ministers for Justice and Equality and Expenditure and Reform is required for such establishment.

Law centres refer applicants to the private solicitors on the panel on a rota basis having regard to the capacity of the Law Centre to take on new cases at a particular point in time and having regard to other guidelines laid down by Board management from time to time. As stated above if a client at the outset requests a particular solicitor from the panel this will be facilitated. The number of new cases in which private solicitors provided representation in each of the past five years is set out at Table 3.

Table 3 - The number of new cases which were referred to private solicitors

Year	2015	2016	2017	2018	2019
Total No. IP Cases referred to private solrs.	653	810	1,035	1,479	2,103

1-3 Current numbers of LAB staff nationwide, dealing with IP applications

Table 4 shows the number of solicitors and legal clerks (full time equivalents) currently dealing with International Protection cases at each law centre.

Table 4 – Number of FTE Solicitors and Legal Clerks

Law Centre	No. of Solicitors	No. of Paralegals
Cork Pope's Quay	1.5	1
Galway – Seville House	1	2
Smithfield – IP&HT	5.75	4.8

The numbers for Cork Pope's Quay and Galway – Seville House represent a proportion of the solicitors employed at those law centres. Not every solicitor in the above law centres is engaged in the provision of services in the area of international protection, nor does every solicitor engaged in the provision of services in the area of international protection deal exclusively with that area.

In the Cork Pope's Quay and Galway Seville House, while no staff are dedicated solely to international protection, a number of solicitors have a particular training and specialisation in the area of law. In addition to handling international protection cases, solicitor and legal clerk staff in the Cork Pope's Quay and Galway-Seville House law centres are allocated cases of different case types and subject matter in the areas of general civil law.

The vast majority of International Protection applications are processed through the Board's dedicated International Protection and Human Trafficking Unit located at Law Centre (Smithfield) in Dublin. The Unit is managed by a Managing Solicitor assisted by an assistant managing solicitor. Together they manage the 5.75 FTE solicitor staff and the 4.8 FTE paralegal and 4.2 FTE clerical staff. There are broadly speaking a number of different types of cases dealt with by Law Centre (Smithfield IP & HT); a. International Protection, b. Unaccompanied Minors, c. Human Trafficking, d. Immigration Cases and e. Rape Victim Representation before the Criminal Courts of Justice.

Unaccompanied minor cases are retained in-house and dealt with by one solicitor and two legal clerks who have specialist training. The service offered to unaccompanied minors is more extensive having regard to their age and vulnerability. Law Centre (Smithfield) IP&HT and Galway-Seville House also

provide a legal advice service to those identified as potential victims of human trafficking. Human trafficking cases are retained in-house.

1-4 Current numbers of external contract solicitors dealing with IP applications

Arising from the enactment of the International Protection Act 2015 and the introduction of the "single procedure" the Board established and maintains a panel of solicitors who are willing to provide services to persons who have been granted legal services by the Board for the purpose of: advice and / or representation in relation to an application under the International Protection Act 2015 for asylum, subsidiary protection and permission to remain; and for all relevant matters covered by the International Protection Act 2015, the Refugee Act 1996 and the Immigration Act 1999 as specified in the letter of authorisation or the legal aid certificate issued by the Board to that client.

The service provided by private solicitors on the Board's panel is the same service that would be provided by a law centre and the fee arrangements seek to reflect a much greater emphasis on early legal advice and assistance than was the case prior to the commencement of the 'single procedure' provisions. There are currently 73 private solicitors on the panel for international protection. A copy of the Solicitors Panel Terms and Conditions is included at Appendix D: Scheme of Legal Aid and Advice for International Protection. In practice not all of the members of the panel are available to take cases.

1-5 Annual cost of Legal Aid Board staff and total running costs covering the administration of International Protection applications, nationwide, over the past 5 years

Estimated Salary Costs

The total running costs covering the administration of international protection applications and casework includes the salary costs of solicitor, legal clerk and clerical officer staff. Table 5 shows the estimated salary costs of solicitor and legal clerk staff engaged in the provision of services in the area of international protection over a one year period.

Table 5 – Estimated Solicitor and Legal Clerk Salary Costs

	No. FTE Solicitors	No. FTE Legal Clerks	Av. Solicitor Salary	Solicitor Salary Costs	Av. Legal Clerk Salary	Legal Clerk Salary Costs	**Total Salary Costs**
Cork	1.5	1	€65,000	€97,500	€40,000	€40,000	€137,500

Galway	1	2	€65,000	€65,000	€40,000	€80,000	€145,000
Smithfield	5.75	4.8	€65,000	€373,750	€40,000	€192,000	€565,750
Total	8.25	7.8		€536,250		€312,000	€848,250

The clerical and administrative services in the three law centres are fully integrated into one overall service which in addition to international protection includes; general civil law, human trafficking, child care and international child abduction. There are currently 4.2 FTE clerical officers assigned to the International Protection and Human Trafficking Unit at Law Centre (Smithfield). 1.5 of the 4.2 FTE are required to administer the PP Scheme and 1.35 for non IP clerical work in the law centre. The remaining 1.35 FTE clerical officers are allocated to IP work. There are 2 FTE clerical officers in each of Cork Pope's Quay and Galway – Seville House providing clerical and administrative support for in-house IP work with 0.5 of the 2 FTE allocated to administering the PP Scheme. Estimating the clerical officer average salary at €35,000, the total estimated salary cost for 4.35 FTE clerical officers assigned to in-house IP work across the three law centres amounts to €152,250. Table 6 shows the estimated salary costs of clerical officer staff engaged in the provision of services in the area of international protection over a one year period.

Table 6- Estimated Salary Costs of Clerical Officer Staff

	FTE Clerical Officers	IP Clerical	PP Admin	Law Centre	Av. Salary	IP Salary Costs	PP Admin Salary Costs	**Total Salary Costs**
Cork	2	1.5	0.50	0.00	€35,000	€52,500	€17,500	€70,000
Galway	2	1.5	0.50	0.00	€35,000	€52,500	€17,500	€70,000
Smithfield	4.2	1.35	1.50	1.35	€35,000	€47,250	€52,500	€99,750
Total	8.2	4.35	2.5	1.35		€152,250	€87,500	€239,750

Taking the above calculations into account, the total salary cost to the Board of providing its current in-house service may be estimated at €1,000,500. It should be noted that the estimated salary cost of clerical officer staff required to administer the PP Scheme in the law centres amounts to €87,500 and is not included in the €1,000,500.

Additional Running Costs

The total running costs of the three law centres also includes; professional fees, witness/ancillary fees, practising certificates, postage/phone/office supplies etc., travel & subsistence, general insurance, professional negligence liabilities, fit-out

& refurbishment, maintenance of premises and equipment, computerisation, rent, other establishment costs, training and furniture and equipment. Calculation of expenditure in these areas specific to the international protection area of work is problematic given the integration of service delivery in the law centres. However, for the purposes of this exercise, the additional costs of providing the mixed model of service across the three law centres are estimated to amount to €465,000.

1-6 Annual cost of private contract solicitors dealing with IP applications, over the past 5 years

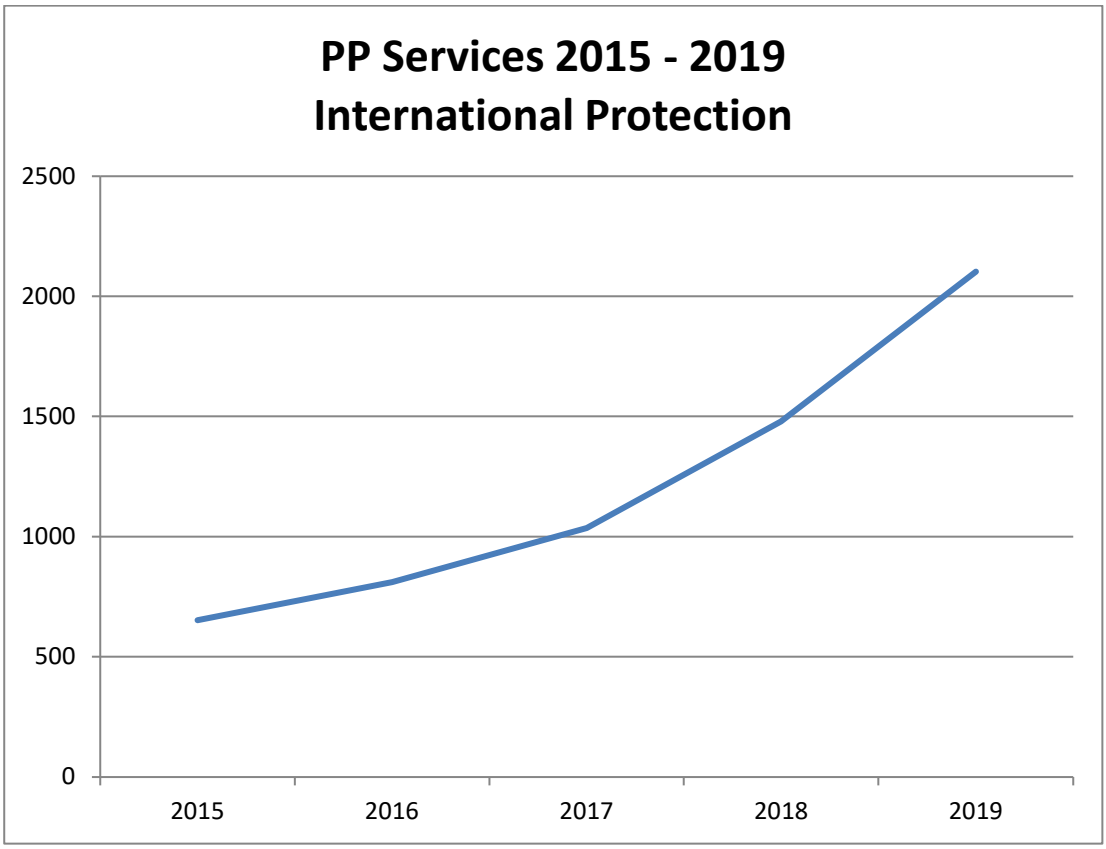
In 2015 and 2016, the Board granted 846 and 1,035 legal aid certificates respectively in International Protection cases to enable representation before the Refugee Appeals Tribunal (now the International Protection Appeals Tribunal, or IPAT). In 2015 and 2016, the Board included both subsidiary protection and asylum matters on the same legal aid certificate when a case was handled in-house whereas two separate certificates were issued where the service was provided by a private solicitor. Under the new single procedure from 2017, one certificate issues to cover all matters whether in-house or for a private solicitor. The following Table 7 shows the breakdown between the numbers of certificates in which representation was provided by law centre solicitors and by private solicitors/barristers, acting on behalf of the Board in 2015 and 2016.

Table 7 - Legal Aid Certificates in asylum matters granted in 2015 and 2016

Legal Aid certificates granted – asylum and related matters	**2015**	**2016**
Law Centre Solicitors	164	209
Private solicitors – Asylum	394	810
Private solicitors - Subsidiary Protection	259	-
Barristers instructed by a law centre	29	16
Total	**846**	**1,035**

With the introduction of the International Protection Act 2015 the Board took the opportunity to revise the terms and conditions upon which private practitioners are retained. One aspect of this was to 'frontload' the fees payable in order to ensure that clients got early legal advice. The expenditure on this budget line has increased very significantly going from €75,000 in 2016 to €552,000 in 2017, €1,050,000 in 2018 and €1,582,000 in 2019.

There is a standard scale of fees payable per case to solicitors/firms on the Panel for the provision of services set out in Schedules 1, 2 and 3 on the Board's website at:
https://www.legalaidboard.ie/en/lawyers-and-experts/legal-professionals-in-civil-cases/international-protection/terms-and-conditions/



As can be seen from the Chart above the use of private solicitors in International Protection cases has increased very considerably in recent years. The Private Practitioner Expenditure by the Legal Aid Board in the course of the provision of services to international protection clients for each of the past five years is contained in Table 8.

Table 8 – Non-Pay Expenditure in International Protection over a 5 year period

Year	Outturn 2015	Outturn 2016	Outturn 2017	Outturn 2018	Outturn 2019
Non-Pay Expenditure	€87,259	€75,356	€552,787	€1,050,035	€1,582,789

Additional Case Expenditure common to In-House & PP Referrals

The Legal Aid Board incurs additional expenditure in relation to service provision in International Protection cases. The Private Practitioner Scheme applies in relation to persons who have been granted legal advice or have been granted a legal aid certificate issued by the Board for all relevant matters covered by the International Protection Act 2015, the Refugee Act 1996 and the Immigration Act 1999 as specified in the letter of authorisation or the legal aid certificate issued by the Board to that client.

If a solicitor considers that further steps that will incur expenditure are required to process the client's claim, over and above those authorised on the certificate/advice authority, for example, that an expert report should be obtained or that professional or other witnesses are required, authority must be sought from the Board for an amendment to the certificate/advice authority to incur such expenditure.

The engaging of an interpreter, where it is necessary in a particular case does not require an amendment before doing so. An amended certificate is required before engaging a translation company to translate documents in a particular case. A solicitor may not seek reports, engage witnesses or otherwise incur costs or expenses save as authorised on foot of a certificate or an amending certificate.

Table 9 below shows the amounts paid for additional services provided to the Board in respect of International Protection cases in 2019. The total expenditure of €275,400 includes the cost of additional services in cases dealt with in-house and those with private practitioners.

Table 9 – Additional Case Expenditure in 2019

Additional Case Expenditure in 2019	
Interpreter	€173,125
Translator	€22,137
Medio-Legal Reports Spirasi (Centre for Care of Survivors of Torture)	€39,360
Medical (includes GP, psychologist, psychiatrists reports)	€21,953
Transcripts	€18,825
Total Expenditure	**€275,400**

2. Queries relating to future funding of Legal Aid Board:

Almost the entirety of the Board's income consists of a grant received from the Department of Justice and Equality. This funding is used to provide the Board's services in all its offices across the country, as well as the support services provided to law centres centrally from the Board's head office. The Board's other main sources of income are financial contributions from applicants and costs recovered. Under the provisions of Section 29 (2) (b) of the Civil Legal Aid Act 1995 (as amended by Section 80 of the Civil Law (Miscellaneous Provisions) Act

2008) it is open to the Board to waive legal aid contributions in certain circumstances.

