

Update for Legal Representatives about the MLR service during COVID-19

June 2020

The Helen Bamber Foundation (HBF) runs a Medico-Legal Report (MLR) service. HBF's physical office has been closed during lock-down and due to social distancing requirements and increased risks of transmission where public transport is used, HBF's staff are predominantly working remotely for at least the next 3-6 months. HBF is continuing to maintain an MLR service and to provide MLRs.

Safeguarding and public health

During lockdown (23 March-at least June 2020) all new MLR assessments have been undertaken remotely (some reports related to people who had already been assessed in-person pre-lockdown). So far during lockdown the only HBF MLR assessments that have taken place remotely are 'psychological or psychiatric' assessments and physical injury assessments have thus far been placed on hold.

In all cases where a remote assessment for an MLR has been considered we have asked legal representatives to prepare a safeguarding plan to consider whether a remote assessment can be safely and appropriately undertaken. In some cases remote assessment has not been considered appropriate and the case has been placed on hold. We are now planning for the 'new normal'. In line with public health advice regarding ongoing social-distancing requirements, HBF is in the process of making arrangements for the MLR service in the medium-term (for now this is likely to be until the end of 2020, although the situation will be kept under review).

The global increase in remote working has led to a sharp learning curve regarding the potential for digital forms of communication. This is ongoing and we anticipate that over the coming months an increasing volume of evidence and information will become available regarding the contexts in which remote assessments are appropriate, safe, inclusive and accessible. We will continue to update our procedures and plans in line with these developments.

We believe it is imperative that standards of fairness and access to justice are not curtailed or 'short cut' and that people are not forced to breach public health recommendations and place themselves and others at risk in order to claim international protection.¹ Remote assessments do create different safeguarding and accessibility challenges and by their nature can reduce rapport/trust (which can be critical for facilitating disclosure) and will often involve less evidence being obtained by the MLR writer (due to the reduction in social cues/access to body language).

¹ For example, in collaboration with Freedom from Torture, HBF has set out recommendations based on clinical and safeguarding concerns in ['The Courts, Tribunals and the COVID-19 Public Health Crisis'](#).

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Interim MLRs

An MLR may be categorised as interim (as referred to in the Home Office's API).² In some cases we may be instructed at the outset to provide an 'Interim MLR' based on restricted material or in other cases it may become clear later on in the MLR assessment process that for cogent clinical reasons only an 'Interim' assessment is possible. An interim assessment will aim to identify the core clinical issues, set out any preliminary diagnosis, describe physical and psychological sequelae and, to the extent possible, document them.

Where a report is categorised as 'Interim' we can be contacted at a future date with a view to a legal representative instructing HBF to undertake a further full assessment. We will seek to prioritise such cases, but further assessments would be dependent on our capacity at that time. In due course we are likely to request an update from the legal representative in cases where we have undertaken an interim MLR so that we can ascertain if further assessment is required.

We hope that in some cases a further assessment will not be necessary, particularly given the lower standard of proof applicable in international protection claims – as the Home Office API³ states "*Where an interim report has been completed, it will depend entirely on the individual facts of the case and the content of the report as to whether it would be appropriate to proceed to a decision. In cases where an interim report does provide sufficient evidence to justify a grant of leave there is no need to wait for the full MLR*".

Weight to be attached to MLRs based on remote assessments

Our clinicians are experts and are specially trained, when undertaking an MLR our clinicians will set out the history, evidence, analysis and findings their clinical, expert opinions are based on, where appropriate applying relevant diagnostic frameworks and the assessment framework of the Istanbul Protocol.

Where an assessment has been undertaken remotely any issues around the impact this process has will be factored into the clinical opinion expressed by the MLR writer. HBF is therefore of the view that findings our MLR clinicians do reach should be accorded full weight. The Home Office's API accepts that our clinicians are experts. We are only proceeding with assessments remotely where this is assessed as appropriate through our rigorous referrals process

If, however, an HBF MLR is challenged in a court or tribunal or not accepted by a decision-maker, due to it being an interim report or the findings being made during a remote assessment, we would always want to know about this straight away and to be given the opportunity to comment or, if appropriate, consider whether a further MLR should be undertaken.

Psychological/psychiatric assessments

We will be undertaking the majority of these assessments remotely during the public health crisis. In an exceptional situation we will consider trying to accommodate a face to face MLR assessment, but capability for doing so will depend heavily on the individual case and our clinician and room availability.

² Home Office's [Asylum Policy Instruction](#), 'Medico-Legal Reports from the Helen Bamber Foundation and the Medical Foundation Medico Legal Report Service', p.9-10.

³ As above.

Assessments of physical injuries

During lockdown we have placed these on hold, where appropriate undertaking the psychological/psychiatric assessment only. Going forward we will have limited capacity for face to face assessments, but in individual cases we will assess whether a face to face assessment is possible. We are trying to promote social distancing and so even where we do offer a face to face assessment for a physical examination this may be in the context of further assessment being undertaken remotely.

