

The Unified Contract

Review of responses to the consultation on the General Specification

July 2007
Corporate Legal Team

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Introduction

This document is the post-consultation report on the draft Unified Contract Specification issued by the Legal Services Commission (“the Commission”) on 1 March 2007.

This document does not include responses to the Family, Immigration or Mental Health category specific sections which where necessary will be dealt with in separate reports following publication of those Sections.

It provides:

- A background to the report; and
- A summary of the responses to the rules contained in the Specification.

Further copies of this report are available from the Legal Services Commission website (www.legalservices.gov.uk).

This report should be read in conjunction with the Unified Contract Standard Terms and final (draft) version of the Specification, which can be found at:

www.legalservices.gov.uk/civil.asp

Overview of the Unified Contract

1. The Unified Contract's Standard Terms have prepared the way for the Reform programme¹ and addressed issues arising from the operation of the General Contracts.
2. The Unified Contract replaced both General Civil Contracts (Solicitors and NFP) and both Mediation Contracts (For Profit and Not for Profit) from 1 April 2007.
3. The Unified Contract will replace the General Criminal Contract from 1 April 2008. In the interim period the General Criminal Contracts have been extend until 31 March 2008.
4. The key structural difference between the General Contracts and the Unified Contract is that each legal aid supplier now has one Unified Contract, instead of a contract per office. Each Unified Contract contains separate Office Schedules for each of the Supplier's offices, under which work will be allocated in accordance with the prescribed Specification.
5. From 1 April 2007 until 30 September 2007, the Specifications contained in the General Civil Contracts will continue, subject to amendments contained in the Contract for Signature and any subsequent notices.
6. The new Unified Contract Civil Specification (save for the Mental Health Section) will come into force from 1 October 2007 and will cover all civil Controlled and Licensed Work regardless of whether an organisation is a Solicitor or NfP. There is a separate Specification to cover Family Mediation. The Family Mediation Specification sits under Unified Contract Standard Terms but is separate from the Civil Specification.
7. Key Documents

The documents which comprise the Unified Contract have now been published and are as follows:

- Contract for Signature and Annexes;
- Office Schedules
- Standard Terms and Annexes
- Specification and Payment Annex

¹ See document 'Legal Aid Reform: The Way Ahead' for further information

Background to the Consultation

8. In our consultation paper “Legal Aid: a Sustainable Future” (published in July 2006) we put forward a number of proposals concerning legal aid contracts from 1 April 2007. In that paper, we said that we wished to introduce a Unified Contract on 1 April 2007, which would cover civil legal aid from that date (as the General Civil Contracts would expire on 31 March 2007)².
9. In November 2006, the joint DCA and LSC paper ‘Legal Aid Reform: the Way Ahead’ CM6993 explained that, although the Unified Contract would come into force on 1 April 2007, the Contract Specification would remain largely unchanged (i.e. it would remain largely the same as the General Civil Contract Specification), until revised fee schemes came into force in October 2007 and that there would be further consultation on proposed changes to the Specification in 2007 with a view to implementation in October 2007.
10. The Unified Contract came into force on the 1 April 2007 with the new Contract for Signature, Standard Terms, and Office Schedules. However the Specification of the General Civil Contracts continues to apply (until 30 September 2007)³.
11. The Commission issued on 1 March 2007, a consultation, which comprised of a number documents making up the Specification of the Unified Contract. Responses to Family and Immigration Sections shall be dealt with in a separate paper. The Mental Health Category Specific Section and the Family Mediation Specification are also being consulted on separately.
12. All parts of the Specification have been subject to extensive formal and informal consultation. The Commission held a number of consultation meetings with the Representative Bodies⁴ the last of which took place on 26 June 2007.