In international protection cases, the contribution payable by a financially eligible applicant is €10, covering both legal advice and legal aid. Managing solicitors (or their nominees) have authority to waive this contribution in circumstances where the applicant is in direct provision and where the managing solicitor or their nominee forms the view that undue hardship would be caused if the applicant would have to pay the contribution (in accordance with section 29(2)(b) above). All applicants are asked for the contribution in the first instance. If an applicant indicates that they do not have the contribution, then a waiver is considered if the applicant confirms that their only resources are the payment they receive from the state while in direct provision. In practice, the income from contributions from applicants for international protection services is insignificant.

2-1 Planning for a base application rate of 2,500 to 3,000 per year, what resources/ capacity would the LAB need to be able to provide legal advice on all IP cases from first instance to deportation stage inclusive on the basis of an end to end service?

2,571 applications for services related to international protection were made to the Legal Aid Board in 2019. 576 of those applications were taken on in-house representing 22.4% of all applications received. 2,103 cases were referred to private practitioners in 2019. This number includes some cases from applications made in 2018.

Estimated In-House Cost of Current Service Delivery

Table 5 shows the estimate of the solicitor and legal clerk salary cost to the Board of providing its current in-house service with 8.25 FTE solicitors and 7.8 legal clerks amounts to €848,250. As noted at paragraph 1-5 there are clerical and administrative costs associated with the operation of the PP Scheme. Table 6 shows the estimate of the total clerical officer salary cost of providing the current service, including the administration of the PP Scheme to amount to €239,750. The total salary cost of the current service delivery is estimated to be €1,088,000.

As noted in the foregoing paragraphs at 1-5, the total running costs also includes the ancillary and additional costs of legal service provision that in any calculation is difficult to separate from the shared costs encountered in offices that deliver an integrated service. The additional costs of providing the mixed model of service in the three law centres are estimated to amount to €465,000.

Estimated Combined Cost of Current Mixed Service

The estimated combined cost of providing the current mixed model service to 2,571 applicants is shown in Table 9 below.

Table 9 – Estimated Total Combined Cost of Mixed Service

Estimated Total Combined Cost of Mixed Model Service - 2019	
Current In-House Service Salary Cost	€1,000,500
Estimated In-House Cost of Administering the PP Scheme	€87,500
Non-Pay Expenditure in International Protection – PP Services (including Additional Case Expenditure)	€1,582,789
Additional Law Centre Running Cost	€465,000
Total Cost	**€3,135,789**

Planning for a base application rate of 3,000 applications, it is estimated that an increase in applications from 2,571 would require resources of €3,659,030 for the Board to provide a legal service under the current mixed model of delivery on all international protection cases from first instance to deportation stage inclusive on the basis of an end to end service.

2-2 Would extra capacity required be best provided by FTE LAB staff or external solicitors?

This is a policy matter to which the Board is currently giving consideration. The mixed model has the advantage of giving the Board flexibility in meeting a fluctuating demand influenced by external factors. The rate of increase in inward migration and the numbers of people seeking international protection have varied considerably in the last 20 years with a significant fall in numbers following the 2008 economic downturn followed by a steady increase in numbers in recent years. We are likely to see further changes in the current very turbulent times.

2-3 What would the cost be of FTE LAB staff dealing with all cases for this base application rate?

An estimate of the salary cost of the current solicitor, legal clerk and clerical officer staffing complement amounts to €1,000,500. This comprises 8.25 FTE solicitors, 7.8 FTE legal clerks and 4.35 clerical officers. This is the estimated salary cost of providing an end-to-end legal service to 22.4% of all applications received in 2019. The cost of providing a complete in-house service to 100% of applications, i.e. to all 2,571 applicants would consequently be a multiple of this estimated salary cost.

2-4 What would the equivalent cost be of external solicitors dealing with all cases for this base application rate?

The standard payment to a private solicitor for providing legal advice is €897.90 and the standard payment for legal aid for an appeal to the IPAT is €492.00. In 2019, 43% of payments made to PPs were for a standard appeal to the IPAT. Typically this payment will be in addition to the payment already made for the provision of advice to the client. In 43% of cases referred to PP's a total fee of €1,389.90 may be paid. Taking a base application rate of 2,500 to 3,000 per year and the standard payments made to private solicitors under the existing scheme, the estimated cost of referring all cases to private solicitors is shown in Table 10 and 11 below. In addition to the cost of payments to private solicitors there would also be additional administration costs and additional case expenditure (see estimates at Table 9 above). There would also be the cost of providing robust quality assurance.

The profile of cases has been evolving since the enactment of the International Protection Act 2015. In addition to payments for legal services for standard advice and appeal to IPAT, payments are also made to private solicitors for services in relation to the following; Dublin III Advice, Dublin III Appeal, Revocation of status, Appeal of an inadmissible application, Appeal on papers only, Client not contactable after First Consultation and Transitional cases. Additional fees are payable for family members. However, for the purposes of this base rate calculation, the payments made in relation to standard advice and standard appeal to the IPAT are relied upon as these are the primary services provided to applicants.

Table 10 – Estimated cost of private solicitors payments for dealing with 2,500 cases

Base App. Rate of 2,500 Applications		Advice Payment	Total Cost Advice	Standard Appeal to IPAT	Total Cost Standard Appeal	Total Cost
57%	1425	€897.90	€1,279,508	€492.00	€0	€1,279,508
43%	1075	€897.90	€965,243	€492.00	€528,900	€1,494,143
	2500					€2,773,650

Table 11 – Estimated cost of private solicitors payments for dealing with 3,000 cases

Base App. Rate of 3,000 Applications	Advice Payment	Total Cost Advice			Total Cost

				Standard Appeal to IPAT	Total Cost Standard Appeal	
57%	1710	€897.90	€1,535,409	€492.00	€0	€1,535,409
43%	1290	€897.90	€1,158,291	€492.00	€634,680	€1,792,971
	3000					€3,328,380

3. EU Best Practice

We would also like to look at best practice in relation to legal support for asylum seekers in other EU States. In this regard, would you have any examples of best practice the Board could recommend?

Access to legal aid is essential to ensure the effective exercise of fundamental rights of international protection applicants[1]. EU legislation and jurisprudence reinforces this position. Member states have an obligation to ensure applicants' fundamental rights are provided for. There is divergence between member states regarding the extent of legal aid that is provided to asylum seekers. The legal aid service provided by the Legal Aid Board is an end-to-end service including early legal advice.

The UNHCR has acknowledged that *"The provision of legal aid contributes to the efficiency of the asylum procedure."*[2] The Irish Refugee Council have reported that the provision for quality legal aid from the outset of the asylum procedure both improves the quality of decisions and is cost efficient; it reduces the requirement for detention and state support.[3] An applicant's right to access legal aid is also set out in EU Directives and Regulations for the Common European Asylum System. [4]

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 regarding common procedures for granting and withdrawing international protection (commonly referred to as the Asylum Procedures Directive (APD)) states as follows;

"In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention or as persons eligible for subsidiary protection, every applicant should have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his or her case and

[1] EU Fundamental Rights Agency, Access to effective remedies: The asylum-seeker perspective(2010) http://bit.ly/2o9EGvl
[2] ECRE/ELENA Legal note on access to Legal Aid in Europe
[3] Irish Refugee Council, Providing Protection: Access to early legal advice for asylum seekers (2014), http://bit.ly/117X9dz
[4] European Union: European Commission, COM (2016) 467: Proposal for a Regulation of the European Parliament of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 13 July 2016, Procedure 2016/0224/COD, available at: https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-467-EN-F1-1.PDF.

sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure. Moreover, the procedure in which an application for international protection is examined should normally provide an applicant at least with: the right to stay pending a decision by the determining authority; access to the services of an interpreter for submitting his or her case if interviewed by the authorities; the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) and with organisations providing advice or counselling to applicants for international protection; the right to appropriate notification of a decision and of the reasons for that decision in fact and in law; the opportunity to consult a legal adviser"[5]

Legal Standards

Member states are bound by the requirements of the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights (CFR) and must interpret national measures in accordance with these authorities. Notably Article 6 of the ECHR provides for a right to a fair trial and the absence of legal aid renders a remedy under Article 13 inaccessible. Furthermore the CFR provides for the right to asylum and non Refoulement under Articles 18 and 19. Article 47 of the CFR states that an applicant is entitled to legal aid to challenge asylum decisions.[6]

Signatories to the following EU directives are also bound by their provisions;

- The revised Asylum Procedures Directive – fair, efficient and effective asylum decisions. Necessary supports for vulnerable applicants – especially unaccompanied minors and victims of torture.
- The revised Reception Conditions Directive – minimum standard for material reception conditions and that the fundamental rights of the applicant are respected. Dentition only employed if absolutely necessary
- The revised Qualification Directive – guidance regarding grounds for grant of international protection
- The revised Dublin Regulations – process of determining appropriate member state to determine application -
- These provisions establish the minimum standard for the treatment of international protection applicants.

Brief Analysis of Access to legal aid in European Countries

The following extract from the UNHCR's report on Access to Legal Aid for asylum-seekers in Estonia gives a brief outline of best practice initiatives of some member states;

[5] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013
[6] Article 47 of the Charter

"The ELA Report highlighted the success of pilot programmes and practices in the UK and Ireland related to the provision of early legal advice at first instance. In the UK, the Solihull Pilot "facilitated an interactive and flexible process before, during, and after the asylum interview with greater decision maker/legal representative liaison and NGO/UNHCR involvement in oversight and evaluation." The evaluation found, as a result, higher initial grant rates, lower appeal rates, neutral costs, and a qualitatively significant change in culture.[262]

The UK also designed the Early Legal Assistance Project and developed a system in which an applicant "was referred to a legal representative within five days of lodging an application and prior to the substantive interview the legal representative would assist the applicant in the production of a witness statement."[263] *This project also saw success in the improved quality of decision making and increasing confidence in asylum-seekers' initial decisions.*[264] *Witness statements in particular received direct praise; "[they] added credibility to the asylum system, ensuring that a minimum level of information/evidence was available at the earliest opportunity for all cases."*[265]

In Ireland, the Irish Refugee Council undertook to provide early legal advice to asylum-seekers. This involved having a solicitor conduct an initial interview followed by preparing a detailed statement of the claim.[266] *The process often required several appointments and an interpreter so that all available evidence, including submissions being made prior to or (sometimes in light of issues raised) during an interview, was included.*[267] *All of the Irish stakeholders interviewed for the ELA report noted two broad reasons why the provision of early legal advice was important: "trust and efficiency" and "to move the system away from an adversarial stance and towards a greater inquisitorial and collaborative process."*[268]

Estonian decision-makers were also in favour of providing early legal advice after the submission of an application.[269] *They felt that it (i) helped to facilitate communication between asylum-seekers and authorities and encouraged asylum-seekers to be more "cooperative" and trusting of the system, (ii) alleviated the time pressure when limited to only 10 days to appeal a negative decision, and (iii) contributed to the case owners' work with helpful and up-to-date country of origin information.*[270]

According to EASO, several countries broadened their scope of providing legal assistance to applicants or took steps toward enhancing the effectiveness of legal assistance in 2017.[271] *Belgium continued to guarantee free legal assistance.*[272] *Bulgaria provided legal aid at first instance under the AMIF for the first time.*[273] *Hungary selected five lawyers via public tender to provide legal representation and counselling for asylum-seekers in transit zones on top of already-existing free legal assistance services.*[274] *The Swiss government has*

also continued preparations for implementing major legislative and organizational reforms to the asylum system, including the provision of free legal assistance for the purposes of an important safeguard against short timelines for processing asylum claims.[275]

The ECRE/ELENA Legal Note also provides many examples of good practice in regards to the provision of legal aid at first instance.[276] *In Spain, the right to legal aid is guaranteed in national legislation except where asylum applicants renounce it.*[277] *In this vein, the Spanish Supreme Court has ruled that administrative authorities must go beyond informing asylum applicants about the possibility to receive legal aid and must indicate in their asylum file whether they accept or reject legal aid.*[278] *In Slovenia, legal aid is not guaranteed by law, but free legal assistance and representation (including in the interview) is generally provided by the PIC (Legal-Informational Centre for NGOs) financed partly by the AMIF and partly by the Slovenian government.*[279] *In Switzerland, while legal aid is not available at present, a new asylum system is foreseen for 2019 and will include access to legal aid at first instance.*[280]

The ECRE/ELENA Legal Note also provides insights into legal services offered within the scope of assistance and representation. In the Netherlands, as a general rule, asylum applicants are assigned to legal representatives, who meet with them before the actual start of the asylum procedure and prepare them for their interviews.[281] *These legal representatives get fixed compensation for the first instance procedure and can choose to be present during the asylum interview (compensation is, however, the same whether they are present or not).*[282] *In Portugal, legal aid providers are not present in asylum interviews (with the exception of interviews with asylum applicants who are children).*[283] *However, legal advice is provided at first instance by the Portuguese Refugee Council under an agreement with the Portuguese Government.*[284] *This legal advice includes the review of statements provided by the applicant to the authorities, preparation of legal requests to amend information given at the interview, and providing additional evidence and other contacts to the authorities.*[285"][7]

The Dutch Council of State in a ruling regarding the return of applicants of international protection to Greece from the Netherlands held that the transfer should not take place due to serious deficiencies in reception and asylum procedures. In its ruling the Council of State referenced the limited access to legal aid by in international protection applications in appeals procedures and its impact on access to effective remedies. The Council further held that *"a lack of access to legal aid does not ordinarily amount to a violation of Article 3 ECHR or*

[7] UNHCR UN Refugee Agency *Access to Legal Aid for Asylum Seekers in Estonia,* 2019. Available at https://www.unhcr.org/neu/28284-access-to-legal-aid-in-estonia.html

Article 4 EU Charter, the circumstances in this particular case were such that meant ill treatment was foreseeable." The Council held that returns to Greece cannot take place unless legal aid can be guaranteed to asylum applicants, or unless there are individual guarantees that asylum applicants will be appointed legal representation upon return."[8]

The UNCHR in their report titled Access to Legal Aid for asylum-seekers in Estonia makes the following comments regarding best practice procedures;

"Bearing in mind the good practices highlighted by the ELA Report from the UK, Ireland and Belgium as well as the proposed new standards outlined in the proposed APR, Estonia may consider introducing additional procedural safeguards in the national legislation. This may include:

(i) a possibility for asylum-seekers to meet with a free legal advisor prior to the asylum interview, in order to discuss, collect and submit corroborating evidence. A detailed witness statement/claim prior to the interview to be prepared with the help of a legal adviser could also be a requirement, and

(ii) a right to have a free legal representative (lawyer) at the asylum interview and later on during the administrative procedure, in order to be able to draft follow-up notices and responses to inquiries from the PBGB.

