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To: All Immigration Stakeholders

Date: 19 May 2006

Dear Consultee

Consultation on the CLR Performance Indicator

I am writing to inform you of the outcome of the CLR consultation exercise that we have been carrying out and to thank you for your responses. I thought that it might be helpful if I started by summarising both the original proposal and the final outcome of the consultation before explaining the reasons behind our decision-making.

Original Proposal

- Introduce a Performance Indicator for success at the AIT of 40% overall and a minimum of 35% in each of immigration and asylum.
- Introduce contract sanctions that would make failing to meet these standards a breach of the contract and failure to meet half these levels a fundamental breach.
- Re-instate devolved powers to grant CLR for all suppliers and remove those devolved powers at our complete discretion.
- These measures were planned to come into effect in June 2006 (although we had mistakenly put May in the consultation paper).
- Use the Performance Indicator to distinguish between suppliers being awarded a contract from 1 April 2007.

Final Outcome

- Introduce a Performance Indicator for success at the AIT of 40% overall and a minimum of 35% in each of immigration and asylum from October.
- Carry out further consultation on the measurement of the Performance Indicator and on the contract sanctions that we may introduce in the April 2007 contract for suppliers failing to meet these standards.
- Not to re-instate devolved powers to grant CLR to all suppliers, however we may take a pragmatic view of extending the number of suppliers with devolved powers (eg those with a performance of 30% or better rather than 40%) from October. Consult on extending our ability to remove devolved powers as part of the April 2007 contract consultation.
- Use the existing devolved powers criteria to distinguish between suppliers being awarded a contract from 1 April 2007, ie those that fail to meet the criteria would only be awarded a temporary contract.

It was very clear to me during the consultation exercise that many of you are against the CLR merits test as a matter of principle and that is not something that we will lose sight of in future policy making. Unfortunately we were not carrying out a consultation exercise on the merits test as that has been in effect since representation at appeal was brought into the scope of legal aid in January 2000. There are currently no plans to change the CLR merits test.

It remains our view that a 40% success rate is the minimum return that we would expect from a supplier conducting a reasonable volume of appeals bearing in mind the merits test does not allow funding to be granted where the prospects of success are clearly less than 50%. Whilst there will certainly be a significant proportion of a supplier's caseload where funding is granted for borderline cases, equally there will be a significant proportion where the prospect of success are good (ie clearly better than 50%). As the prospects of success for all cases where representation at the appeal is being funded under CLR have to be 50:50 or better, we believe a 40% success rate is reasonable and achievable. Setting the success rate at 40% allows a 10% tolerance which should allow for any vagaries in decision making over a large enough caseload (we think a minimum of 50 cases per year).

This view is backed up by the reported success rate in immigration and asylum appeals of all suppliers in the last quarter of 2005/06 which was 43% compared to a figure of 33% in the first quarter of the year. Over 60% of our allocated new matter starts in asylum this year are with the 160 or so suppliers with a success rate of 40% or better in asylum in 2005. These figures show that this level of performance is achievable.

We will therefore introduce a Performance Indicator (PI) requiring suppliers to have a success rate of at least 40% in immigration and asylum (and a minimum of 35% in each category). As we no longer consider the introduction of the PI as being urgent we will provide a ten-week notice period before implementation. Although we are not restricted to the normal April and October windows for contract changes when

introducing a PI, on this occasion it would appear sensible for the PI to come into effect on 1 October 2006 and therefore formal documentation will be issued in mid July.

Most of you responding to the consultation were concerned about the contract sanctions that would be in place for suppliers who did not meet the PI. We will therefore carry out further consultation to examine the use of contract sanctions. If sanctions are to be applied to the PI we expect that they would be introduced with the new contracts in April 2007.

I accept that there is further work that we need to do in terms of refining the measurement of success rates and in order to achieve this it may require changes to the end point reporting requirements in April. The principle should be that suppliers should not fall foul of the PI and be under threat of possible contract sanctions if there are justifiable reasons for having a lower success rate at appeal due to the nature of work that they carry out. Therefore if there are types of case that have justifiable reasons for being excluded from the PI (eg UASC, Onward Appeals), this should be done at the point of measurement not after the event on negotiation with an Account Manager.

Our view is that 40% is the minimum level of success required and, if from April we are confident with the measurement of the PI, any sanctions we may apply for those not achieving this level will be determined by the degree of underperformance. For example, after further consultation we may still decide that performing at below 20% represents a fundamental breach of the contract but that is unlikely to be the approach for a supplier performing at 35%. In the latter situation it is far more likely that we will take a "corrective action" type approach although ultimately if a supplier fails to meet the PI over a sustained period they are likely to lose their contract.

At the current time, without the safety net of the PI related contract sanctions, we have decided there is too much of a risk to both clients and the fund to re-instate devolved powers for CLR to all suppliers when we introduce the PI in October. Between now and October we will make a decision whether to re-instate devolved powers to some suppliers who do not meet the published criteria, for example those at 30% and above rather than just those at 40% and above. Our intention is to re-instate devolved powers to all suppliers in the new contract in April 2007 and we will also consult on the circumstances where devolved powers could be removed as part of the April 2007 contract consultation exercise.

As you are aware it has been our stated intention for some time to take account of success rates when making contracting decision for April 2007. Our intention now is to award permanent contracts to those who meet the published devolved powers criteria and only to award temporary contracts to those suppliers who do not meet the criteria. When we issue the contract documentation for the PI in mid July, we will also clarify how we will measure suppliers against the devolved powers criteria and over what period.

In effect this means that no supplier will fail to get a contract in April 2007 merely because of their success rate at appeal. However whether they retain that contract

or have it made permanent will then be determined by their performance against the PI from April 2007.

What we should not lose sight of with all the discussions about the PI and associated sanctions is that there has actually been no change to the merits test. If suppliers continue to apply the merits test properly they should be able to meet the PI and therefore this change will have no negative effect on them. However there is still a significant minority of suppliers whose success rate is unacceptable and we need to take action to address this.

I know that these proposals are unpopular with stakeholders and that some of you have been unhappy with the way that we have consulted. In my opinion this has been one of the most open consultation processes that I have been involved in bearing in mind we started the process at the stakeholder meeting in October 2005. There have subsequently been a number of further meetings and discussions with stakeholders as well as communication through correspondence. I hope you will feel that the revisions we have made to the original proposal demonstrate that we have taken your views seriously. We will of course issue a formal post consultation response at the same time as we issue the PI contract change in mid July.

May I thank you again for being involved in the consultation process and I hope you will contribute to the process we are about to start on both the contract and remuneration arrangements for April 2007. I am very keen to continue to work together constructively and hopefully with a shared aim of making sure that clients have access to good quality advice and representation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Newell', with a stylized flourish at the end.

Paul Newell
Head of Immigration Policy