² For the outcome of that consultation see - www.legalservices.gov.uk/civil/docs_for_consultation/openConsultations002.asp

³ As denoted in a supplier’s Contract for Signature

⁴ The Law Society, The Legal Aid Practitioners Group and Advice Services Alliance

General Information on the Specification

13. The Civil Specification is the main vehicle for bringing into effect the various civil fee schemes from 1 October 2007 (1 January 2008 for Mental Health), supported by a new Funding Order and certain Funding Code and Regulation changes. The Specification consists of both general and category specific provisions.
14. This document should not be considered as guidance on the operation of the Specification. The Commission intends to publish with the formal notice of the amendment to the Unified Contract in mid-August, guidance on costs assessment and related Contract rules.
15. In drafting the Specification there were three overall objectives: -
- (i) To give effect to the new fee schemes as published in the 'Way Ahead' document;
 - (ii) To update and amend the old Contract Rules in order for them to be fit for purpose for a standard fee regime;
 - (iii) General updating and modifying of the Contract Specification to match the new Unified Contract Standard Terms and to simplify and replace the detailed regulations under the 1988 Legal Aid Act which were previously incorporated into the Contract.
16. The key challenge for the Commission was that the current Specification (as per the General Civil Contracts) was simply not designed for a standard fee regime. Although it contains some rules about new matters, there was no clear test for what constituted a "case" on which a standard fee could be based, or flexible rules about when new matters may be started for a particular client.
17. If we had retained all the rules of the old Specification, in our view there would have been a very significant risk that we would not be able to retain Fund control (or value for money within any given budget) and suppliers would be left without clear guidance, for example as to closing and re-opening new Matter Starts in a variety of situations. Further, the sheer uncertainty of the old rules would itself generate numerous problems on our ability to manage performance under the Contract.
18. The new Specification allows suppliers to change their case mix by taking on a wider variety of clients where this is consistent with the Contract rules. All the fixed fees are set out in the Payment Annex to the

Specification whilst the rules as to when a case falls within the remit of an “Exceptional Case” are set out in the general and category specific rules.

19. In negotiations and consultation with the representative bodies we have tried to take a compromise approach of maintaining the flavour of many of the old Specification rules but departing from those where it is necessary to do so either to achieve clarity on an issue, or where the old rules simply would not be fit for purpose in a standard fee regime.

20. We recognise that the new schemes represent a new remuneration regime which will inevitably change supplier behaviour in ways which cannot be predicted with precision until the system is up and running. Consequently we have agreed with the representative bodies that we will carefully monitor volumes and trends in the new system and take stock of the situation after the first six months (April 2008).

21. Contents of the Specification:

Part A	Provisions for Contract Work
Preliminary	
Section 1	General Rules for Supplier
Section 2	Applications for Contract Work
Section 3	Scope of Contract Work
Section 4	Scope of Licensed Work
Section 5	Carrying out Controlled Work
Section 6	Carrying out Licensed Work
Section 7	Remuneration for Contract Work
Section 8	Assessment Procedures
Section 9	The Statutory Charge
Section 10	Family*
Section 11	Immigration*
Section 12	Mental Health*
Section 13	Debt
Section 14	Employment
Section 15	Housing
Section 16	Welfare Benefits
Part B	Payment Annex

***These Category Specific Sections (and reports on the consultation) are to be published separately.**

Summary of Responses

22. A total of 34 written responses to the draft contract documents were received.
23. Of these 13 were from the main representative bodies, including the Law Society, the Legal Aid Practitioners Group and the Advice Services Alliance.
24. Of the remaining 21 responses, 15 were from NfP organisations and 6 from solicitors firms⁵.
25. Responses to the proposed changes to the Specification as published in October 2006 were also considered where relevant provisions still remained. Visit our website for further information on the previous respondents in our report on the responses to the Unified Contract Standard Terms.

⁵ See Appendix A for a full list

Responses to Specification

26. The Unified Contract Specification (“the Specification”) documents published in March 2007 have changed significantly following the consultation responses and constructive discussion with the representative bodies, in terms of:

- Structure;
- Wording; and
- Contractual provisions.

27. In this section, the responses to the consultation on contract provisions have been summarised. Below each summary is the Commission’s response in italics, which sets out the current position in the final Specification document and reasoning where necessary.