Such procedural safeguards would allow the PBGB to carry out more focused and effective asylum interviews down the line, which would have a positive ripple effect through the decision and appeal process and improve the perception of the system itself.."[9]

[8] The Netherlands: Assurances of access to legal aid required in transfers to Greece

https://www.asylumlawdatabase.eu/en/content/netherlands-assurances-access-legal-aid-required-transfers-greece

[9] UNHCR UN Refugee Agency *Access to Legal Aid for Asylum Seekers in Estonia,* 2019. Available at https://www.unhcr.org/neu/28284-access-to-legal-aid-in-estonia.html

Appendix A: International Protection Service Delivery Model

First Instance

1. A pre-Questionnaire consultation will be held (usually with a paralegal) during which information is given and gathered. This consultation should also be offered to clients who register post-questionnaire but pre-interview (time allowing). The client must be brought through the Questionnaire so that they are clear on the issues that need to be set out and the importance of being accurate. An attendance form and a checklist for this consultation have been circulated. It is important to highlight that the checklist is not intended to replace the conversational aspect of the consultation, but rather to ensure the paralegal has a checklist at the end of the consultation against which they can ensure they have covered everything that needs to be covered with the client.
2. The template attendance document reflects the fact that it is not necessary for a paralegal to write every piece of information given to the client, but rather to sign a one-line declaration that the information has been given in accordance with the Best Practice Guidelines. The focus of the attendance will be on the information gathering element, and may be 6 paragraphs or 6 pages long, depending on the complexity of the case. The focus of the attendance on information gathered will also ensure that the solicitor will not need to extensively review the file in order to find the pertinent case information. The paralegal should ensure that any issues that require urgent attention are highlighted at the beginning of the attendance in synopsis form so that the solicitor is alerted to them immediately. As part of this synopsis note, the paralegal will recommend if they believe a SPIRASI report, GP report may be necessary. In determining whether to recommend referring a case to SPIRASI or to another medico legal provider, the paralegal/solicitor must have regard, inter alia, to the following factors:-
    a. the statement of acceptance in the interagency "Framework Document on the interpretation of medico-legal reports" that a medico legal report is not always necessary and that the statement by an applicant for asylum should if credible be sufficient for the purposes of refugee status determination
    b. consider the view where expressed by SPIRASI that a medico legal report may be beneficial
    c. the definition of torture and of cruel, inhuman and degrading treatment, as set out in Article 1 of the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment;
    d. the history given by the applicant in the questionnaire, whether the client has medical documentation from their country of origin, consultations with the solicitor or Paralegal and whether the applicant has described incidents falling within the above definitions or other incidents of violence or harm of a serious nature;

e. the applicant's explanation for the failure to disclose the incidents previously (if this is the case);
f. the consistency of the applicant's account with generally known facts about the country of origin:
g. the nature of the injuries sustained by the applicant;
h. the likely corroborative value of a report;
i. The applicant's expressed wishes in relation to submitting a medico legal report.

3. Unless exceptional circumstances require it, no more than one pre-questionnaire consultation should be held with a client and the consultation itself should, in the majority of cases, be kept to a maximum of two hours. Additional time may be necessary where Dublin III considerations arise. The Dublin III information gathering document should be used in conjunction with the pre questionnaire consultation document. Guidance for these cases is provided in the best practice guidelines.
4. Where Transitional clients have already received comprehensive advice on the Asylum claim, a shorter consultation should be held for any additional information to be given and gathered. Consideration can be given to conducting this consultation by telephone if the client speaks English without difficulty. However where the client has already received a S13 report and only a skeletal appeal lodged, the S13 report needs to be gone through with the client by the solicitor or the paralegal and any negative credibility findings addressed.
5. The file should be given to the solicitor with responsibility for the case as soon as is practicable after the consultation.
6. On reviewing the file, the solicitor will confirm to the paralegal what reports to pursue; to obtain relevant COI if required; what outline submissions (if any) should be drafted etc. It is recommended that PTR submission be drafted and submitted pre-Interview. The translated Questionnaire should be sought and obtained from the IPO (or client) prior to drafting submissions, where at all possible. Where a paralegal drafts an outline submission, responsibility still rests with the solicitor to review and, if appropriate, amend the submission. The finalised submission is always the solicitor's responsibility. In some instances, the solicitor may prefer to draft the submission without any prior drafting by the paralegal (for instance in the case of transitional clients who received a negative decision pre-1st January 2017 and skeletal appeals have been filed, submissions should be drafted by the solicitor).
7. The paralegal will take responsibility for updating PTR on an ongoing basis under the supervision of the assigned case solicitor.
8. Paralegals work under the supervision of solicitors and a teamwork approach should be taken in respect of every case. Paralegals must be aware of the importance of their role in supporting solicitors and for the need to ensure the solicitor is informed of any potential risks or issues that they become aware of at this early stage. Solicitors must entrust the paralegals with this role,

promoting a mentoring and collaborative approach. The progression of a case should not differ greatly from solicitor to solicitor. A defined and standardised approach, based on this document and the Best Practice Guidelines is required.

Pre-Interview Consultation

9. On receipt of the translated questionnaire and/ an interview date from the IPO, the solicitor will review the file and arrange a legal advice consultation with the client. Submissions may be sought at this stage following receipt of Questionnaire and interview date.
10. The client will already have been advised of all aspects of the process and the importance of various key aspects of the legislation, so the solicitor pre-interview consultation should be for the purpose of providing targeted legal advice based on the particulars of the claim, over and above that information and advice already given.
11. Where submissions have been drafted, these are gone through with the client and the necessary changes and corrections made and approved prior to being submitted to the IPO.
12. As per the pre-questionnaire consultation, no more than one pre-interview consultation should be given to a client unless it is deemed absolutely necessary by the solicitor.
13. Submissions should not be made to synopsise a claim and may not be necessary in every instance. IP submissions should be made where a client has an arguable claim for refugee status or subsidiary protection status, and the submission should set out the basis for contending that the client is entitled to such status. In transition cases where skeletal appeals have been lodged , submissions should address negative credibility findings.

Appeals

14. If a positive recommendation is received, the paralegal should advise the client in writing of same. If the client receives a negative refugee status recommendation but a positive subsidiary protection recommendation, the solicitor should advise the client on their legal options and they should be written to in this regard.
15. On receipt of a negative recommendation, an appeal may be filed if the client so instructs. Appeals should not be filed for clients who cannot be contacted and do not show up for appointments on the basis that they indicated an intention to appeal before the interview. Instructions must be taken after a negative recommendation has issued from the IPO. An instruction to appeal may be taken on the phone if appropriate and it should be recorded on the file. This should be done by the paralegal. Instructions to appeal must be notified to the solicitor immediately.
16. The solicitor will meet with the client and draft the appeal and get the client to sign the appeal form.

17. The solicitor may send an RDC query seeking additional COI. Additionally, the paralegal may be requested to seek COI following the client's instructions to appeal or arising from the appeal consultation.
18. In copying and collating copies of an appeal and supporting documents and COI for the Tribunal, support will be available from the clerical staff.
19. Given the strict statutory deadlines for filing appeals, it is envisaged that most of the work undertaken at first instance; pre-interview; information gathered; potential risks and issues identified; any submissions drafted will serve to ease the pressure at appeal stage.
20. In drafting appeal submissions, it may be possible for paralegals to draft outline submissions for the solicitor, however, as above, ultimate responsibility for finalising submissions rests with the solicitor.
21. Emphasis on a collaborative approach and collegiality is also required with regard to attendance at IPAT Hearings. Where a solicitor is unable to attend an IPAT Hearing, the first alternative pursued should be for a colleague to step in. Referring a case to a PP at IPAT Hearing stage should not be the first recourse where a scheduling difficulty arises for a solicitor. It is also the case that no referrals to PPs or BLs should be made at appeal stage without the express approval of the Managing Solicitor.
22. For Service in Cork and Galway a modification on the approach may be appropriate where it is not possible to facilitate solicitors travelling to Dublin for IPAT hearings. This modification in consultation with the staff in Cork and Galway may see the in-house component of the service front loaded towards the early stage of the process with referrals to PPs or BLs occurring at the IPAT stage.

Caseloads

23. Feedback received in respect of appropriate caseloads for paralegals was considered and it is accepted that paralegals' capacity for pre-questionnaire consultations should be reduced from 6-8 per week to 4-5 per week (given current numbers and projections, demand may not even meet the level of 4-5 per week). This is also on the basis that the paralegal should have an on-going quasi-legal role as support to the solicitor in performing COI searches, drafting outline submissions, contacting clients, recording and notification of PTR updates etc. The reduction in pre-questionnaire consultation capacity expectations should allow time for these additional functions. The model emphasises the value a paralegal can add to a file, the support that can be given to solicitors and that the majority of paralegal tasks should be quasi-legal in nature.
24. In respect of solicitors' pre-interview consultations and preparation, this capacity is dependent on other casework that may be required in terms of

drafting and attending appeals etc. The emphasis in the pre-interview stage is that demand will be driven by the scheduling of IPO interviews and the situation will be kept under review with regards to capacity.

25. As negative recommendations have begun to be issued and solicitors will be spending more time meeting clients for appeal consultations, drafting and filing appeals and attending appeal hearings, the capacity for dealing with pre-interview appointments and submitting appeals must be kept under review by management. Certainly, in any ongoing review, the existing output of solicitors would be considered and it should be noted that the limitations on the service that we can provide must be borne in mind at all times.

Clerical Support

26. The support function takes on increased significance under the service delivery model outlined. It is not appropriate for solicitor and paralegal staff to spend hours typing; photocopying; collating documents etc. which all fall within the clerical support remit.
27. Clerical support staff should not be assigned to individual solicitors. Maximum capacity, efficiency and effective allocation of resources can only be achieved through work being allocated among the clerical support pool of staff as deemed appropriate by their manager according to demand and availability.
28. Again, flexibility and teamwork is required. Managers need to ensure that there are sufficient cover systems in place.
29. All staff should please note that the proper signing-off convention for law centre correspondence is the author's name, followed by the law centre name and address. This also applies to emails. No correspondence, whether written or via email, should be signed off under the name RLS. The Refugee Legal Service no longer exists and staff should not include the term in contact details or sign-offs

PTR update and Review

30. As stated at Point 7 responsibility for updating PTR on ongoing basis remains with the paralegal. The client should be advised at every step of the way of the need to update the Minister and provide documentation (original where possible) to support their application. This includes at the stage of lodging appeal and at appeal hearing. A template letter has been drafted and is available in the IP folder on the P Drive. At review stage, submission should be made to the Minister where appropriate, including any additional relevant information and change in circumstances and reference made to the updates that had been sent since receipt of the negative PTR recommendation, within the **5 day** statutory period. As the first PTR Reviews are issued the model of delivery will have to be reviewed and amended as appropriate.

Deportations

31. If a client has been served with a Deportation Order pursuant to s.51(1) of the IPA 2015, the solicitor must write to the client to explain its implications in terms of reporting requirements and to offer an appointment, with the solicitor/caseworker if the solicitor considers it appropriate and necessary.

If considered appropriate, the solicitor may submit written representations to the Minister for Justice and Equality setting out reasons as to why their client should not have had a Deportation Order made in respect of them or submit grounds upon which the Deportation Order should be revoked. At this stage, the possibility of making an application for re-admission into the process should also be considered and made if appropriate.

If it is considered that the decision to issue a Deportation Order is flawed and merits the institution of Judicial Review proceedings, the case should be referred to the specialist judicial review solicitor who will handle the matter in accordance with the best practice guidelines. If the solicitor is of the view that no judicial review issues arise:

- He/she should make a clear note on the file to that effect;
- The client should be so informed in writing;
- The client should be advised of the possibility of obtaining a second opinion independently and instructing a private solicitor to institute review proceedings, and
- The client should be advised that the law centre will be closing their file after the reporting date has passed.

Note: This model of Service delivery is to be read in conjunction with the Best Practice Guidelines on International Protection

Appendix B: LAB International Protection/Permission to Remain Best Practice Guidelines

Introduction

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

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

Authority to act for a client and additional services

- One Legal Aid Certificate will be granted to a Private Practitioner on referral, to cover any advice and/or legal aid required from Questionnaire/Interview/Appeal stage until finalisation of the case. For the avoidance of doubt, please note that such legal aid certificate granted to an applicant does not authorise the taking of judicial review proceedings.

- There will be no requirement for a Private Practitioner whose applicant has been granted such a certificate to apply to the Board for an amended legal aid certificate to cover each individual stage of the process.

- Where a Private Practitioner considers it necessary to have a document translated or to obtain a SPIRASI or GP report (or any other report), an application for an amended legal aid certificate must be made in all instances to Head Office in Cahirciveen (PPUnit@legalaidboard.ie).

- For Legal Aid Board Solicitors, a Legal Aid Certificate is not necessary at the advice stage, however a submission for a Legal Aid Certificate must be made if an appeal to the International Protection Appeals Tribunal is pursued.

Key Stage 1 – Approach at First Instance/Pre Questionnaire

- The applicant will be given general information and advice on the completion of the questionnaire at the first meeting. The applicant should leave this consultation with all of the information they need to enable them to complete the questionnaire.

- Information must be given on possible issues such as: admissibility; nexus; safe country of origin; exclusion; the importance of filling in family details for any potential future family reunification application; implications of 15(3) (a-c) regarding any children born or later entering Ireland and the duties of the International Protection applicant.

- Information must be given on the International Protection process and the basis for granting Asylum Status as per the checklist at Appendix A.

- The applicant must be informed that the basis for granting Subsidiary Protection (SP) is that a person is in need of international protection due to a real risk of serious harm, meaning:
    - Death penalty or execution;
    - Torture or inhuman or degrading treatment; or
    - Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

- The applicant must be informed of the Permission to Remain (PTR) procedure to include consideration at first instance; ongoing duty to inform the Minister of any changes in circumstances that might affect PTR; and 5 day statutory period following receipt of The International Protection Appeals Tribunal decision to file further PTR submissions before final review by the Minister.

