

Check list for clients with immigration issues.

Recent changes may leave some clients (EEA nationals) with issues. The issues may be complex and require either specialist knowledge of recent immigration/benefit rule changes or require that the clients be dealt with by a supervisor at local offices. This check list is designed to help those who interview the client either at a Gateway interview, or in the initial follow up to the Gateway, to determine if specialist/supervisor help is needed. It will NOT provide all the support required to deal with what may be complex issues.

Initial Questions:

1. Is the client an EEA national?

*If **not**, then the issues may be straightforward, and not be subject to the recent changes (but see question 2 below). The client interview can be proceeded with. **If they are**, then read to question 3 below*

2. Is the client the family member of an EEA national but not a British Citizen or settled in the UK in their own right?

*If **they are**, then read to question 3 below*

3. Are they entitled to benefits?

Means tested benefits.

You will need to check first their right to reside in the UK by running through the following questions. There are some specific definitions in terms of what constitutes someone seeking work or someone who has worker status. If unsure of these definitions, seek supervisor's help.

- Are they a **worker** – i.e. working 10-12 hours or more per week. If so they can claim any in-work benefits and housing benefit.

- Have they **retained rights as a worker**? If they worked for sufficient time before becoming unemployed, they may get to keep their 'worker' status for 6 months and claim means tested benefits in this period even if unemployed. You can also retain worker status (and self employed status) if temporarily incapable of work due to illness or disease.
Take specialist advice if someone is not treated as having worked for sufficiently long or regularly to become a worker, or is coming to the end of a period as unemployed with retained worker status.

- If not a worker, or with retained rights, are they **looking for work** here and
 - (a) Able to prove they have been in the UK for 3 months already and
 - (b) had LESS than a total of 182 days (91 days for claims beginning after 10th November) as a work seeker claiming income based Jobseekers allowance during their time in the UK (do not count work seeking in the first 3 months in the UK?

- Could they/are they set up as self-employed?

- Are they the child or spouse /partner of a child of an EEA national who themselves has a right to reside? In EU law you are a child up to age 20, and are treated as a spouse if the marriage has broken down but there is not yet a divorce (decree absolute). Estranged spouses and children (but not partners) may therefore be able to claim if they can show that their EEA spouse/parent has a right to reside.
- Are they the sole carer of a child **in school**, where the child was in UK at the same time as a parent who then, or in the past, had been a worker? *In school means from aged 5 – or the term in which they become 5. It does not mean those in nursery from aged 3.*
- Is there a British child in the family? *Take advice if the nationality of the child is unclear.*
- Has anyone in the family got a permanent right to reside? *This is usually achieved when an EEA national exercises rights to reside for a continuous 5 years, but there are other routes - take advice.*

If the answer to all these questions is NO, then there may still be a possibility of benefits, following a legal case called the Brey case. However, at this point you will need to get someone with specialist knowledge/training or a supervisor to deal with the client.

If the answer to one of these questions is YES they MAY be entitled to means tested benefits - income based Jobseekers allowance, income related Employment and Support Allowance (only if temporarily unable to work after first becoming a 'worker' in EU law), or housing benefit. NOTE – those whose only right to reside as a work seeker will be eligible for ibJSA but not be able to get housing benefit

4. What about other benefits?

A. Child Benefit / Tax Credits

Ask the following questions

- Have they been here for at least 3 months and do they have children under the age of 20? If so they can claim.
- Do they have other children living in another EEA country that they support and are not receiving an equivalent benefit there? – if so they can claim.

B. National insurance benefits

Ask the following questions

- Has the client paid the equivalent of national insurance contributions in another EEA country which could be used as entitlement for UK benefits?
- Do they have any benefits that they received in another EEA country which could continue to be payable in the UK?

If the answer to either is YES they may be entitled to NI benefits, but evidence will be needed. However, at this point you will need to get someone with specialist knowledge/training or a supervisor to deal with the client.

C. Disability Benefits

Ask the following questions

- Does anyone in the family have a disability that could attract a Personal Independence Payment, or Disability Living Allowance (child), or Attendance Allowance (elderly)?

If the answer to this is YES they may be able to claim, but a presence test will be necessary (104 weeks in the UK out of the last 156 week)y. At this point it is advisable to get someone with specialist knowledge/training or a supervisor to deal with the client.

If the answers so far have all been NO, then there may be other support that can be accessed. Some of this is outlined below, but it is best at this point to either make the client an appointment with an immigration specialist or seek the help of a supervisor/someone trained in dealing with the issues in your own CAB office.

5. Is there other support available to them?

Ask the following questions

A. Social Services

- Has anyone been compulsorily detained under the Mental Health Acts?
- Is there an adult requiring care and accommodation that is not otherwise available to them and that arises from their age, illness or disability or
- is there is a child in need, and
-is it unreasonable for the family to return to their home country (e.g where there are legal or practical barriers (including a breach of human rights, or breach of EU treaty rights) preventing this?

It may also be necessary to find out if the local authority is willing to fund the costs of travel home, and if so will they fund accommodation and support pending this?

Other Support- *Some of this can be given in the Gateway interview, but as the case may be complex it is best to involve a supervisor if these are the only options left following all the questions.*

- Food banks
- Red Cross vouchers
- Night shelters or refuges
- Charitable, religious or community support
- Embassy assistance in returning home