

NOTICE OF AMENDMENTS TO GENERAL CRIMINAL CONTRACT STANDARD TERMS

For implementation on 1 April 2007

The contract amendments set out in the notice, which have been subject to consultation with The Law Society and other representative bodies, come into force on 1 April 2007. This notice should be read in conjunction with the Notice of Amendment to the General Criminal Contract Specification and Duty Solicitor Arrangements.

The original consultation document (including the proposed amendments) and an outcome document showing the consultation responses, are available on our website www.legalservices.gov.uk.

Summary of Changes

A Peer Review and Assessment Reduction Performance Indicator

Amendments to introduce Independent Peer Review as a performance standard and an Assessment Reduction Performance Indicator, in relation to Contract Work.

First, a requirement that suppliers attain a rating of 3 or better of Independent Peer Review (and an agreement to participate in this process and be bound by its outcome).

Secondly, a requirement to have a reduction rate on Assessment of Claims for Contract Work of not more than 15% (although this will not be treated as a breach of contract until further notice, but a potential trigger for further investigation or action).

B Amendments to the Specification

Amendments to enable the Commission to amend the Specification to the General Criminal Contract outside the April and October “windows” in order to facilitate a Reform of the Legal Aid Scheme.

C Amendment to clause 16 – new provisions on Equality and Diversity, Email and Website

Amendments to the General Provisions to incorporate new provisions requiring suppliers to comply with equalities law and best practice, as set out further in an Annex to the Standard Terms. These provisions will be accompanied by Guidance to be published by the Commission in April 2007.

Also, amendments to the General Provisions requiring suppliers to have an e-mail address to which we can send electronic communications, and a provision allowing us to require you in the future to make transactions with us on our website, rather than on paper. We will not require you to do this before October 2007, and will consult with The Law Society first.

D New provisions on gifts, fraud and unethical behaviour

New provisions, in addition to the current provisions on prohibited gifts/bribes, to cover (a) collusion and bribery in the context of bidding and applying for contracts, (b) putting in unrealistically low bids, and (c) requiring suppliers to be alive to fraud and unethical behaviour by personnel and third parties.

E Termination

A new right for the Commission to terminate the contract, or part of the contract, on 3 months’ notice in order to facilitate a Reform of the Legal Aid Scheme.

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[The Commission has decided not to proceed with these amendments at this time]

A Peer review and Performance Indicators

Clause 3 Your main rights and obligations

Add to the old text (below) with the new text (in the box)

2. You must perform all Contract Work and exercise your Devolved Powers in a timely manner and with all reasonable skill, care and diligence. You must perform your obligations to record and report data accurately. Your Claims must be true, accurate and reasonable.
3. In performing (and claiming payment for) Contract Work, in exercising your Devolved Powers and in complying with the SQM you must achieve such level of performance, as measured by the Performance Indicators, as we may require.

Independent Peer Review (Rating 1 = highest, Rating 5 = lowest)

3A In each Category of Law, your Contract Work must receive either rating 1, 2 or 3 as determined by the Independent Peer Review Process.

The provision below takes precedence over the provision in the “Contract for Signature – Performance Indicator Annex”

If your Contract Work in any Category of Law receives a rating of 4, as determined by the Independent Peer Review Process, you may make representations in accordance with the Independent Peer Review Process by completing the appropriate form (currently found at Appendix 5 to the Independent Peer Review Process) and giving it to us within 28 days of your receipt of the review report and file sample. If the rating is confirmed, this is a breach of Contract.

If your Contract Work in any Category of Law receives a rating of 5, as determined by the Independent Peer Review Process, you may make representations in accordance with the Independent Peer Review Process by completing the appropriate form and giving it to us within 28 days of your receipt of the review report and file sample. If the rating is confirmed, this is a Fundamental Breach.

3B You agree to the standard of your Contract Work being assessed by the Independent Peer Review process and promptly to provide such information, matter files and case files as may be required for that purpose. Both you and we agree to accept the validity of the Independent Peer Review process and to be bound by any rating determined by it. The Independent Peer Review Process and an explanation of the ratings (1 – 5) are available on our website www.legalservices.gov.uk and from your Regional Office.

3C. To qualify as a Preferred Supplier you must achieve Independent Peer Review ratings of 1 or 2.