  The importance of the client keeping the Board/PP informed of any change of address should also be highlighted. Further country of origin information (COI) may need to be sought and further instructions may need to be taken following receipt of the Tribunal decision before any further PTR submissions are made for the Minister's final review. Given the five-day window for reviewing a negative PTR decision, the PTR application should be kept under review and updated where necessary.

- The information provided should include answers to all of the necessary and important questions relating to, for example, the applicant's family; health information; travel history and personal circumstances, including a synopsis of the details of their claim. The applicant should be provided with a detailed overview of the International Protection process.

- Inquiries should be made with IPO at the outset regarding any visa/EURODAC hits and instructions must be taken to assess whether a risk of Dublin III transfer arises to any other relevant DIII country and consideration must be given to whether there are any grounds in each client's circumstances to resist such transfer that should be brought to the early attention of the IPO, eg. if there is family in Ireland; Article 17 discretion in humanitarian cases (submissions must also be made to the Minister in such cases); systemic deficiencies in the International Protection process in the proposed country of transfer.

- All of the information and advice detailed above must be provided to the applicant during the consultation even in circumstances where they have returned their completed questionnaire to the IPO before the first consultation.

- At this information and advice session a certain amount of factual information should be obtained from the client including medical details and contact details of the GP as well as an authority to obtain medical information if required.

- After the information session a query will, if necessary, be raised in respect of relevant Country of Origin Information with the Refugee Documentation Centre (RDC) 1st Floor Montague Court, 7-11 Montague Street Dublin 2 (Telephone : 01-4776250 Email: (refugee_documentation_centre@legalaidboard.ie). Also consider if further documentary/medical reports may assist and should be obtained.

- The pre-questionnaire checklist at Appendix A should be used to ensure that all necessary points were covered during the consultation in terms of information given to the client.

- A post-attendance letter should be sent to the client synopsising the process as outlined. The letter should also confirm the documents which the client was advised to seek or said they could get.

Key Stage 2 – Pre-Interview Consultation

- A further consultation between the applicant and a solicitor should be arranged when the questionnaire/translated questionnaire has been received from the International Protection Office. The focus in this meeting is on legal advice based on all of the information contained in the completed questionnaire.

- The solicitor, in taking the client’s instructions and in advising the client shall have regard to the checklists at Appendix B-J:

- Appendix B: Credibility Assessment
- Appendix C: IPA Pre-Interview Checklist
- Appendix D: Determining Nationality, Former Habitual Residence and Article 1E Countries
- Appendix E: Persecution Flowchart
- Appendix F: State Protection Flowchart
- Appendix G: Internal Protection Alternative Checklist
- Appendix H: Section 15(c) Analytic Flowchart
- Appendix I: Standards of Probability and Assessment of Future Risk
- Appendix J: Article 1(F) Exclusion Checklist 1 and 2

- Written submissions may be made to the IPO following consultation with the applicant and review of the applicant's file. Submissions should be made where a client has an arguable claim for refugee status or subsidiary protection status, and the submission should set out the basis for contending that the client is entitled to such status. The submission should include a brief synopsis of the facts and link those facts to a statement of the law. If possible the applicant will approve the submissions prior to the submissions being sent to the IPO. These submissions might include: a reference to nexus; internal relocation and state protection issues; address any inconsistencies or reasons for absence of documentation; include relevant COI; and address any potential issues that might risk a 'papers only' or 'accelerated appeal'.

  Submissions should also include Permission to Remain issues. Submissions in relation to Dublin III might include for example arguments in relation to the exercise of Article 17 discretion or submissions in relation to family applicants in accordance with Article 10. Submissions may be made in relation to language analysis reports if it is considered necessary.

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

Key Stage 3 - Outcomes at First Instance

- If a positive Refugee Status (RS) recommendation is received, the client should be written to confirming: the outcome of the application; the fact that they will receive further correspondence from the Department of Justice and Equality (DJE) explaining the implications of Protection status; and that the solicitor will be closing the file.

- If a negative Refugee Status recommendation is received and positive Subsidiary Protection (SP) recommendation is received, the client should be written to confirming: the outcome of the application; the fact that they will receive further correspondence from the Department of Justice and Equality (DJE) explaining the implications of Subsidiary Protection status; and take the applicant's instructions re. the possibility of appealing the negative Refugee Status recommendation.

- Negative RS/SP and positive Permission to Remain (PTR) recommendation: the client should be written to confirming: the outcome of the application; the fact that they will receive further correspondence from the Department of Justice and Equality (DJE) explaining the implications of being granted PTR; and take the applicant's instructions re. the possibility of appealing the negative RS/SP recommendation.

- Negative RS/SP/PTR: The Solicitor shall review the recommendation of the International Protection Office and take the applicant's instructions as to whether they wish to appeal the negative RS/SP recommendation to the IPAT. If the client instructs that they want a review by the Minister of their PTR claim, the request must be made within 5 days of the negative RS/SP appeal decision from the IPAT.

- IF the client is not appealing or seeking a review - a letter should be sent to the client notifying them that the case is completed and file will be closed.

Key Stage 4 – Filing an Appeal

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

Oral appeals and appeals on the papers

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

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

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

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

Notice of Appeal - Refugee and Subsidiary Protection Status Appeal (Form 1)
This form is used if the applicant is appealing the recommendation not to grant Refugee Status, or the recommendation to grant neither Refugee Status nor Subsidiary Protection Status.

Notice of Appeal - Inadmissible Status Appeal (Form 2)
This form is used if the applicant is appealing the decision that their international protection application was deemed inadmissible

Notice of Appeal - Subsequent Status Appeal (Form 3)
This form is used if the applicant is appealing the decision that a subsequent protection application should not be accepted.

Notice of Appeal - Dublin III
This form is used if the applicant is appealing the decision not to grant Refugee Status under the Dublin III System Regulations.
The solicitor should clarify with the applicant whether any documentation or other proofs may be obtainable prior to the submission of the Notice of Appeal/oral

hearing.

All Notices of Appeal must:

- **a)** Contain the applicant's name; applicant's temporary residence certificate number; country of origin; date of birth; ethnic group; religion; area of former habitual residence in country of origin; profession.
- **b)** Set out any other bio-data relevant to the claim; identify any changes to the biodata previously provided in relation to the claim as well as explanations of differences where they arise.
- **c)** Be responsive to the grounds of refusal.
- **d)** Be case specific.
- **e)** Identify the Convention reason(s).
- **f)** Cite relevant COI information that supports the claim. This information must be specific to the applicant's claim and be set out in a detailed and nuanced manner.
- **g)** Where submissions in relation to errors of law are made include a statement of the law, including UNHCR Handbook, relevant legislation, jurisprudence (nationaland international) and any relevant statements from leading scholars. The stated position of the law should be applied to the facts of the applicant's case.
- **h)** Where submissions are made in relation to errors of fact arising from the International Protection Office (IPO) recommendation, including negative/adverse credibility findings, these must be clarified and specifically addressed. The Notice of Appeal should incorporate a summary of the error of fact; the clarification provided by the applicant (in his or her words); and an explanation for the error of fact where applicable.
- **i)** Address any procedural issues arising from the first instance interview. The procedural irregularity should be explained, as well as a statement provided from the applicant regarding how this affected his or her ability to present his/her claims.
- **j)** Make a case as to why the applicant should be recognised as a refugee and/or beneficiary of subsidiary protection.
- **k)** Identify any witnesses who are required to attend the oral hearing; and
- **l)** Identify the language and dialect of interpreter if required for oral hearing.
- **m)** Be accompanied by relevant and clearly marked Country of Origin Information and redacted decisions. In the event that same is unavailable at the time the Notice of Appeal is lodged, the COI should be made available at the earliest opportunity thereafter, particularly where no oral hearing is to take place. The IPAT should be advised that further documentation shall follow in the cover letter.
- **n)** Once the Notice of Appeal is drafted, the solicitor should sign as legal representative. Should the applicant fail to return/ to sign his/her Notice of Appeal, submit the unsigned Notice of Appeal to the IPAT in any event where you have received instructions from the applicant.

Appeal forms can be submitted to:
The International Protection Appeals Tribunal
6/7 Hanover Street East
Dublin D02 W320
Tel: +353 (0) 1 474 8400
Scanned by Email to: info@protectionappeals.ie

Key Stage 5 – IPAT Hearings and Recommendations
The IPAT will notify the Law Centre once a date for the oral hearing has been scheduled. The solicitor is expected to represent the applicant at the hearing which will be held in the offices of the IPAT in Hanover Street on the date specified.

Recommendations from International Protection Appeals Tribunal (IPAT)
If IPAT affirms the negative recommendations from the IPO the solicitor should advise the applicant of options open to them including:

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

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

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

Sections 49(6) (b) and 49(9) (b) of the IPA 2015 not only allow but *oblige* an applicant to inform the Minister of any change in circumstances which occurs (i) between the initial application for protection and the making of the IPO protection recommendation and (ii) during the 5 day period following the receipt by the applicant of the protection appeal decision by the IPAT.A permission to remain refusal under s.49(4) is covered by the special provisions relating to judicial review contained in s.5 of the *Illegal Immigrants (Trafficking) Act 2000*, and it therefore must be challenged by way of judicial review within 28 days.

Statutory Deadline Missed
In the unlikely event of a statutory deadline being missed, either through your or the applicant's fault, the solicitor should immediately furnish the IPAT with an application

for an extension of the time within which to lodge the appeal (which is available in the body of the appeal form). The Managing Solicitor must be notified immediately if it is an in-house Board client. PPs should notify the Board immediately in circumstances where a request for an extension is refused.

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

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

Identifying potential victims of human trafficking
The solicitor should be aware of the definition of a victim of trafficking.

A victim of trafficking is a person who:

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

When children and mentally impaired persons are trafficked, no violence, deception, or coercion needs to be involved. In such exploitative conditions simply transporting or harbouring constitutes trafficking.
Where it appears to a solicitor that a client may be a victim of trafficking, the client should be immediately referred to An Garda Síochána. The solicitor may also need to consider referring the client to a relevant agency.

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

Post IPO Interview/Review Positive Permission to Remain Recommendations
If a positive Permission to Remain (PTR) recommendation is received following a Ministerial review, the client should be written to confirming:

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

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

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

Key Stage 6 – Deportation

If a client has been served with a Deportation Order pursuant to s.51(1) of the IPA 2015, the solicitor must write to the client to explain its implications in terms of reporting requirements and to offer an appointment, with the solicitor/caseworker if the solicitor considers it appropriate and necessary.

If considered appropriate, the solicitor may submit written representations to the Minister for Justice and Equality setting out reasons as to why their client should not have had a Deportation Order made in respect of them or submit grounds upon which the Deportation Order should be revoked. At this stage, the possibility of making an application for re-admission into the process should also be considered and made if appropriate.

If it is considered that the decision to issue a Deportation Order is flawed and merits the institution of Judicial Review proceedings, that possibility will be investigated by the solicitor. If the solicitor is of the view that no judicial review issues arise:

- He/she should make a clear note on the file to that effect;
- The client should be so informed in writing;
- The client should be advised of the possibility of obtaining a second opinion independently and instructing a private solicitor to institute review proceedings, and
- The client should be advised that the law centre will be closing their file after the reporting date has passed.

If a solicitor is of the view that there is a potential judicial review issue, the client should be so advised in writing and advised to obtain immediate private legal representation to pursue this option.

If a barrister has set out views on the prospects of JR, this must be included with the letter to the client. The Legal Aid Board will not discharge fees in respect of any counsel opinion that was not authorised in advance by Legal Services in

Caherciveen. If a legal aid certificate is granted for counsel's opinion, the solicitor must so inform the client.

If the solicitor is of the view that no possible grounds exist for Judicial Review:

- The client must be informed in writing by the law centre; and
- the client should be informed of the possibility of obtaining a further opinion independently, and of the importance of meeting statutory time limits in relation to judicial review.

Where the barrister and solicitor are of the view that no grounds exist but the client instructs that they want to challenge the decision of the IPAT:

- No JR query should be raised; and
- The solicitor should make an application for counsel's opinion/legal aid certificate, having particular regard to the provisions of Paragraph 5 (5) (b) of the Regulations.

Appendix A: Pre-Questionnaire Information-Giving Checklist
Appendix B: Credibility Assessment
Appendix C: IPA Pre-Interview Checklist
Appendix D: Determining Nationality, Former Habitual Residence and Article 1E Countries
Appendix E: Persecution Flowchart
Appendix F: State Protection Flowchart
Appendix G: Internal Protection Alternative Checklist
Appendix H: Section 15(c) Analytic Flowchart
Appendix I: Standards of Probability and Assessment of Future Risk
Appendix J: Article 1(F) Exclusion Checklist 1 and 2.

Appendix C: Guidance on European Communities (Reception Conditions) Regulations 2018

Directive 2013/33/EU lays down standards for the reception of applicants for international protection. Ireland opted in to the Directive on 22nd May 2018 and on foot of this the Minister for Justice and Equality has made the European Communities (Reception Conditions) Regulations 2018, implementing the Directive in Ireland effective from 30th June 2018.

Broadly speaking the Regulations provide minimum "material reception conditions" (basic housing, food, clothing, and daily allowances) to be provided to a recipient who does not have sufficient means to have a basic standard of living but subject to the proviso that he/she resides in a reception centre or an approved accommodation centre and complies with the house rules of the accommodation centre. In Ireland the reception conditions are provided via the "direct provision" system.

A law centre or member of the solicitors panel providing services in relation to an application for international protection may receive queries in relation to the matters covered in the Regulations. It is generally open to them to provide legal advice in relation to a matter covered by the Regulations, and in line with the further guidance provided below in relation to specific matters. Unless an application is received from an applicant who is not an existing client of the Board, it is not to be regarded as a separate matter and should be dealt with as part of the international protection file.

Labour market access

A key part of the Regulations deals with applications for labour market access permissions. These are available to applicants for international protection who meet the following criteria:

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- after nine months (after the international protection application was made), no first instance decision has been taken on the application
- the reason why a decision has not been taken on the application for international protection cannot be attributed to the applicant.

