

Q&A's: 21 September 2007 – Criminal Contract

Why is the contract being terminated?

Due to the uncertainty arising from the judgment in the Unified Contract judicial review, we have decided not to issue the planned contract amendment notice that would enable us to make the changes to the existing contract for October 2007. The only alternative way to ensure that the reform programme remains on track is by terminating the existing contract, and introducing the changes under a new contract starting on 14 January 2008.

Unlike the civil Unified Contract, the criminal contracts were entered into before the legal aid reform programme was announced and therefore providers would not have been aware of the proposed reforms at the time they signed the General Criminal Contract. Although the LSC is appealing the judgment, the outcome of this is unlikely to be known for some time. The LSC is committed to making the process as simple and certain as possible and acting in accordance with the law.

My contract is due to expire in March 2008 – why not wait until then?

The fee scheme changes were originally intended to be introduced in October 2007 in order to ensure that the LSC spend remains in accordance with our budget. We have now announced that any change to the remuneration structure for the crown court will be introduced in January 2008 (subject to consultation) and therefore it made sense to introduce the changes together, although each month's delay will lead to lost savings.

How is the January contract different from my current contract?

The Contract Documents are based on the current General Criminal Contract (out of London), with the Specification amended to facilitate the introduction of

- police station fixed fees
- the expansion of the Defence Solicitor Call Centre to cover own client work
- the expansion of CDS Direct (subject to PACE changes)
- an exclusive panel of providers for VHCC cases

Our policy is to limit the amount of change to the bare minimum, although we are also reviewing the amendment provisions in Contract Standard Terms in the light of the UC judgment and bearing in mind that this contract is only intended to run for 6 months, subject to a limited right to extend. A full revised version of the contract documents will be available on our website from 28th September 2007, along with a summary of all of the changes.

How do I get a Contract from January 08?

We will be conducting a simple application process from 1 October 2007 to 4pm on 31 October 2007. All current General Criminal Contract holders will

receive an application pack by post by the end of September and full information will be available to all interested parties (including new applicants) on the website from 28 September. In short, all that is required is basic information about your firm and staff, confirmation that you remain compliant with the SQM and the contract and details of the relevant Duty Schemes you wish to apply for.

I currently have a General Criminal Contract. Will I automatically get a new one?

The award of a new contract is not automatic. However, current providers who comply with the conditions of the application process, including the timetable we have published, will be eligible for a contract starting 14 January 2008.

Who is the application process open to?

The application process is open to both existing providers and new entrants. Under EU Procurement Law we cannot simply give existing providers new contracts, we have to run a full application process open to all; both current contract holders and new entrants/entities alike.

We will be placing national advertisements regarding the application process over the coming weeks.

Why is the closing date for the application process 31 October when the new contracts do not begin until 14 January 2008?

As well as awarding contracts, we are also allocating duty solicitor scheme slots for the duration of the new contract.

The timetable has been drawn up to allow us time to conduct an internal appeals process against any refusal of a contract (for example, if the firm fails to comply with the application process) as well as to draw up duty solicitor scheme lists, before issuing the rotas in December to allow for a suitable notice period prior to the rotas commencing and to be able to allocate any additional slots in the event of spare capacity.

That extra period will also allow us to contact any providers who decide not to apply for a new contract to make arrangements for the orderly transfer of their work where appropriate after 13 January 2008 and for reconciliation of their account.

How long will the contracts last?

The contracts will last for 6 months, subject to the LSC's right to extend the contracts for up to 6 months. We hope that the uncertainty that has arisen from the judgment in the judicial review of the Unified Contract will have been resolved during this period.

How will duty slots be allocated for the January 08 contract?

Slots will be allocated in January on the basis of the number of duty solicitors employed. We will issue the first rota for 6 months. Full details of scheme entry rules and the slot allocation process will be contained in the application pack.

What happens if insufficient providers register?

As part of the application process, we will be asking providers whether they have an interest in expanding their legal aid work on duty solicitor schemes. Where there is a shortfall of providers in any area, we will approach those providers who have already applied, and have expressed an interest in expanding, in order to meet any shortfall.

What happens after the January contracts expire?

We will conduct a tender to award contracts from the end of the new contract. This will move criminal legal aid providers onto the Unified Contract. We expect the new terms for criminal providers will include new Key Performance Indicators and IT capability requirements to enable us to transact more effectively with providers in the future.

What are the implications for fixed fees and new boundary arrangements?

Fixed fees for police station work will now be introduced as part of the January 2008 contract. Any revised boundary areas detailed in the June 2007 Police Station consultation response will now take effect at the same time.

Am I still required to use the new CDS6 from October 2007?

Yes. We are aware that a large number of software providers have revised their systems to introduce the additional column for scheme codes on the CDS 6 from October 2007.

Despite the delay to the implementation of fixed fees and revised boundary areas we require the new codes to be used. Providers will be required to enter both a scheme code and a police station code. These codes will be available on the LSC website (www.legalservices.gov.uk)

Duty solicitor schemes will continue to operate from October despite the requirement to report the new codes. The new CDS6 will allow the LSC to further improve the reliability of its data-gathering in advance of the introduction of fixed fees.

What are the implications of this for DSCC/CDS Direct expansion?

The Defence Solicitor Call Centre will become operational from 14 January 2008. CDS Direct expansion will begin 1 week later from 21 January 2008 (subject to changes to PACE Code C being in place), and follow the original phased expansion plan.

What are the implications of this for VHCC Panel Tenders?

We are currently in the process of assessing tenders, and will be writing to applicants individually regarding the impact of this change. The panel will now commence on 14 January 2008.

Are there any implications for Best Value Tendering?

No. The LSC remains committed to publishing a consultation paper on Best Value Tendering (BVT) later this year. BVT is unaffected by the Unified Contract judicial review decision. The LSC believes that BVT remains the best way of achieving prices which reflect the true cost of doing publicly funded work in particular areas and creating a sustainable provider base over the long term.

Who can I direct further questions about the application process to?

We are keen to ensure that we can respond effectively to your questions. We are however very aware of our duty to ensure that all potential applicants have equal opportunity of access to any information given regarding the application process.

After publication of the application packs, we will regularly update our list of Frequently Asked Questions (FAQ's) on our website at CDS>Tenders. In the event that the FAQ's do not answer any individual queries, your local regional office will be happy to respond to general questions on the current General Criminal Contract, the current Duty Solicitor Schemes in your area, the new changes we are introducing and about the General Criminal Contract (January 2008).

Questions on the application process or allocation of duty slots for January 2008 will be collated and answered by updating the FAQ's, to ensure all applicants and interested parties have equal access to the information in the answers. All personal or identifying information will be removed from questions prior to publication.