28. Respondents’ drafting points have all been considered and amendments made if necessary to the contract document.

29. The Commission is aware that there were a number of provisions of particular concern for the representative bodies in the context of the Standard Fee regime. In order to address these concerns in a structured way this report has been set out as follows:

- Part 1: Refusing applications and Stopping Contract Work;
- Part 2: Matter Start Boundaries;
- Part 3: Legal Help prior to grant of An emergency certificate;
- Part 4: Amendment to Fixed Fees;
- Part 5: Other provisions in the Specification;
- Part 6: Miscellaneous Section (Education, Debt, Housing, Employment);
- Part 7: Paragraphs removed following consultation.

Part 1

Refusing applications and stopping Contract Work (rules 2.39 – 2.49)

30. The majority of respondents objected to the purpose of these provisions mainly on the basis that the Commission appeared on the one hand to be encouraging case mixing whilst on the other setting restrictions or limits on when a supplier can refuse or stop work. Many respondents felt the provisions were directly opposed to the other communications from the Ministry of Justice (formerly the DCA) and the Commission; namely that suppliers were to be encouraged to change their case mix to become more efficient. Suppliers were unclear how they could do this without being able to refuse to take on a client.
31. Many respondents felt that niche suppliers in particular would, under the fee schemes, be required to take on smaller cases to survive as a business, and yet would be prevented from doing so by these provisions. Many respondents felt it was inherent in a standard fee regime that suppliers must be able to choose who they see in order to remain profitable.

LSC response:

The existing Specification contained no clear rules about choosing which clients to provide Legal Help for and specifying the grounds on which clients can be turned away. The new standard fee regime creates the obvious risk of clients with difficult cases being turned away simply because they are less profitable than more straightforward ones and therefore it was important for the Specification to set out how we intended suppliers to operate.

We have provided that case mix can be changed under the new system but only by broadening the range of clients. In other words, providers who previously only dealt with more complex cases could accept a wider range of clients including more simple cases in order to maintain profitability.

The Specification already has an anti-discrimination provision (2.45). We have, however, widened this to say that clients may not be turned away on the grounds of cost (2.41 to 2.44). All clients within the capacity and competence of the supplier should be seen where they meet the necessary means and merits tests. These provisions also contain a list of when clients can legitimately be turned away (2.42).

We believe these provisions are essential to safeguarding access to advice for clients with difficult cases, who might otherwise be discriminated against under the standard fee regime.

Part 2

Matter Start boundaries (rules 5.6 – 5.22);

32. The majority of respondents to the first draft of the Specification considered that the provisions were too restrictive and that the rules should remain as per the General Contract. Respondents put forward a number of scenarios regarding where it would be perceived as unfair not to be able to open a further matter start (e.g. where two clients have separate causes of action on the same facts).

LSC response:

The rules of when new Matter Starts may be opened are set out at sections 5.6 to 5.22 of the draft General Specification. Some of its provisions are new where there were no clear rules in the old Specification. The basic rule at 5.8 of needing a “separate and distinct” legal problem to justify a new Matter Start is new, but in our opinion does not represent a radical departure from the approach under the old Specification.

Our concern was that the previous Specification contained few controls and allowed a supplier to define the client’s problem and retainer so that it could be treated as “completed” prematurely or after minimal work, and then a new Matter Start opened for the client when they inevitably return to the office. The old Specification was drawn up under an hourly rates regime where defining matters was not of the essence of the scheme. In protecting the Fund and ensuring the viability of a Standard Fee scheme it was necessary, as far as possible, to define in what circumstances a new matter was justified.

The proposed new rule on starting new Matter Starts after a case is concluded is set out at rule 5.15 of the new Specification. This seeks to base the test more on whether the client needs further help in relation to the same problem and an objective period of time has elapsed, rather than on whether the supplier has managed to close and claim for the work previously done. It provides that to claim a new Matter Start for substantially the same problem you need either a gap of six months from the previous advice, or three months plus a material development or change. We have also provided that where further work is needed but a new Matter Start is not justified, the supplier must continue to help the client.