Effectively a first labour market access permission is only available to applicants for international protection where an international protection officer has not made a recommendation in relation to their application for international protection. It is not available to applicants who have already received a recommendation in relation to their application and are appealing to the International Protection Appeals Tribunal. However, where an applicant for international protection has received a recommendation from an international protection officer, they can continue to renew an expiring permit up until the time their application for international protection has been finally determined and cannot be appealed.

Law centres and members of the solicitors panel providing services to applicants for international protection may receive queries from existing applicants in relation to applying for labour market access. As part of the legal advice service they are providing in relation to the application for international protection, they may provide

an applicant legal advice in relation to the criteria for an application for labour market access.

The application for labour market access is made to the Minister for Justice and Equality on the form (LMA3) provided for in Schedule 3 to the Regulations. The form is relatively straightforward and involves the submission of the applicant's basic personal details and the completion of a checklist. No legal submissions are requested nor required. On that basis, it is not considered appropriate for a law centre or member of the solicitors panel to complete the application for labour market access on behalf of the applicant, as part of the legal advice service offered.

Reviews and appeals under the Regulations

As noted above decisions to grant and refuse labour market permissions, as well as to withdraw such permissions, may be taken by the Minister for Justice and Equality under the Regulations. The Regulations also provide for the Minister to take certain decisions regarding the provision of the reception conditions, namely:

- the recipient is not entitled to receive the relevant reception conditions
- the recipient should contribute to the costs of relevant reception conditions
- to seek a refund of the cost of providing the recipient with the relevant reception conditions
- to reduce or withdraw the relevant reception conditions provided to a recipient

Likewise the Minister for Employment Affairs and Social Protection may take similar decisions in relation to the provision of a direct provision allowance.

The Regulations provide for a review and appeal process in relation to a decision taken by the relevant Minister in relation to a labour market access permission, the provision of reception conditions or the provision of a direct provision allowance. The application for review must be made to the relevant Minister within ten days. The Minister concerned shall appoint an officer of the same or higher grade to the one that took the original decision, to be a review officer. The decision stands suspended pending the review. An applicant for international protection may seek advice from their solicitor in relation to the review and such advice may be provided including advice in relation to any further information that might be submitted in support of a review.

Where a decision is upheld on review the decision may be appealed to the International Protection Appeals Tribunal. Such appeal must be made within ten days of the applicant being notified of the review decision. Such an appeal will be "on the papers" only except where the interests of justice require. An application should be made to the managing solicitor (or, where the managing solicitor has delegated this role to other staff, to the nominated staff member) for a delegated legal aid certificate in relation to the appeal and this can be granted locally. The certificate should be worded in such a way that it will cover the provision of legal aid to the applicant in relation to any further appeals to the Tribunal.

Where a legal aid certificate is already in being then an amended legal aid certificate can be applied for and granted locally to cover the appeal to the Tribunal. As with other cases there should only ever be one legal aid certificate on an EOS file.

Where the service is being provided by a member of the solicitors panel the solicitor should apply to Legal Services for an amendment to the legal aid certificate to cover an appeal to the Tribunal in relation to the reception conditions/labour market permission matter only.

The service to be provided by the law centre/solicitor in such cases should extend to:

- taking instructions from the client, including taking up all documentation in relation to the first instance decision and the appeal
- advising the client in relation to the merits of any appeal
- preparing the notice of appeal
  Advocacy before the Tribunal, where an oral appeal is convened

An applicant who has failed to appeal within the ten day period may seek permission to appeal outside the time limit. Where the Tribunal receives an appeal outside of the ten day time limit, the Tribunal will, by notice, inform the appellant that their appeal is outside the time limit and of their entitlement to seek permission to appeal outside of the time limit, which they must do so within three days having received such a notice. In either event the request must be made in the form in Schedule 8 to the Regulations. The Tribunal must be satisfied that there are "special circumstances" as to why the applicant could not make the appeal within the time period allowed and that in the circumstances concerned it would be unjust not to grant the permission. Where this occurs the service to be provided may extend to taking instructions from the client as to the nature of the special circumstances and drafting the Schedule 8 form. Where the three day period applies this must be done as a matter of absolute priority.

Enquiries and applications received by law centres other than those involved in the provision of international protection services

Where a law centre, other than one involved in the provision of legal services to applicants for international protection, receives an enquiry or application in relation to the provision of services regarding a matter covered by the Regulations, they should ask the applicant/querist whether or not they are legally represented in relation to their application for international protection. If representation is being provided by a law centre or a member of the solicitors panel, they should be asked to make contact with the law centre or private practitioner concerned. If they make an application then it should be forwarded to the law centre/private practitioner concerned without being processed. This is on the basis that the law centre/private practitioner of which they are a client will provide services without any requirement for a fresh application.

If the applicant is not an existing client of the Board then the procedure below should be followed.

Applications received from persons who are not legally aided in relation to their application for international protection

Where an application is received in relation to a matter covered by the Regulations, by a person who is not being legally represented (or is being privately represented) in relation to their application for international protection, it must be processed as normal and treated as High Risk and Priority. If the person is financially eligible

contact should be made with the nearest law centre which deals with international protection matters with a view to having them act in relation to the matter.

If the applicant is being represented privately then the applicant should be advised that that solicitor may be best placed to advise them. If the applicant wishes to continue with his/her application with the Board the applicant should be asked for details of the private solicitor who is representing them in relation to the international protection matter with a view to taking up a copy of the file at short notice. Where this is not possible, it may be appropriate to make preliminary enquiries from the applicant as to whether the delay in issuing a decision is obviously attributable to the applicant (e.g. they have not returned their completed questionnaire). If it seems clear that the impugned decision is on the basis that the reason a decision at first instance on the application for international protection has not been taken is attributable to the applicant, the solicitor with conduct of the file may need to consider to what extent they can properly advise the applicant in relation to any review or to take full instructions in relation to the appeal.

Appendix D: Scheme of Legal Aid and Advice for International Protection
Solicitors Panel Terms and Conditions

INTRODUCTION

1. The Civil Legal Aid Act 1995 ("the Act") provides that the Legal Aid Board ("the Board") may establish and maintain a panel of solicitors who are willing to provide legal aid and advice to persons who are in receipt of legal services. Arising from the enactment of the International Protection Act 2015 and the introduction of the "single procedure" the Board has now decided to establish and maintain a panel of solicitors who are willing to provide services to persons who have been granted legal services by the Board for the purpose of advice and / or representation in relation to an application under the International Protection Act 2015 for asylum, subsidiary protection and leave to remain and for all matters previously covered by the Private Practitioner Asylum and related issues Panel. The Panel is to be known as the Private Practitioners International Protection Panel ("the Panel").

PANEL OF SOLICITORS

2. Any solicitor who meets the conditions in the Scheme and wishes to have his or her name placed on the Panel must apply in writing to the Board. The solicitor must give an undertaking, in the form at Appendix 1, to comply with the terms and conditions herein and the provisions of the Act when providing legal aid and/or advice.

3. Any solicitor wishing to apply to be placed on the Panel must hold a current practising certificate from the Law Society of Ireland and must have professional indemnity insurance that is adequate for the purposes of the Scheme. The current figure is €1.5 million in any one case, but the Board may revise this amount from time to time.

4. Solicitors on the Panel must comply with the tax clearance procedures specified in the Department of Finance Circular 43/2006 entitled 'Tax clearance Procedures-Public Sector Contracts' or any such circular amending or replacing that circular.

5. The Panel shall be in place for a period of three years from the 1st September 2016 or such other date or period as the Board may determine. In this regard the Board is required to be responsive to any further changes that may occur in the international protection process. The Board shall consider applications to be included on the Panel at such times as the Board, from time to time, may determine.

6. Solicitors on the Panel must have access to e-mail facilities and must have IT software that is compatible with Microsoft Office software in order to ensure the effective and efficient administration of the Scheme. In addition it is Board policy that email communications concerning clients are encrypted for security purposes. Instructions for reading and replying to secure communications sent by the Board are attached at Appendix 2.

QUALITY SERVICE

7. Solicitors are expected to act in a fiduciary manner in relation to all legally aided clients and to provide a service in keeping with the Guides to Professional Conduct that are issued from time to time by the Law Society of Ireland.

8. The Board is committed to the provision of a quality legal service to its clients and shall from time to time provide solicitors on the Panel with best practice guidelines on the approach to be adopted in dealing with matters within the ambit of this Scheme as referred to at Appendix 3. Solicitors on the Panel are expected to broadly comply with the Guidelines. The Guidelines may be updated by the Board from time to time.

9. All legal professionals engaged in international protection work are required to have the necessary experience and training in the area.

10. Notes must be kept on file in relation to all consultations and phone calls with clients and such notes must be clearly legible. They should ideally be typed.

11. In the event that the Board is not satisfied that the services required under this scheme have been provided to a particular client the Board reserves the right to pay a partial fee or no fee at all to the solicitor to whom the case has been referred.

COMMUNICATION WITH CLIENTS

12. Solicitors are expected to make every effort to contact a client who has been referred to them under the scheme, and to use all means of contact available to them until contact has been achieved where possible. In the event that a solicitor/firm is unable to make contact with a client who has been referred to them under the scheme the solicitor/firm should contact the Board immediately to inform the Board of the situation. Solicitors are expected to communicate effectively with clients from the time a case is referred to them until the client's case is closed and to keep clients informed of all developments in relation to their cases.

REASONABLE BEHAVIOUR OF CLIENTS'

13. Clients are expected to behave reasonably, for example by providing the Board or solicitor with their latest contact details, returning calls and turning up for appointments at the designated date and time. Where a solicitor/firm considers that a legally aided client is behaving unreasonably they should contact the Board.

MONITORING

14. A solicitor on the Panel shall provide the Board with any information relating to a person in receipt of legal aid, including the case file if requested, or any commitment sought by the Board, which is required by the Board for the purpose of enabling the Board to discharge its functions under the Act. Such information or undertaking shall be furnished within fourteen days of any such request.

Solicitors shall retain files of legally aided persons for a period of seven years from the date of completion of the services authorised on foot of the legal aid certificate.

15. As part of its commitment to ensuring that its clients receive a quality service, the Board shall review a number of files of legally aided clients so as to satisfy itself that the solicitor on the Panel is providing an appropriate level of service. In the event that that review identifies issues of concern in relation to the provision of an appropriate level of service, the Board may inspect any or all legally aided client files assigned to that solicitor.

EXCLUSION/REMOVAL/WITHDRAWAL FROM THE PANEL

16. The Board may suspend or remove a solicitor from the Panel if it considers that:

- the solicitor's conduct when providing or selected to provide legal services renders him / her unsuitable; or
- his/her professional conduct generally render him or her unsuitable, in the opinion of the Board, to provide such services; or
- the solicitor has failed to comply with these Terms and Conditions; or
- the solicitor has not participated in the Scheme to a satisfactory level, including but not confined to his/her refusal on a regular basis to accept a legally aided person as a client or to give a client appropriate legal advice or aid; or
- the solicitor provides legal aid or advice to an applicant in respect of one aspect of his/her case but fails without good excuse (such as a client changing solicitor), to provide services in relation to further matters, for example the solicitor represents the client at first instance but does not advise the client or represent the client at appeal stage even though the client wishes to be so advised or represented.

17. If the Board decides to suspend or remove a solicitor from the Panel, the solicitor shall be notified in writing of the grounds for the decision. The solicitor may, within a period of one month from the date of such notification, appeal in writing the decision to the Chief Executive of the Board, setting out the grounds of appeal in full. The Chief Executive may restore the solicitor, if satisfied that a case for restoration to the Panel is made out. Any appeal does not operate to delay or negate the suspension or removal of the solicitor from the Panel, unless the Chief Executive determines otherwise.

18. Solicitors who wish to withdraw from the Panel must inform the Board, in writing, of their intention to withdraw. Solicitors shall give one month's notice of intention to withdraw from the Panel. Solicitors who withdraw from the Panel must complete all outstanding cases that have been referred to them unless the Board consents to the matter being returned to it or referred to another solicitor.

MAINTAINING THE PANEL

19. The Panel shall be maintained on a national basis and shall comprise the names of all solicitors whose applications for placement have been accepted by the Board.

20. Every solicitor who has been accepted for membership of the Panel shall be allocated a Private Practitioner number, to be known as a PP Number, which must be quoted on all correspondence.

SCOPE OF THE SCHEME

21. The Scheme shall apply in relation to persons who have been granted legal advice or have been granted legal aid certificate issued by the Board for all relevant matters covered by the International Protection Act 2015, the Refugee Act 1996 and the Immigration Act 1999 as specified in the letter of authorisation or the legal aid certificate issued by the Board to that client.

OPERATION OF THE SCHEME

22. Persons seeking legal services make their applications through law centres. The Board has designated three of its law centres (Smithfield in Dublin, Seville House in Galway and North Quay House in Cork) for the purposes of providing services in relation to international protection applications and for the purpose of authorising the retention of private solicitors from the Panel. Any application will be initially processed by one of those centres. Where a legal aid certificate or an amended certificate is required for the next stage of a case the solicitor should obtain the client's instructions and then contact the relevant law centre for the purpose of seeking a legal aid certificate or amendment to the existing legal aid certificate. Thereafter the provisions of paragraph 27 will apply.

    The contact email addresses for the relevant law centres are as follows:
    - Smithfield law centre at lawcentresmithfield@legalaidboard.ie.
    - Cork law centre lawcentrecorknorth@legalaidboard.ie
    - Galway law centre at lawcentresevillehouse@legalaidboard.ie

23. Where legal aid or advice has been granted and the client no longer requires the services granted or becomes ineligible for the services granted the solicitor/firm should immediately inform the Board of the change in situation, for example if in the case where a client has been offered a Subsidiary Protection interview and the offer is subsequently withdrawn or where the client cannot be contacted.

24. In the event that an applicant is granted a legal aid certificate in respect of any of the matters covered by this Scheme, the Board may either allocate a law centre solicitor or refer the person to the Panel to select a solicitor from the Panel to act on their behalf. Due to the tight time constraints in international protection cases, where a case is being referred to a solicitor on the Panel, the Board shall, where reasonable, assist the client by selecting a solicitor from the Panel on the client's behalf and referring the case to that solicitor unless the client makes a request, before the referral takes place, for his or her case to be referred to a particular solicitor on the Panel.