Assessment Reduction Performance Indicator

3D. The current Performance Indicator is set out in the Table below. This standard is likely to be part of the entry criteria for Preferred Supplier status.

A failure to achieve the specified standard for this Performance Indicator, on or before 31 March 2008, shall not of itself be a breach of Contract (but without prejudice to our rights if it separately involves a breach of any other obligation under the Contract).

**The Performance Indicator that you must meet in performing Contract Work
(Clause 8 General Criminal Contract)**

Assessment Reduction

15% (Max)

NOTES ON THE PERFORMANCE INDICATOR

For the purpose of the Performance Indicator, "Contract Work" includes such other publicly funded work that you are authorised to perform by this Contract e.g. Representation in the Crown Court, Court of Appeal and House of Lords.

B Amendments to the Specification

Clause 11 Specification

Add to the old text (below) the new text (underlined below and in the box)

10. Subject to Clauses 11.11, 11.12 and 11.12A we will require compliance with any amendments to the Specification with effect from either of two points during each year – April or October.
11. If, in any case, The Law Society has requested a longer consultation period than the six weeks or 21 days specified in Clauses 11.6 or 11.7 (as appropriate) we may require compliance with the amendments at another point in the year, but will always consider whether delaying the requirement to comply until the following April or October (as appropriate) is a practicable alternative.
12. Clause 11.10 does not apply (and we may require compliance with effect from another point in a year) if we consider that it is impracticable to require compliance with effect from either April or October, or if the amendments affect fewer than 10% of the number of our Contractors, and in any case where The Law Society agrees. Examples of when we may consider that it is impracticable to require compliance from April or October are if:
 - (a) the Department for Constitutional Affairs requires an amendment; or
 - (b) an amendment is required pursuant to other provisions of this Contract e.g. Clauses 16.16 or 16.17.

12A Clause 11.10 does not apply (and we may require compliance with effect from another point in a year) if we consider it necessary or desirable to do so in order to facilitate a Reform of the Legal Aid Scheme.

"Reform of the Legal Aid Scheme" means such reforms as we may wish to implement in order better to comply with our statutory duties or fulfil our statutory functions including (a) such changes as we wish to make to, or as are related to, the CLS, CDS, or both, consequent on, or related to, the paper "Legal Aid Reform: the Way Ahead Cm 6993"; or (b) new approaches to procurement and contracting for the provision of publicly funded legal services;

C Amendment to clause 16 – new provisions on Equality and Diversity, Email and Website, and addition of new Equalities and Diversity Annex

At the end of Clause 16 General, add the following clause:

Equality and Diversity

Our obligations

38. As a public authority we have statutory obligations:

- (a) to promote race equality, disability equality and gender equality in accordance with the Sex Discrimination Act 1975 (“the 1975 Act”), Race Relations Act 1976 (“the 1976 Act”) and Disability Discrimination Act 1995 (“the 1995 Act”); and
- (b) not to discriminate in the provision of goods, facilities or services on the basis of race, disability, gender, religion or belief or sexual orientation in accordance with the 1975 Act, the 1976 Act, 1995 Act and the Equality Act 2006;

and you must use all reasonable endeavours to assist us, and to co-operate with us, to enable us to comply with these obligations.

Your obligations

39. To help us to comply with our statutory obligations, you must comply with the requirements of the Equality and Diversity Annex.

40. Without limiting the generality of any other provision of this Contract, you must not unlawfully discriminate; and must take all reasonable steps to ensure that your personnel do not to unlawfully discriminate within the meaning and scope of:

- (a) the Equal Pay Act 1970,
- (b) the Sex Discrimination Act 1975;
- (c) the Race Relations Act 1976;
- (d) the Disability Discrimination Act 1995;
- (e) the Employment Rights Act 1996;
- (f) the Human Rights Act 1998;
- (g) the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000;
- (h) the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2000;
- (i) the Employment Equality (Sexual Orientation) Regulations 2003;
- (j) the Employment Equality (Religion or Belief Act) Regulations 2003
- (k) the Work and Families Act 2006
- (l) the Employment Equality (Age) Regulations 2006; and
- (m) any other relevant legislation in force from time to time relating to discrimination in

employment and the provision of goods, facilities or services.