Where possible we have nevertheless based the new rules on existing rules and guidance. It should be noted that in certain respects the position under the new Specification is more generous than that set out under the previous scheme in particular in stating that a new Matter Start will be justified where a client breaches the terms of a suspended or postponed order.

Part 3:

Legal Help Prior to Grant of Emergency Representation

33. A number of concerns were raised about how Legal Help would operate where previously a matter may have been opened which subsequently went on to the Licensed Work Level of Service. Could a matter still be opened?

LSC response:

In genuinely urgent cases, typically domestic violence and homelessness, suppliers may grant emergency representation under devolved powers on the day of the first meeting with the client. We are aware that some suppliers will provide Legal Help to the client immediately prior to the decision to grant emergency representation. Our view is and remains that once a supplier makes the decision to grant emergency representation then all subsequent reasonable work can and should be claimed under the certificate.

However, we recognise that position became particularly confused with the introduction of the Tailored Fixed Fee Scheme in February 2005. The initial guidance with that Scheme was for suppliers to continue their existing practice in relation to the opening of a Legal Help Matter Start or otherwise. However, with the costs of completing the application forms being disallowed on assessment of the work carried out under the certificate, that approach arguably became untenable, and with effect from April 2006, the TFF guidance was revised to state that a Legal Help matter should be opened in this situation.

Many suppliers have complained of the bureaucracy of completing both Legal Help and emergency representation applications on the same day. Nevertheless, under TFF some suppliers have taken full advantage of the rules by always claiming a TFF fee before every devolved grant of emergency representation. Other suppliers have continued to claim work under the certificate despite the above confusion on the guidance.

The draft Specification confirms that when a supplier grants emergency representation it operates from that day (not from any particular time of day). Hence all work carried out by the supplier on that day can and should be claimed under the emergency certificate. On that approach it is not necessary or appropriate to open a separate Legal Help Matter Start at all. This has two attractions for suppliers: firstly, it is simpler and less bureaucratic, and secondly, it allows all work on that day to be claimed at the higher hourly rate for legal representation.

However, we acknowledge that this approach takes a percentage of low cost Legal Help Matter Starts out of the system and therefore some suppliers will be worse off in that respect, but will still gain through increased hourly rates and reduced bureaucracy.

Our data indicates that Legal Help Matter Starts in family cases proceed on to CLS funding after the first meeting with the client in fewer than 2% of cases. Further, the

budget on which the TFF replacement fees were set was of the amount paid in respect of TFF claims in 2005/6, not the hourly rate costs reported on the CMRF. Accordingly, the data used pre-dated the change to the TFF guidance. However, any change in supplier behaviour in 2005/6 would not have been caught by the calculation of fees in any event, since it was not based on average reported costs (at hourly rates) per case; instead, the use of new Matter Starts for short Legal Help matters would have increased the total amount paid under TFF in 2005/6. (See Appendix A to the Regulatory Impact Assessment to 'Legal Aid Reform; The Way Ahead').

In all the circumstances, the impact on the fee population as a whole is not sufficiently great to justify a change of fees. However we shall monitor trends under this new approach.

Part 4

Amending the Standard or Graduated Fee

34. The majority of respondents fundamentally opposed the right to amend the Standard or Graduated Fee over the 3 years of the Contract.

LSC response:

We recognise that one of the major areas of concern to suppliers has been the provision, at paragraph 7.27, permitting us to reduce the level of Standard and Graduated Fees if the average costs per case reported to us have fallen below a certain percentage of the relevant Fee calculated over a sustained period.

The Commission clearly has to act as a responsible public body both in protecting the Fund as well as ensuring value for money. This provision is clearly of importance to the fixed fee schemes as it provides protection for the Fund, although we recognise we also have additional powers within the Standard Terms to reduce Matter Starts for individual Providers whose average costs per case are below 20% of the fixed fees.

Currently, the necessary period for calculating the average costs per case has been specified to be at least 6 months and the necessary reduction in costs per case has been specified at 20%.