25. The Board or the legally aided person shall notify the solicitor and shall furnish them with:
    - Two copies of the legal aid certificate or letter authorising the provision of legal advice which will indicate the legally aided person's name, the nature of the proceedings authorised and the steps authorised on foot of those

proceedings, in terms of the expenditure on witnesses that may be incurred; and

- a Claim Form on which the legal aid certificate number should be entered.

This certificate or letter shall be the solicitor's authority to provide legal aid to the client under this Scheme. One copy of the certificate/letter should be retained by the solicitor / firm on the client file. The second copy of the certificate/letter should be attached to the Claim Form for payment of the fee and any outlay, when the case is concluded.

Legal services cannot be provided under the Scheme without a valid legal aid certificate or letter authorising the provision of legal services.

26. The certificate granted or letter authorising the provision of legal services to be provided to the applicant will state the nature of the proceedings and the steps authorised on foot of those proceedings.

27. It is an essential requirement of this scheme that where a solicitor is engaged on foot of any matter authorised under a legal aid certificate that they continue to provide services for all other matters authorised under that certificate. Failure to do so without good reason will be regarded as grounds for removal from the Panel.

EXTENT OF SERVICE TO BE PROVIDED

28. The extent of services to be provided to an applicant under this Scheme will be as specified in the Board's Best Practice Guidelines.

29. It is the responsibility of the solicitor to obtain such country of origin Information as may be deemed necessary for the case. The Board operates a Refugee Documentation Centre (phone: 01 477 6200) which may be able to assist in the provision of such information.

AMENDING LEGAL AID CERTIFICATES

30. If a solicitor considers that further steps that will incur expenditure are required **to process the client's claim, over and above those authorised on the certificate,** for example, that an expert report should be obtained or that professional or other witnesses are required, an application must be made in writing seeking an amendment to the certificate to incur such expenditure. Such application should provide sufficient information, particularly in relation to how the additional expenditure is likely to benefit the client's case, to allow a decision to be made and to enable the terms of the Act to be complied with by the Board when considering the application. The application may be made to the **Private Practitioner Unit by email to PPUnit@legalaidboard.ie.**
The **Private Practitioner Unit can also be contacted by post or DX at the following address: Private Practitioner Unit, Legal Aid Board, Quay Street, Cahirciveen, Co Kerry, V23 RD36DX 166 004.**

31. The engaging of an interpreter, where it is necessary in a particular case, shall be included in the sanction and no amendment shall be required before doing so.

However, any travelling expenses incurred by an Interpreter company must be authorised in advance by the Board and only the interpreter company with which the Board has a contract may be engaged for this purpose. A completed interpreter form must be sent to both the Board and the Interpreter Company in each such case for invoicing purposes.

32. An amended certificate shall be required before engaging a translation company to translate documents in a particular case. Where an amended certificate is provided for this purpose only the translation company with which the Board has a contract may be engaged for this purpose. The application may be made to the **Legal services support unit by emailing info@legalaidboard.ie.**

33. A solicitor may not seek reports, engage witnesses or otherwise incur costs or expenses save as authorised on foot of a certificate or an amending certificate. **The Board shall be responsible only for costs or expenses incurred where these have been approved in writing in advance.**

34. Decisions by the Board to refuse applications for professional or expert witnesses shall be subject to the relevant review and appeal procedures contained and the Civil Legal Aid Regulations 1996 to 2013 (Regulation 12).

FEES

35. The Claim Form (CF1 at Appendix 4) shall be the document whereby the solicitor shall be entitled to claim the appropriate fee and any authorised outlay. The appropriate fee is inclusive of any fee that might be paid to a barrister and the Board shall not pay any additional fee for any barrister retained. Care should be taken in completing the Form, as incomplete or improperly completed claim forms will be returned without payment

36. The completed Claim Form (CF1), together with a copy of the signed Certificate or letter of authority, should be returned to the Board when the services specified in the certificate have been provided and the case has been determined to the point where a fee becomes payable. The appropriate fee can be claimed after each stage, i.e. where any step set out in schedules 1, 2 or 3 below have been completed.

37. Where a solicitor/firm is advised by the Board that a client's legal aid contribution to the Board is outstanding the solicitor/firm should ensure that the contribution is paid to the Board before providing legal services to the client.

38. Legally aided persons must not be charged any fees and must not be asked to discharge any fees, expenses, costs or outlay, except in accordance with such specific instructions as may be issued in writing from time to time by the Board (e.g. the legal aid contribution). If a legally aided person offers to pay additional money to a solicitor for additional services in their case the solicitor must refuse to accept any such additional money. If a legally aided person offers to pay additional money for the services of another organisation or body to provide services relevant to their case (e.g. Spirasi report, medical report, psychological report, psychiatric report) the solicitor must first seek sanction from the Board for the provision of such services. The solicitor should provide their opinion as to

whether such services are necessary for the proper presentation of the case. Only in the event that sanction for such services has been refused by the Board may the solicitor accept payment from the client for such services. The solicitor must inform the Board in writing of the situation before accepting any such payment. Furthermore, legally aided persons must not be asked to sign undertakings to pay for additional services and the charging or accepting of additional fees, expenses, costs or outlay or the seeking of undertakings to pay for additional services shall be grounds for immediately removing a solicitor from the Panel.

39. Once a client has been referred to a solicitor under this scheme if either that solicitor or another solicitor in the same firm decides to take that client on in a private capacity, having been requested by the client to do so, the Board must be notified immediately.

FEES PAYABLE

40. There shall be a standard scale of fees (set out in Schedules 1, 2 and 3 below) payable per case to solicitors on the Panel for the provision of services.

41. In the event that the case has already been part heard, or an application has already been submitted for international protection, refugee status, subsidiary protection, an appeal to the Refugee Appeals Tribunal or the International Protection Appeals Tribunal, or submissions have already been made, before the case is referred to the solicitor/firm the Board reserves the right to pay part only of the fee that would otherwise be payable.

42. Solicitors on the Panel shall be responsible for the outlay of any necessary viaticum to secure the attendance of witnesses, but shall be entitled to a refund of any outlay authorised on foot of the certificate or amendment thereof. If it becomes necessary to pay a fee for professional services that has been authorised by the certificate or an amendment thereof, in advance of the determination of a case, an Interim Claim form together with the original fee note may be submitted to the Board. The fee shall be paid by the Board directly to the relevant person or body and the solicitor will be advised when payment has been made.

43. Travel costs will only be payable where authorised in advance. Travel costs will only be payable at relevant public transport rates, unless otherwise agreed by the Board, and can only be claimed once in respect of any particular trip. Travel costs are not payable in the Dublin area. Subsistence costs will not be payable.

COMPLAINTS

44. Section 31(4) of the Act provides that:

" Where a person to whom the Board has decided to grant legal aid or advice has -

(a) accepted the nomination of a solicitor or selected a solicitor from the solicitors' panel pursuant to subsection (1) or been granted the services of a solicitor pursuant to an application under subsection (3), or

(b) accepted the nomination of a barrister pursuant to subsection (2) or been granted the services of a barrister pursuant to an application under subsection (3),

the person may apply to the Board to have the services of that solicitor or barrister dispensed with and the services of another solicitor of the Board or solicitor from the solicitors' panel or, as may be appropriate, barrister from the barristers' panel obtained in the matter and where the Board considers it reasonable in all the circumstances, it may consent to the application.

45. If a client makes a complaint to a solicitor about his/her performance and it is not possible to address the complaint to the client's satisfaction, the client should be requested to put the complaint in writing and the complaint should be forwarded to the Board. If the Board receives a complaint from a client or if the Board identifies a performance issue, a copy of the complaint or a note of the performance issue shall be forwarded to the solicitor for his/her observations. The Board shall consider the complaint / performance issue in accordance with its Information Leaflet entitled "Customer Care and Complaints Procedure", and also in accordance with the terms and conditions contained herein, including the appendices attached hereto.

GENERAL

46. Nothing in these Terms and Conditions shall give rise to, or be construed as giving rise to, a relationship of employer and employee between the Board and any solicitor on the Panel.

Schedule 1 - Fee schedule for asylum and related cases referred to a solicitor from the 1st September 2016 until the commencement of the single procedure provisions of the International Protection Act 2015

Fees for asylum cases (inclusive of any payments made to counsel and exclusive of VAT)	***Fee for first client***	***Fee for spouse****	***Fee for each child who has a separate case***
a) Provision of pre questionnaire and pre interview advice in relation to asylum and Subsidiary Protection where the client is referred to the solicitor prior to completion and submission of the questionnaire to ORAC, including making pre interview submissions and all advices and representations in relation to Dublin III.	**€500**	**€300**	**€100**
b) Provision of pre interview advice in relation to asylum and Subsidiary Protection, where a client is referred to the solicitor after completion and submission of the questionnaire to ORAC and before attending the ORAC interview, including making pre interview submissions and any advices and representations in relation to Dublin III.	**€350**	**€200**	**€75**
c) Subsidiary protection application to ORAC	**€250**	**€200**	**€150**
d) Representation before the Refugee Appeals Tribunal in relation to a Dublin III appeal.	**€300**	**€250**	**€100**
e) Appeal of negative recommendation for asylum at first instance to the Refugee Appeals Tribunal where the same solicitor/firm has represented the client at ORAC stage where the appeal involves an oral hearing.	**€300**	**€250**	**€100**
f) Appeal of negative recommendation for asylum at first instance to the Refugee Appeals Tribunal for a case which is being re-processed or where the solicitor/firm has not represented the client previously where the appeal involves an oral hearing.	**€385**	**€250**	**€125**
g) Appeal of negative recommendation for asylum to the Refugee Appeals Tribunal on the papers only.	**€190**	**€140**	**€75**
h) Representation before the Refugee Appeals Tribunal only where the appeal has already been submitted prior to the case being referred to the solicitor. The fee for the child only applies where there is a separate hearing in relation to the child's case.	**€195**	**€140**	**€140**
i) Appeal of negative recommendation on subsidiary protection to the Refugee Appeals Tribunal	**€195**	**€140**	**€140**

j) Leave to remain application to Minister	Inclusive in above	Inclusive in above	Inclusive in above
k) Adjournments	Inclusive in above	Inclusive in above	Inclusive in above
l) Call backs	Inclusive in above	Inclusive in above	Inclusive in above
m) Brief withdrawn fee may be paid subject to evidence of work carried out on the file	Up to half of the relevant fee	Up to half of the relevant fee	Up to half of the relevant fee

Notes:

* The fee for a spouse is the fee payable where the applicant is the spouse or partner of another applicant and the same solicitor or firm provides services to both clients (a full fee will be payable for the first applicant in such cases). Where there is an entirely distinct claim a case can be made to the Board for payment of the full fee for the spouse's case.

** The fee for a child who has a separate case is the fee payable where the applicant is the child of another applicant represented by the same solicitor/firm and the child has a separate asylum case. A full fee will be payable if the solicitor/firm is only representing the child and not either parent.

Only either a or b above will apply to a particular case.
Only either e or f above will apply to a particular case.

Cases referred to a solicitor from the date of this agreement are referred at the above fee rates. Cases referred to a solicitor under a prior agreement are referred at the fees in place under that agreement.

A brief withdrawn fee may be payable subject to evidence of work carried out on the file where, for example, a client goes to another solicitor or becomes uncontactable after submission(s) or an appeal have been lodged on behalf of the client but before the client's interview or hearing has taken place.

Fees are only payable for services authorisation in advance by the Board. In this regard solicitors should refer in particular to Section 22 of these terms and conditions.

The appropriate fee can be claimed after each stage has taken place

Schedule 2 – Fee schedule for International Protection Cases dealt with from the date of the commencement of the single procedure provisions of the International Protection Act 2015

Fees for cases (inclusive of any payments made to counsel and exclusive of VAT)	***Fee for first client***	***Fee for spouse****	***Fee for each child who has a separate case***
a) Provision of legal services at first instance in relation to an International Protection application (for asylum and subsidiary protection) including an application for permission to remain in the State under Section 16 of the International Protection Act 2015.	**€730**	**€365**	**€210**
b) Appeal of a negative asylum recommendation and/or an appeal of a negative subsidiary protection recommendation to the International Protection Appeals Tribunal where the appeal involves an oral hearing.	**€400**	**€200**	**€80**
c) Provision of advices and representations to the Protection Office where the client's application is being processed under the Dublin III Regulation, including advices in relation to Article 5 interview if same has not yet taken place, and to include submissions in relation to Dublin III where appropriate.	**€195**	**€100**	**€80**
d) Provision of advice, drafting notice of appeal and representation at the International Protection Appeals Tribunal for the purpose of an appeal against a decision to transfer the client to another EU jurisdiction on foot of the provisions of the Dublin III Regulation.	**€300**	**€150**	**€80**
e) Advice, submissions and representation in the Circuit Court, covering all matters in relation to the revocation of refugee declaration or subsidiary protection declaration under section 52 of the International Protection Act 2015.	**€600**	**€300**	**€80**
f) Advice, submissions and an appeal to the International Protection Appeals Tribunal in respect of the inadmissibility of an application under Section 21 of the International Protection Act 2015.	**€300**	**€150**	**€80**
g) Advice and submissions in respect of an accelerated appeal under Section 43 of the International Protection Act 2015 where there is no oral hearing.	**€250**	**€175**	**€80**
h) Fee payable where the client becomes un-contactable following the first consultation with the solicitor prior to substantive work being carried out.	**€150**	**€75**	**€50**

i) Adjournments	Inclusive in above	Inclusive in above	Inclusive in above
j) Call backs	Inclusive in above	Inclusive in above	Inclusive in above
k) Brief withdrawn fee may be paid subject to evidence of work carried out on the file	Up to half of the relevant fee	Up to half of the relevant fee	Up to half of the relevant fee

Notes:

* The fee for a spouse is the fee payable where the applicant is the spouse or partner of another applicant and the same solicitor or firm provides services to both clients (a full fee will be payable for the first applicant in such cases). Where there is an entirely distinct claim a case can be made to the Board for payment of the full fee for the spouse's case.

** The fee for a child who has a separate case is the fee payable where the applicant is the child of another applicant represented by the same solicitor/firm and the child has a separate asylum case. A full fee will be payable if the solicitor/firm is only representing the child and not either parent.

Cases referred to a solicitor from the date of this agreement are referred at the above fee rates. Cases referred to a solicitor under a prior agreement are referred at the fees in place under that agreement.