41. To be sure that we are complying with our statutory obligations to promote race, disability and gender equality and to carry out equalities impact assessments, we need to require you to provide information to us e.g. about Clients and your personnel. This also helps us to make decisions that better take account of any equality and diversity needs of Clients and potential Clients.
42. You must complete and return to us our equality and diversity Contract Work Report Forms within the period specified in the forms provided that to do so does not breach or prejudice your professional obligations. These may require information about your personnel, showing their level e.g. partner, solicitor, legal executive etc correlated against gender, ethnicity and disability, and you must collect relevant information accordingly.
43. You must collect information about your Clients eg on gender, ethnicity and disabilities e.g. by completing the equal opportunities information section on our funding application forms.
44. Researchers (normally the Legal Services Research Centre) will contact you annually to ask you to complete an equality and diversity survey. You must co-operate with the Researchers and complete and return to them their survey documents (which are Contract Work Report Forms) within the period specified by the Researchers.

Email and Website

45. As well as a postal address or Document Exchange (DX) number and telephone number, you must have an operational email address to which we may send you electronic communications.
46. You must have access to our website www.legalservices.gov.uk. From no earlier than October 2007, we may require you to use our website to make transactions – Claims etc. We will consult with The Law Society, and give you notice, before introducing this requirement in accordance with clauses 10.6 – 10.9 as if the introduction of the requirement were a change to the Specification.

Add the following Annex to the Standard Terms:

**Annex to the Standard Terms
Equality and Diversity
(Clause 16.39 - 46)**

General

1. We are committed to promoting equality and tackling discrimination to ensure access to legal services for vulnerable clients and that services take account of the diversity of local populations, without compromising quality of service. We are also committed to promoting equality and contributing to tackling discrimination that creates barriers to career progression within the legal and advice sector. As a supplier of legal services you have a key role to play in meeting the diverse needs of the communities that you serve and promoting equality in your workplace. The requirements in this contract are intended to help you do this.

Duty not to discriminate

2. Without limiting the generality of any other provision of this Contract, you must not unlawfully discriminate and must take all reasonable steps to ensure that your personnel do not unlawfully discriminate against, or harass or victimise any person (directly or indirectly)

on the grounds of their:

- (a) race or racial group (including colour, nationality, ethnic or national origins);
- (b) sex (including marital status, gender reassignment, pregnancy, maternity and paternity);
- (c) sexual orientation (including civil partnership status)
- (d) religion or belief;
- (e) age; or
- (f) disability.

Equality and Diversity Policy, Training Plan and Communications Plan

3. The requirements in paragraphs 4 to 10 (below) must be in place, and in effective operation, by no later than 1 October 2007. To help you achieve this, the LSC will provide Equality and Diversity Policy Guidance, which we will make available online at www.legalservices.gov.uk.
4. You must have a written Equality and Diversity Policy that is available for audit at our request. The purpose of your policy is to set out how you will promote equality and tackle discrimination in your organisation and meet the diverse needs of the clients you serve. In doing so your policy should be relevant to the size and nature of your organisation.
5. As a minimum your Equality and Diversity Policy must include:
 - (a) a commitment to the principles of equality and diversity and to observing legislative requirements;
 - (b) how you will meet the diverse needs of the clients and local community or communities that you serve;
 - (c) how you will implement, monitor, evaluate and update the policy;
 - (d) how you intend to ensure equality in relation to your personnel, Clients, potential Clients and other third parties;
 - (e) how complaints and disciplinary issues are to be dealt with;
 - (f) requirements that no members of your personnel unlawfully discriminate in dealings with other members of your personnel, Clients, potential Clients or other third parties.
6. These are the minimum requirements that your policy must meet. While you may choose to go beyond the minimum requirements nothing in your policy should be contrary to anything required under this Contract. In particular it must not discriminate on the grounds outlined above, at paragraph 2 above.
7. You must also have:
 - an equality and diversity training plan for your personnel; and
 - a communications plan to promote and raise awareness of policies and procedures for ensuring that your services are accessible for people with a disability and meet the foreign language needs of the clients that you serve in your locality.

Further information on the form and content of these plans will be set out in the Equality

and Diversity Policy Guidance. These plans may be incorporated into your Equality and Diversity Policy.