We acknowledge that such a provision is of particular significance since, under Clause 13.1 (iii) of the Standard Terms, any amendment to Contract Documents authorised by another provision of the Contract is not subject to the requirements of falling within the category of a 'Reform of the Legal Aid Scheme' or the consultation and notice requirements contained in Clause 13. The original version of the Specification contained no specific consultation or notice provisions. We have therefore amended this paragraph to incorporate the notice and consultation provisions of Clause 13.

Part 5

Other provisions within the Specification

Preliminary

- Workings of the Scheme

35. A number of respondents did not consider that a reference to Community Legal Advice Networks or Centres (CLACS and CLANS) was necessary and that this created confusion.

LSC response:

CLACS and CLANS shall be set up under separate contracting arrangements. However the purpose of this section was to demonstrate how the various levels of service are funded.

Section 1 – General Rules for Suppliers

- Providing a file to a new supplier (paragraph 1.2)

36. A number of respondents felt it needed to be made clear that this did not breach professional duties to clients. In addition, the number of day was insufficient.

LSC response:

This paragraph is to remain although it has been redrafted to remove the requirement to supply the information within 7 days.

Section 2 – Applications for Contract Work

- Financial Eligibility (paragraph 2.3 – 2.5)

37. A number of respondents were concerned that these provisions were not sufficiently clear as to what evidence was required.

LSC response:

Paragraphs 2.3 – 2.10 have been redrafted to provide clarity as to when financial eligibility can be assessed without evidence (paragraph 2.5). However, the provisions remain similar to the previous Specification. Otherwise this issue is a matter for the means assessment guidance.

- Aggregating means of Child (paragraph 2.7- 2.8)

38. A number of respondents considered that further clarity was required as to how the LSC meant this rule to operate. It was not clear what was meant by 'appropriate cases'

LSC response:

Paragraph 2.7 has been redrafted to make the test subject to the exceptions in the Community Legal Service (Financial) Regulations 200 (Reg 11(3)).

- Right to amend the form (paragraph 2.12)

39. A number of respondent were unhappy that the LSC could amend forms 'from time to time'.

LSC response:

The right to amend forms is actually contained in the Standard Terms, which states we shall amend forms after giving 28 days notice. Paragraph 2.12 has been amended to reflect that position.

- Signing the form prior to Legal Help (Paragraph 2.14 – 2.21)

40. The majority of respondents were concerned that often they need to build up trust with the client prior to filling in the forms. It was not clear what the exceptions were to this rule applying. In particular NfP providers felt that it was often not appropriate to ask the client upfront for their details.

LSC response:

Paragraph 2.14 has been extended to take on board provider's comments and includes now at 2.14(c) a provision, which allows for 'exceptional circumstances' where the client requires urgent advice.

- Previous Controlled Work (paragraph 2.22- 2.30)

41. The majority of respondents considered that these provisions created further administrative burden on the supplier and meant additional time for which they would not be remunerated in order to find out the previous circumstances. The majority of respondents felt very uncomfortable with the provisions of 2.26, as it did not differentiate between poor service and a client not liking advice.

LSC response:

There has been some redrafting of these paragraphs to take account of respondent's concerns, e.g. paragraph 2.5 defines what is meant by 'reasonable cause' for the client to be dissatisfied with the previous advice (see Funding Code criteria B9). The rule in 2.26 has remained but is subject to rule 2.6(a) that states the client must be justified in being dissatisfied.

Section 3 Scope of Controlled Work

- Delegation of Power (paragraph 3.7)

42. The majority of respondents did not consider that these provisions accurately described the powers within the contract. In particular that the Commission 'delegates' powers to the supplier. In addition, a number of respondents did not consider that the Contract should allow the Commission discretion to suspend devolved powers in relation to controlled work under the Contract.

LSC response:

The standard terms already contained a number of provisions that allow the Commission to manage the delivery of work and therefore after consultation these paragraphs have been removed. Instead the contract confirms at paragraph 3.7 that 'unless otherwise directed this Contract delegates to you the power to grant or refuse Controlled Legal Representation'.