A brief withdrawn fee may be payable subject to evidence of work carried out on the file where, for example, a client goes to another solicitor or becomes uncontactable after submission(s) or an appeal have been lodged on behalf of the client but before the client's interview or hearing has taken place.

Fees are only payable for services authorisation in advance by the Board. In this regard solicitors should refer in particular to Section 22 of these terms and conditions.

The appropriate fee can be claimed after each stage has taken place.

Schedule 3 – Fee schedule for Transitional cases initiated but not completed prior to the commencement of the single procedure provisions of the International Protection Act 2015

Fees for asylum cases (inclusive of any payments made to counsel and exclusive of VAT)	***Fee for first client***	***Fee for spouse****	***Fee for each child who has a separate case***
a) Provision of legal services at first instance in accordance with the Board's Best Practice Guidelines in relation to an application for subsidiary protection and permission to remain in the State under the transitional provisions of the International Protection Act 2015.	**€350**	**€175**	**€80**
b) Appeal of negative recommendation on subsidiary protection application to the International Protection Appeal Tribunal	**€195**	**€100**	**€80**

Notes:
Schedule 3 relates to a person whose asylum application has been processed and who has been refused asylum at first instance and at appeal stage prior to the commencement of the single procedure provisions of the International Protection Act 2015 following which the client's subsidiary protection application is considered by the International Protection Appeal Tribunal under the provisions of the International Protection Act 2015.

* The fee for a spouse is the fee payable where the applicant is the spouse or partner of another applicant and the same solicitor or firm provides services to both clients (a full fee will be payable for the first applicant in such cases). Where there is an entirely distinct claim a case can be made to the Board for payment of the full fee for the spouse's case.

** The fee for a child who has a separate case is the fee payable where the applicant is the child of another applicant represented by the same solicitor/firm and the child has a separate asylum case. A full fee will be payable if the solicitor/firm is only representing the child and not either parent.

The fee paid at any stage includes reviewing any decision for JR implications and /or advice and consideration as to why a deportation order might be open to challenge.

Cases referred to a solicitor from the date of this agreement are referred at the above fee rates. Cases referred to a solicitor under a prior agreement are referred at the fees in place under that agreement.

A brief withdrawn fee may be payable subject to evidence of work carried out on the file where, for example, a client goes to another solicitor or cannot be contacted after

submission(s) or an appeal have been lodged on behalf of the client but before the client's interview or hearing has taken place.

Fees are only payable for services authorisation in advance by the Board. In this regard solicitors should refer in particular to Section 22 of these terms and conditions.

The appropriate fee is only payable to the private practitioner for a particular stage of the case where an application, submission or appeal (whichever is appropriate) has been lodged on the client's behalf in relation to the particular stage or where the case has been referred to the solicitor for representation only.

The appropriate fee can be claimed after each stage has taken place.

Appendix I

LEGAL AID BOARD

Private Practitioners International Protection Scheme
Application to be entered onto the Panel

Name: _____

Address _____

_____

_____

Tel No: _____ Fax Number: _____

Email: _____

VAT No.: _____

Please indicate which areas you are willing to serve at by placing a tick in the box of the appropriate areas below and return this list with your application.

☐ **Dublin – Smithfield Law Centre Catchment Area**
Dublin, Kildare, Wicklow, Carlow, Kilkenny, Laois, Offaly, Meath, Louth, Wexford, Tipperary (except Carrick-on-Suir), Cavan, Monaghan

☐ **Galway - Seville House Law Centre Catchment Area:**
Galway, Mayo, Sligo, Leitrim, Roscommon, Clare, Limerick, Donegal, Westmeath, Longford

☐ **Cork – Popes Quay Law Centre Catchment Area**
Cork, Kerry, Waterford, Tipperary (Carrick on Suir only)

NB Applicants must also return the signed form of undertaking below and an up to date Tax Clearance Certificate.

Private Practitioner Scheme for International Protection ("the Scheme")

I hereby apply to have my name entered on the Private Practitioner International Protection Panel ("the Panel") maintained by the Legal Aid Board ("the Board") on

foot of the Civil Legal Aid Act 1995 for which purpose I hereby apply to have the following information recorded on the Panel:

1. I confirm that I am not currently and have never been the subject of any disciplinary proceedings relating to my professional conduct before any committee, tribunal, court or other similar body, other than proceedings in which the complaint has been found to be unwarranted.

   Yes ___ No ____

   If "No", please provide further details on an additional page.

2. I confirm that I am willing to provide legal services in accordance with the Civil Legal Aid Act 1995 and the Terms and Conditions of the Scheme as may be determined from time to time by the Board.

   Yes ___ No ____

3. I confirm that I hold a current practising certificate from the Law Society of Ireland and that I shall notify the Board immediately in the event of my ceasing to hold such a certificate at any time.

   Yes ___ No ____

4. I confirm that I am covered by professional indemnity insurance for a claim of up to €1.5m and that I shall notify the Board in the event of this not being the case at any time.

   Yes ___ No ____

5. I confirm that I was admitted to the Roll of Solicitors in Ireland in ____/_____/_____

6. I have participated in training organised by the Board for the purpose of providing legal services under this Scheme:

   Yes ___ No ____

   If yes please specify date(s) of training: _____

   If no, do you agree to undergo such training? Yes ___ No ___

   If yes, do you agree to undergo such further training as may be deemed necessary from time to time by the Board?

   Yes ___ No ___

I have received formal training in refugee law: Yes ___ No ____

If yes please provide details: _____

_____

I have practical experience in refugee law: Yes ___ No ___

If yes please provide details: _____

_____

7. I confirm that I have access to email facilities and that the IT software used by me is compatible with Microsoft Office software and that I am willing to abide by the Board's requirement to send confidential emails using the Board's secure email facility.

Yes ___ No ____

8. I declare that I have no medical condition that would render me unfit to provide the required service. I agree to the Board reserving the right at all times to refer me to a medical practitioner in order to confirm my fitness in this respect.

Yes ___ No ____

Signed: _____ Date:_____

PLEASE COMPLETE IN BLOCK CAPITALS:

Name of solicitor to be placed on the Panel: . . . . . .

Address: . . . . . .

. . . . . .

VAT Number: . . . . . .

Withholding tax Number: . . . . . .

Tax clearance certificate enclosed: Yes ___ No ____

Appendix 3

Best practice guidelines for the Private Practitioners International Protection Scheme

The Board will provide Private Practitioners with a copy of the best practice guidelines drawn up by the Board for the provision of services in international protection cases. The guidelines are updated from time to time and the revised guidelines are circulated to Private Practitioners when they become available.

The guidelines are a statement of best practice for the provision of legal services by private practitioners who are on the Panel. Solicitors on the Panel are expected to broadly comply with the Guidelines. Circumstances may arise where a solicitor does not follow these guidelines. In such circumstances the specific reasons for not doing are to be noted in writing on the client file***.***

The Board will endeavour to refer cases to a private practitioner in a timely manner so as to ensure compliance with statutory deadlines. Should a case be referred within close proximity to a deadline, the solicitor will be contacted so as to ensure that he or she is in a position to meet it.

Appendix 4 - Legal Aid Board Private Practitioner International Protection Scheme - Claim Form (CF1)

LEGAL AID BOARD

Claim for fee payable under the Private Practitioner Asylum International Protection Scheme

Solicitor: _____ PP No: _____

Client Name: _____

Law Centre Ref: _____ DJE Ref: _____

Matter: Please tick the relevant box(es) on the attached table(s) to specify the matters for which a fee is being claimed.

I certify that I have provided the legal services as specified in the attached table(s) in accordance with the terms and conditions for the Private Practitioner International Protection Scheme and I accordingly seek payment of the appropriate fee in accordance with those terms and conditions.

Total amount claimed: €	Current stage of this case:	
Liable for VAT: YES/NO	VAT No. if applicable:	
Signature of solicitor:	Date:	

NB a complete claim form must be accompanied by:

(a) a copy of the signed legal aid certificate or other written authority (in the case of additional services) and

(b) a letter from the relevant decision making authority as evidence of the stage of the case

For cases referred by Cork and Galway law centres please send fee claim to:
Legal Services Support Unit, Legal Aid Board, Quay Street, Cahirciveen, Co Kerry, V23 RD36.
DX 166 004.
For cases referred by Smithfield Law Centre please send fee claim to:
Support Unit, Smithfield Law Centre, 48 North Brunswick Street, Dublin 7, D07 PE0C.
DX 1085 Four Courts.

For Office Use:

Claim "Receipt Date" in Head Office: _____

Claim checked by _____ Date _____

Payment Authorised _____ Date _____

Table of fees claimed

Schedule 1 - Fees claimed for asylum and related cases referred to a solicitor from the 1st September 2016 until the date of commencement of the single procedure provisions of the International Protection Act 2015

Fees for asylum cases (inclusive of any payments made to counsel and exclusive of VAT)	**Matters claimed *for first client*** √	**Matters claimed *for spouse**** √	**Matters claimed *for children who have a separate case**** √
a) Provision of pre questionnaire and pre interview advice in relation to asylum and Subsidiary Protection where the client is referred to the solicitor prior to completion and submission of the questionnaire to ORAC, including making pre interview submissions and all advices and representations in relation to Dublin III.			
b) Provision of pre interview advice in relation to asylum and Subsidiary Protection, where a client is referred to the solicitor after completion and submission of the questionnaire to ORAC and before attending the ORAC interview, including making pre interview submissions and any advices and representations in relation to Dublin III.			
c) Subsidiary protection application to ORAC			
d) Representation before the Refugee Appeals Tribunal in relation to a Dublin III appeal.			
e) Appeal of negative recommendation for asylum at first instance to the Refugee Appeals Tribunal where the same solicitor/firm has represented the client at ORAC stage where the appeal involves an oral hearing.			
f) Appeal of negative recommendation for asylum at first instance to the Refugee Appeals Tribunal for a case which is being re-processed or where the solicitor/firm has not represented the client previously where the appeal involves an oral hearing.			
g) Appeal of negative recommendation for asylum to the Refugee Appeals Tribunal on the papers only.			
h) Representation before the Refugee Appeals Tribunal only where the appeal has already been submitted prior to the case being referred to the solicitor. The fee for the child only applies where there is a separate hearing in relation to the child's case.			
i) Appeal of negative recommendation on subsidiary protection to the Refugee Appeals Tribunal			
j) Leave to remain application to Minister	Inclusive in above	Inclusive in above	Inclusive in above

k) Adjournments	Inclusive in above	Inclusive in above	Inclusive in above
l) Call backs	Inclusive in above	Inclusive in above	Inclusive in above
m) Brief withdrawn fee may be paid subject to evidence of work carried out on the file			

Schedule 2 – Fees claimed for International Protection Cases dealt with from the date of the commencement of the single procedure provisions of the International Protection Act 2015

Fees for cases (inclusive of any payments made to counsel and exclusive of VAT)	**Matters claimed *for first client*** √	**Matters claimed *for spouse**** √	**Matters claimed *for children who have a separate case**** √
a) Provision of legal services at first instance in relation to an International Protection application (for asylum and subsidiary protection) including an application for permission to remain in the State under Section 16 of the International Protection Act 2015.			
b) Appeal of a negative asylum recommendation and/or an appeal of a negative subsidiary protection recommendation to the International Protection Appeals Tribunal where the appeal involves an oral hearing.			
c) Provision of advices and representations to the Protection Office where the client's application is being processed under the Dublin III Regulation, including advices in relation to Article 5 interview if same has not yet taken place, and to include submissions in relation to Dublin III where appropriate.			
d) Provision of advice, drafting notice of appeal and representation at the International Protection Appeals Tribunal for the purpose of an appeal against a decision to transfer the client to another EU jurisdiction on foot of the provisions of the Dublin III Regulation.			
e) Advice, submissions and representation in the Circuit Court, covering all matters in relation to the revocation of refugee declaration or subsidiary protection declaration under section 52 of the International Protection Act 2015.			
f) Advice, submissions and an appeal to the International Protection Appeals Tribunal in respect of the inadmissibility of an application under Section 21 of the International Protection Act 2015.			

g) Advice and submissions in respect of an accelerated appeal under Section 43 of the International Protection Act 2015 where there is no oral hearing.			
h) Fee payable where the client becomes un-contactable following the first consultation with the solicitor prior to substantive work being carried out.			
i) Adjournments	Inclusive in above	Inclusive in above	Inclusive in above
j) Call backs	Inclusive in above	Inclusive in above	Inclusive in above
k) Brief withdrawn fee may be paid subject to evidence of work carried out on the file			

Schedule 3 – Fees claimed for transitional cases initiated but not completed prior to the commencement of the single procedure provisions of the International Protection Act 2015

Fees for asylum cases (inclusive of any payments made to counsel and exclusive of VAT)	**Matters claimed *for first client*** √	**Matters claimed *for spouse** √**	**Matters claimed *for children who have a separate case**** √
a) Provision of legal services at first instance in accordance with the Board's Best Practice Guidelines in relation to an application for subsidiary protection and permission to remain in the State under the transitional provisions of the International Protection Act 2015.			
b) Appeal of negative recommendation on subsidiary protection application to the International Protection Appeal Tribunal			

Total fee claimed from all three tables above:			

An Bord Um Chúnamh Dlíthiúil
Legal Aid Board

Legal Aid Board Additional Calculations – July 2020

Planning for a base application rate of 3,500 per year, what resources/ capacity would the LAB need to be able to provide legal advice on all IP cases from first instance to deportation stage inclusive on the basis of an end to end service?

The estimate is based on the allocation of all 3,500 applications nationwide in-house representing 100% of all applications received and no cases referred to private solicitors. For the purpose of this exercise, the 2019 figures have been used as a basis to determine the in-house resources required to handle the projected 3,500 applications for services related to international protection. In 2019 there were 2,571 applications for international protection received by the Legal Aid Board, 22% of which were dealt with in-house. Of the 2,571 applications, approximately 10% were received at the Board's office in Galway – Seville House, 10% at Cork Pope's Quay and 80% were received at the Smithfield Office in Dublin. The estimates below are based on the same percentage breakdown of total applications at each location.

Estimated In-House Cost of Service Delivery

Table A shows an estimate of the total salary cost of the solicitor staffing complement required to deal with 3,500 applications amounts to €3,250,000. This comprises 50 FTE solicitors.