Where a physical assessment is undertaken only remotely (via video/photographs) it is likely that this would form an interim rather than full assessment.

Practicalities for remote assessments

In order to carry out the assessments described above the following conditions should be in place:

1. HBF has advised all of its own clients to follow government, medical and statutory advice on social distancing as far as possible (and obviously to isolate if they or those they live with have symptoms).
2. When first approaching HBF regarding an MLR we will ask for a summary of the case, copies of any recent legal documents and a summary of any physical injuries the client is believed to have.
3. If we are able in principle to accept the referral for an MLR based on the above, then legal representatives will need to complete a safeguarding plan, which will be considered by the clinician and may be considered by our multi-disciplinary staff team to determine whether HBF believes it would be appropriate for a remote assessment to proceed as proposed.
4. Appointments conducted remotely will only be possible if the person to be assessed has access to the technology described below. HBF is not able to provide access to this although for clients within our Model of Integrated Care we may be able to discuss different support options and for other people we may be able to provide advice.
5. The legal representative should ensure that their client has access to:
 - a private space (including with child care and alternative care arrangements for adult dependent relatives arranged);
 - A smart phone, laptop or tablet with a camera and microphone and internet connectivity;
 - A stable internet connection (wifi or sufficient data), bearing in mind more than one assessment appointment may be required;
 - A call may be via Whatsapp or another application. If there is a particular preference for an alternative app, for example use of Skype, Zoom or Facetime, then the legal representative should let HBF know as soon as possible. If an MLR writer requests the use of an alternative app HBF will let the legal representative know as soon as possible.

The legal representative should complete the safeguarding plan and highlight any requests or difficulties well in advance. HBF is aware that many asylum seekers have their own smartphone and that others are using a friend's phone/internet. However, self-isolation, distancing and hygiene routines compliant with current guidelines/legislation apply to the above.

6. On a case-by-case basis HBF will seek to arrange an interpreter to be available via a three-way call. We may also ask the legal representative to make the arrangements for an interpreter in some circumstances. Please note that HBF cannot guarantee arrangements for an interpreter in all cases.

7. Where the instructions to HBF include instructions to assess physical injuries, the legal representative must set out all physical injuries of which the client is aware. Staff at HBF will decide whether in the circumstances the physical assessment should be put on hold and a psychiatric/psychological only assessment be undertaken or whether a different approach is more appropriate. If a remote assessment of physical injuries is planned then we will provide further information to the legal representative regarding what information is required in advance of an assessment appointment.
8. In the event of technical problems during the assessment appointment, HBF and our MLR writer will try to be flexible (e.g. advising people to move nearer a router or to carrying out that appointment audio only). However this may mean that additional assessment appointments become necessary. If there are more substantive problems (e.g. issues with rapport and disclosure) arising because of the means of communication which suggest that it is clinically inappropriate to continue, then we will terminate the appointment and prepare a (necessarily briefer) MLR explaining the issues which prevented the assessment from continuing.
9. If, despite all efforts, the result is that an MLR cannot be accomplished, we will still invoice for the preparatory work done (reading papers, preparatory steps towards the assessment etc.) and will provide a breakdown of that work for the Legal Aid Agency.
10. A form of words explaining the processes adopted in the above circumstances will be incorporated into the MLR.
11. Clarifications etc. will be dealt with as usual, but your forbearance is requested.
12. MLRs produced at this time may be more restricted and only information which is strictly clinically relevant may appear in the MLRs. MLRs may not mirror previous statements etc made to others exactly. Such apparent inconsistencies are particularly likely to be present where MLRs are conducted in the constrained manner described above. The wording of the reports will clarify this matter for the reader and will be weighed/factored into any clinical opinions in the report.

Practicalities for in-person assessments

The availability of these is currently strictly limited and we are unwilling to proceed with these assessments in a way which places MLR writers or people due to be assessed at risk.

PPE will need to be worn during face to face assessment appointments and the plan around this would be notified in advance so that the person due to be assessed can be prepared for this. If there is a concern that the use of PPE has impacted in some way on the assessment then that will be factored into the clinical opinion of the MLR writer.

Prior to an in-person assessment a safeguarding plan will need to be completed by the person's legal representative to confirm the plan for safe travel arrangements and to ensure that the face to face assessment is as low risk for all involved as possible.

There may be additional costs associated with face to face assessments during the current public health crisis – for example we may include the cost of an MLR writer travelling by taxi in our quote for the MLR or agree to undertake the MLR on the provisional basis that funding for the travel of the person due to be assessed is in place in advance to allow them to travel safely to the appointment. If there is any additional cost in an individual case we will set this out in our quotation (in the report order form).

We are grateful for the patience and flexibility of those being assessed, their legal representatives, the Legal Aid Agency and our MLR writers during this challenging time.

V2 May 2020

HBF Legal Protection Team

(V1 of this statement was issued on 20 March 2020 and entitled 'Update for Legal Representatives about the MLR service during COVID-19'; V2 updates and replaces the previous statement).