Section 4 Scope of Licensed Work

- Powers in respect of Licensed Work (paragraph 4.5 – 4.6)

43. A number of respondents felt that the original paragraph and table were ambiguous. In addition the exceptions to the powers granted by the Contract were too broad.

LSC response:

The table has been removed, although revised and placed in the preliminary section. The paragraphs have also been substantially redrafted to remove the Commission's power (originally in paragraph 4.6 (c)) which reserved the right for the Commission to remove these powers).

Section 5 Carrying Out Controlled Work

- Acting for more than one client (paragraph 5.8 and 5.12)

44. A number of respondents considered that this original paragraph required clarity as to what 'the same matter' meant and re-drafting to distinguish where two clients may have different causes of actions on the same facts.

LSC response:

Further to the comments on matter start boundaries above; these two paragraphs have been substantially redrafted to take on board the respondent's comments. In particular the requirement only to open one matter at the initial meeting has been qualified by reference to paragraph 5.8, which defines when a 'separate and distinct legal problem' may lead to a separate matter start.

- Reopening a matter (paragraph 5.15)

45. A number of respondents felt the period of 6 months (to be able to open a new matter where there had been a material development) was too long and in particular did not take account of NfP clients.

LSC response:

The paragraph has been amended to allow a matter start to be opened where there has been a material development and a period of 3 months has elapsed since submission of the claim for controlled work. Such a further period is not required if the reason for closing the previous matter was the client's failure to give instructions for 3 months.

- Signing the Legal Help Form after telephone advice (paragraph 5.21)

46. Some respondents considered the fact an organisation could not claim a fee where they had acted in good faith, but the clients had not subsequently signed the form, as a penalty clause.

LSC response:

This paragraph is to remain as drafted. We do not consider that it is a penalty paragraph and should be considered in the context that we should not be spending public funds where the client has not yet signed the form nor confirmed their eligibility. Further this paragraph reinforces the provisions at paragraph 2.14 to enable telephone advice on the proviso that the client later signs the form.

- Location of work (paragraph 5.31)

47. A number of respondents were not clear as to what the rule in the original paragraph allowed them to do.

LSC response:

The paragraph has been amended to refer to the Office in the Office Schedule as opposed to bid zones.

- Ending Controlled Work Matter (paragraph 5.34)

48. A number of respondents opposed these provisions on the basis that solicitors are already bound by professional rules, and it would be a breach of the retainer to stop work because of costs. Consequently there is no need to have this rule.

LSC response:

Whilst the majority of suppliers understand their professional obligations and the rationale behind the 'swings and roundabouts' of a fixed fee scheme, we consider it necessary to include an express provision that a supplier may not cease working on a Controlled matter because costs, calculated on an hourly rates basis, have been reached.

- Client with a financial interest in costs (paragraphs 5.36 and 6.13)

49. A number of respondents were concerned that the need to update the client on a 'regular basis' was excessive.

LSC response:

This paragraph has been redrafted to clarify the stages in a matter where, due to costs, the client should be updated.

Section 6 Carrying out Licensed Work

50. The key concerns for respondents was regarding the opening of Matter Starts and applying for certificated work. The Commission's response to this can be found in Part 3 above.

Section 7 Remuneration for Contract Work

- Travel time and costs (paragraph 7.10)

51. The majority of respondents did not think that travel costs and/or counsel's

fees should be included in the fixed rate.

LSC response:

It was never intended that disbursements relating to travel should be included in the fee. We have therefore made clear that all disbursements are excluded. Travel time and counsels' fees were already included in the figures to calculate the fixed fee. Consequently these elements remain included in the fixed fee and cannot be claimed separately.

- Acting in the client's best interests (paragraph 7.14)

52. The majority of respondents complained that a standard fee regime itself would compromise supplier's ability to act in the best interest of their client.