Table A – Estimate of Solicitor Salary Costs

Total No. New Applications	% of Total New Applications	No. of Cases Taken On In House	Cases Taken On per FTE Solr	Est. of FTE Solicitors required	Est. Solr Salary	Est. Total Solr Salary Cost
Cork	4.1%	105	70	1.5	€65,000	€97,500
Galway	2.7%	70	70	1	€65,000	€65,000
Smithfield	15.6%	401	70	5.75	€65,000	€373,750
2571	22%	576	70	8.25	€65,000	€536,250
Cork	10%	350	70	5	€65,000	€325,000
Galway	10%	350	70	5	€65,000	€325,000
Smithfield	80%	2800	70	40	€65,000	€2,600,000
3500	100%	3500	70	**50.00**	€65,000	€3,250,000

In dealing with such an increased volume of cases in-house it is likely that the deployment of support staff to deliver the service would be structured differently.

Table B shows an estimate of the total salary cost of the legal clerk staffing complement required to deal with 3,500 applications amounts to €1,891,892. This comprises 47.3 FTE legal clerks.

Table B – Estimate of Legal Clerk Salary Costs

Total No. New Applications	% of Total New Applications	No. of Cases Taken On In House	Est of FTE Legal Clerks required	Est. Legal Clerk Salary	Est. Total Legal Clerk Salary Cost
Cork	4.1%	105	1.0	€40,000	€40,000
Galway	2.7%	70	2.0	€40,000	€80,000
Smithfield	15.6%	401	4.8	€40,000	€192,000
2571	22%	576	7.8	€40,000	€312,000
Cork	10%	350	4.73	€40,000	€189,189
Galway	10%	350	4.73	€40,000	€189,189
Smithfield	80%	2800	37.84	€40,000	€1,513,514
3500	100%	3500	47.30	€40,000	€1,891,892

Table C shows an estimate of the total salary cost of the clerical officer staffing complement required to deal with 3,500 applications amounts to €928,030.30. This comprises 26.52 FTE clerical officers.

Table C – Estimate of Clerical Officer Salary Costs

Total No. New Applications	% of Total New Applications	No. of Cases Taken On In House		Est. of FTE Clerical Officers required	Est. CO Salary	Est. Total CO Salary Cost
Cork	4.1%	105		1.50	€35,000	€52,500
Galway	2.7%	70		1.50	€35,000	€52,500
Smithfield	15.6%	401		1.35	€35,000	€47,250
2571	22%	576		4.35	€35,000	€152,250
Cork	10%	350		2.65	€35,000	€92,803
Galway	10%	350		2.65	€35,000	€92,803
Smithfield	80%	2800		21.21	€35,000	€742,424

3500	100%	3500		**26.52**	€35,000	**€928,030**

Table D shows an estimate of the total salary cost of the solicitor, legal clerk and clerical officer staffing complement required to deal with 3,500 applications amounts to €6,069,922. This comprises 50 FTE solicitors, 47.3 FTE legal clerks and 26.52 clerical officers. This is the estimated salary cost of providing an end-to-end in-house legal service to all 3,500 applications.

Table D – Estimate of Total Salary Costs

Total No. New Applications	Est. of FTE Solicitors required	Est. Total Solr Salary Cost	Est of FTE Legal Clerks required	Est. Total Legal Clerk Salary Cost	Est. of FTE Clerical Officers required	Est. Total CO Salary Cost	Total Salary Costs
Cork	5.00	€325,000	4.73	€189,189	2.65	€92,803	€606,992
Galway	5.00	€325,000	4.73	€189,189	2.65	€92,803	€606,992
Smithfield	40.00	€2,600,000	37.84	€1,513,514	21.21	€742,424	€4,855,938
3500	**50.00**	**€3,250,000**	**47.30**	**€1,891,892**	**26.52**	**€928,030**	**€6,069,922**

Additional Running Costs

The total running costs of the three law centres also includes; professional fees, witness/ancillary fees, practising certificates, postage/phone/office supplies etc., travel & subsistence, general insurance, professional negligence liabilities, fit-out & refurbishment, maintenance of premises and equipment, computerisation, rent, other establishment costs, training and furniture and equipment. For the purposes of this exercise, the additional costs of providing an in-house model of service delivery across the three law centres are estimated to amount to **€ 2,334,997**. The non pay expenditure at these locations for 2019 was used as the basis for the calculation (€465,000).

Additional Case Expenditure

The Legal Aid Board incurs additional expenditure in relation to service provision in International Protection cases. This includes the cost of interpreter and translator services, transcripts and Medico-Legal Reports. The cost to the Board of additional services in respect of International Protection cases in 2019 amounted to €275,400. This included the cost of additional services in all cases for all applications received in 2019. It is estimated that the cost of additional case expenditure for 3,500 cases would amount to **€375,000**. There would also be the cost of providing robust quality assurance.

Estimated Total Cost of in-House Service

The estimated total cost of providing a full end-to-end service in-house to 3,500 applicants is €8,779,919. The calculation is shown in Table E below.

Table E – Estimated Total Combined Cost of in-House service

Estimated Total Combined Cost of In-House Model Service	
Projected In-House Service Salary Cost	€6,069,922
Additional Law Centre Running Cost	€2,334,997
Additional Case Expenditure	€375,000
Total Cost	**€8,779,919**

Legal Aid Board Estimated Cost of a Judicial Review Unit to deal with International Protection matters

Judicial Review in International Protection

It is worth re-emphasising at the outset, that the judicial review process is not an appeal and that the court that hears a judicial review case is almost invariably not concerned with whether the applicant should have been granted refugee or some other form of permission to remain in the State. As a generalisation, where the decision making process is properly followed and the decision itself does not fly in the face of reason, there are unlikely to be grounds to institute judicial review proceedings.

It is possible to seek judicial review of any decision taken during the international protection process if there are grounds to do so and for this purpose the IPO "recommendation" is regarded as a decision. Such cases will, however, if meritorious, normally be taken on by the private sector on a "no foal no fee basis". For this reason the Board currently rarely acts in international protection judicial review cases. Decisions of the IPAT are also reviewable decisions.

Where the applicant has been given neither a refugee declaration, nor a subsidiary protection declaration, section 49 of the 2015 Act provides that the Minister should consider whether or not to give the application permission to remain (PTR) in the State. A PTR review takes place following any unsuccessful appeal to the IPAT based on information provided by the applicant as to any relevant change in their circumstances between the time the original decision on PTR was taken and the conclusion of the appeals process. There is no appeal of the PTR decision though such decisions have been challenged by way of judicial review.

The operation of the Dublin Regulation has been subject to extensive judicial review proceedings particularly in regard to Article 17 Regulation (EU) No 604/2013 (the "sovereignty clause") and the remit of the International Protection Appeals Tribunal on appeal.

There is no right of appeal against the decision to issue a deportation order but the decision may be challenged, subject to the special rules for judicial review under section 5 of the Illegal Immigrants (Trafficking) Act 2000 (as amended).

There is no right of appeal against a decision to refuse to grant a certificate of naturalisation. It is, however, possible to request an administrative review of the decision and/or to seek relief by way of judicial review proceedings in accordance with the ordinary rules.

Resources applied to Judicial Review Proceedings by the Refugee Legal Service

The Board had in the past a dedicated judicial review unit as part of its Refugee Legal Service. The Refugee Legal Service (RLS) operated a specialised JR Unit, comprised of three solicitors and support staff of one legal clerk and two clerical officers, who dealt with JR and provided an advice service to the other solicitors and staff in the RLS. The staffing complement required for a re-established dedicated judicial review unit within a service mandated to support all applicants for international protection would be likely to be significantly greater. It is likely that whatever scale of an operation is established it is likely that judicial reviews will still be taken by private practitioners outside of the legal aid system. It is therefore difficult to provide an estimate which is precise in terms of knowing what will be the level of demand.

The RLS provided service in accordance with the Civil Legal Aid Act 1995 and Regulations made thereunder. Any client seeking legal aid for judicial review proceedings must first be granted a legal aid certificate. Such applications are considered in accordance with the Act - in particular sections 24 and 28.

Section 24 requires that the proceedings for which the certificate is being sought are such that a reasonably prudent person would be likely to seek such services at their own expense, and that a solicitor or barrister acting reasonably would be likely to advise him or her to obtain such services at their own expense.

Section 28 provides that a legal aid certificate shall not be granted unless certain conditions are met. These include:

- Financial eligibility
- That there are reasonable grounds in law for instituting proceedings
- That the applicant is reasonably likely to be successful
- The proceedings represent the only appropriate remedy
- It is otherwise reasonable to grant a certificate having regard to all the circumstances of the case

A legal aid certificate was granted if the application met the criteria set out in sections 24 and 28 of the Act, as outlined above.

Judicial Review Unit Salary Cost Estimate

Table A

Est. of FTE Solicitors required	Est. Solr Salary	Est. Total Solr Salary Cost	Est of FTE Legal Clerks required	Est. Legal Clerk Salary	Est. Total Legal Clerk Salary Cost	Est. of FTE Clerical Officers required	Est. CO Salary	Est. Total CO Salary Cost	Total Salary Costs
3.00	€65,000	€195,000	2.00	€40,000	€80,000	3.00	€35,000	€105,000	€380,000

Allocation of Overheads Estimate

For the purpose of estimating the cost of overheads to the Board of establishing a dedicated JR unit, the cost of non-pay expenditure in the Board's three law centres in the Dublin area at Blanchardstown, Finglas and Tallaght is used as a guide owing to the similar staffing complements in those law centres. In 2019 the average non-pay expenditure in the three law centres was €375,000.

Number of cases considered in 2004

In order to estimate the number of cases likely to be dealt with by a JR Unit, it is instructive to review the activity of the former dedicated JR Unit. In 2004, the RLS initiated 84 sets of judicial review proceedings. In 2004, the RLS provided service to 2,500 new applicants at the application stage of the asylum process, and provided service for around 3,750 appeals to the Tribunal – a total of 6,250 instances of service – on which a decision could be received. The number of JR proceedings initiated in 2004 represented just over 1% of all decisions. This is being used as a guide subject to the strong caveat that the law around judicial reviews has developed and indeed the improvement in the decision making process making a comparison somewhat difficult.

An analysis of the reasons for JR initiated in 2004 showed that just eight of the total related to deportation orders. 37 related to the outcome of RAT appeals, 11 related to RAT's refusal to accept late appeals, 10 related to procedural issues at the ORAC stage, 6 related to applicability of the Dublin Convention, 6 were tracking a case on separate applications in respect of children, and 5 related to the application of the Dublin II EU Council Regulation.

Some 500 cases were referred to the JR unit for consideration in 2004 and, of those proceedings were issued in 84, while a further 35 were settled without the need to issue proceedings. Of the 84 JR proceedings initiated in 2004 – 83 were settled in favour of the applicant with a resultant recovery of Counsel costs in such cases.

Counsel employed on JR cases – and fees payable:

The RLS normally engaged experienced junior counsel in JR proceedings, while in complex cases, or where a particular point of law is being tested, senior counsel may also have been engaged. Counsel were paid in accordance with the fee structure agreed with the Bar Council, with the approval of the Minister and Minister for Finance.

A substantial portion of the Board's international protection cases are handled by private practitioners. However, legal aid through private practitioners is not available for bringing judicial review proceedings whether to challenge decisions of the IPO/IPAT or deportation orders. Since the introduction of the single procedure only

six legal aid certificates issued in respect of judicial reviews in International Protection cases dealt with in-house over the five years 2015 -2019. It is envisaged the Board's panel of barristers would be engaged by the JR Unit in judicial review proceedings. The Board has an established schedule of fees payable to barristers for all other High Court, Court of Appeal, and Supreme Court proceedings to cover all work carried out by him or her in relation to the case including as appropriate, consultations, drafting or settling of pleadings, preparatory work, settlement negotiations and court appearances including any mention dates and any interim or post hearing applications. Case fees of €2,135 and €3,150 are payable for Junior Counsel and Senior Counsel respectively.

An additional sum shall be payable by way of refresher in respect of each second or subsequent day of a hearing. The refresher fee payable to Junior Counsel is in the sum of €1,000 save in the event that both Junior and Senior Counsel are retained in which case the refresher fee payable is €300 per day for Junior Counsel (payable in the event that Junior Counsel is in attendance in court). In the case of a matter before the Supreme Court, a full refresher will be paid to both counsel if both counsel advocate before the Court. If Junior Counsel does not advocate before the Court the lower fee is payable.

A refresher fee is payable in the event that a court requires written submissions to be made in relation to the substantive issue(s) in the case. The full refresher fee is payable to both Junior and Senior Counsel in this event. No fee is generally payable in the event that the submissions relate to an ancillary event e.g, costs, however the Board may pay an additional fee of €105 to junior counsel and / or €150 to senior counsel in the event that the submission is extensive.

An additional sum is payable for taking judgement. If, following the completion of a case, and authorisation / legal aid certificate is granted for an application to enforce the order or orders made therein or to re-enter the matter for other reasons, the fee payable on such application is at the refresher rate.

Counsel Fees Estimate – International Protection

For the purposes of this calculation, the number of international protection applications received by the Legal Aid Board is assumed to be 3,500. It is estimated that 43% of applications will result in appeals to the IPAT, i.e. 1,505 cases. Taking the historical figures as a guide, it is estimated that the number of JR proceedings initiated in a calendar year by a new JR Unit would represent just approximately 1% of all decisions amounting to 50 judicial reviews. Table B shows the calculation of the total cost of engaging counsel in JR proceedings. It is estimated that 5 cases would require senior counsel.

Table B – Estimated Cost of Counsel Fees

Base App. Rate of 3,500 Applications		Junior Counsel Case Fee	JC Refreshers Fee	Taking Judgment	Total Cost of Counsel per case	Total Cost
JC	40	€2,135.00	€2,000	€150	€4,285	€171,400
JC&SC	10	€5,285.00	€3,300	€500	€9,085	€90,850
	50					€262,250

Judicial Review Unit Cost Estimate

The total cost estimate of a JR unit shown in table C below is based on the number of staff employed in the unit, an allocation for overheads, and the cost of Counsel fees incurred in JR proceedings.

Table C – Total Estimated Cost of JR Unit

Total Estimate of Costs of JR Unit	
Salary Costs	€380,000.00
Non- Pay Unit Expenditure	€375,000.00
Counsel Fees	€262,250.00
Total Cost	**€1,017,250.00**