8. The Equality and Diversity Policy Guidance will set out how the lead member of a consortium, and those suppliers who we have agreed may perform some Contract Work through a sub-contractor, should ensure that the other members of the consortium or the sub-contractor will implement a similar policy and ensure that they are aware that it will be subject to audit by us. The Equality and Diversity Policy Guidance will also provide guidance on how you should monitor and report on the implementation of the policy and its effectiveness.
9. Where you have responsibility to produce another equal opportunity or equality and diversity policy (for example, under the SQM or by the Law Society or another regulatory body) you may choose to have one policy to meet all of your requirements. You are not required to have a separate policy for the purpose of this Contract as long as it contains the minimum requirements set out in paragraph 5 above.
10. You must review your policies in operation not less than twice a year (and more regularly as appropriate if you identify any non compliance or problem concerning equality and diversity issues with clients or personnel) and take appropriate remedial action if you discover any non-compliance, or if they are failing to achieve their objective. Failure to do so may lead to the issue of a Contract notice and application of a Contract Sanction.

D New provisions on gifts, fraud and unethical behaviour

Clause 19 Prohibited Gifts

Replace the text (below) with the new text (in the box)

What must you not do?

- 1 You must not try to bribe any of our personnel, or any person who may perform services for, or who is associated (in any way) with, the Legal Services Commission

What may happen if you breach this Clause?

- 2 Any breach of this Clause 19 by you or anyone employed, or otherwise engaged, by you acting on your behalf (whether with or without your knowledge) entitles us forthwith to terminate this Contract.

19. Prohibited gifts, fraud and unethical behaviour

No bribery or collusion

1. You must not try to bribe any of our personnel, or any person who may perform services for, or who is associated (in any way) with, the Legal Services Commission.
2. When bidding, or applying for, a contract with us, or for authority to perform work, or for an allocation of duty solicitor or other work, (or for the purpose of, or with the intention of, doing so) you must not collude with any other person or attempt to bribe them.

No false bids

3. When bidding, or applying for, a contract with us, or for authority to perform work, or for an allocation of duty solicitor or other work, you must not bid any price that is unrealistically low. A price is unrealistically low if you intend to secure the contract, authority or allocation by virtue (in whole or in part) of the low price and intend, or hope, to recover any unrealistic element of it by a subsequent renegotiation of the price.

What must you do?

4. You must be alive to the possibility of fraud and unethical behaviour by your personnel and by any third parties, must not tolerate it and must have procedures to identify, address and counter it.

What if this Clause is breached?

5. Any breach of Clause 19.1, 19.2 or 19.3 by you or by anyone employed, or otherwise engaged, by you acting on your behalf (whether with or without your knowledge) is a Fundamental Breach.

E Termination

Clause 20 How the contract can be ended

Replace the old text (below) with the new text (in the box)

1. You may, at any time, serve no less than three months' notice on us terminating this Contract.
2. Subject to Clause 20.3, if at any time while this Contract is in force, we are directed by the Department of Constitutional Affairs to implement new approaches to contracting under the Act we may, to enable us to give effect to the direction, serve no less than six-months notice on you terminating this Contract (or part of it).
3. Unless the direction by the Department of Constitutional Affairs expressly states otherwise, notices under Clause 20.2 are confined to notices affecting (a) all Contractors in a specified geographical area; or (b) all Contractors able to perform Contract Work in a specified Category of Work; or (c) all Contractors in a specified geographical area able to perform Contract Work in a specified Category of Work.
4. Within 14 days of receiving a direction under Clause 20.2, we will send a copy of it to The Law Society.
5. Any new approaches to contracting under the Act will be subject to consultation before implementation.

1. You may, at any time, serve no less than three months' notice on us terminating this Contract.
2. Subject to Clause 20.3, we may, at any time, serve no less than three months' notice on you terminating this Contract, or terminating specified powers, rights and authorities to perform Contract Work under it e.g. we may terminate your right to perform Contract Work in an Authorised Level of Service, or in a Class of Work, in a specified geographical area.
3. We will exercise our rights under Clause 20.2 only when we consider it necessary or desirable to do so in order to facilitate a Reform of the Legal Aid Scheme.
4. "*Reform of the Legal Aid Scheme*" means such reforms as we may wish to implement in order better to comply with our statutory duties or fulfil our statutory functions including (a) such changes as we wish to make to, or as are related to, the CLS, CDS, or both, consequent on, or related to, the paper "Legal Aid Reform: the Way Ahead Cm 6993"; or (b) new approaches to procurement and contracting for the provision of publicly funded legal services;