LSC response:

We do not consider that the end remuneration for the case should affect the extent of the service, which you provide to the client in accordance with the terms of the Unified Contract. This paragraph (7.14) has been revised to confirm that working under a fixed fee scheme should not 'affect the conduct of any matter or case, save as instructed by your client.'

- Changing your case mix (paragraph 7.14)

53. The majority of respondents considered this rule, which allows suppliers to change their case mix, to be in direct conflict with the provisions regarding refusal of work.

LSC response:

This paragraph has been revised since originally drafted, to make it subject to the rule regarding 'good reasons' to refuse contract work (paragraph 2.41).

- Exceptional Cases provisions (paragraph 7.19 – 7.25)

54. A number of respondents did not consider that the paragraphs as drafted were clear as to whether there was a separate procedure for claiming for exceptional cases and the effect on the fixed fee going forward.

LSC response:

These provisions have been redrafted to confirm that where a supplier has a cases as calculated on hourly rates which reaches the 'Exceptional Threshold' they may apply for it to be treated as an 'Exceptional Case'. Information and guidance as to the procedure will be issued shortly.

Section 8 Assessment Procedures

- Audit of files (paragraph 8.43)

55. A number of respondents were concerned that the audit provisions still remained in the Specification.

LSC response:

The Commission must still reserve a right to audit any files of a supplier. Whilst we are moving now towards other performance management tools such as File Assessment and Key Performance Indicators there remains a necessity to protect the client and the Fund, where we have concerns about the way in which a supplier is operating the Contract, by assessing individual Controlled Work matters.

- Appealing an Assessment (paragraph 8.51)

56. A number of respondents were concerned that the Contract allowed only 21 days to appeal an Assessment decision.

LSC response:

Paragraph 8.49 has been amended to allow appeals within 28 days of notification of the Assessment decision.

Part 6

Miscellaneous Provisions

Debt

57. Some respondents considered that the provisions on new matter starts specific to this category were too restrictive, in particular the requirement that multiple debts should be addressed under a single Matter Start unless proceedings were issued in respect of more than one debt. It was suggested that this restriction presented a disincentive to advisors to prevent the issue of proceedings

LSC response:

This provision followed the wording of the existing Solicitors' Specification at Rule D3.10. The current Not For Profit Specification is more restrictive, indicating that a single Matter Start should be used even where proceedings have been issued in respect of more than one debt. The Commission does not accept that this provision provides a disincentive to advisors to prevent the issue of proceedings; that should be integral to the role of the advisor in such a case. However, this section has been expanded to confirm a wider range of circumstances in which separate Matter Starts will be justified, in particular, the issue of a liability notice for Council Tax and the enforcement of different debts.

Housing

58. A number respondents expressed concern at the provision prohibiting Legal Help in relation to practical matters arising from homelessness

LSC response:

This provision has been revised to emphasise that it is a continuation of the provision in the current Specification, preventing Legal Help in relation to matters such as dealing with accommodation agencies, but not difficulties in having a homelessness application received.

59. Respondents expressed particular concerns in relation to the provision that homelessness cases should be carried out, in their entirety, under a single Matter Start. These concerns centred on two points: that this provision conflicted with current practice, which was to open separate Matter Starts in respect of different aspects of a homelessness case; second, the length of time for which the matter could potentially have to be kept open, together with the likelihood of such cases becoming exceptional cases and the consequent increased administration.

LSC response:

The Commission's position is that the 'single Matter Start' provision reflected the position under the current Solicitors' Specification in relation to separate matter start guidance and the time standards for extensions to a Legal Help in homelessness cases. During the consultation process both the Commission and representative groups put forward suggested revised schemes for Matter Starts, but without reaching agreement.

Concerns previously expressed by representative groups in respect of the Fixed Fee for housing cases had been based on the assumption that homelessness cases would attract a single fee. Further, research undertaken by the Commission has indicated that, both before and during the Tailored Fixed Fee Scheme, under 5% of clients had more than one homelessness Legal Help Matter Start and under 1% had more than two.

Accordingly, the final version of the Specification maintains the approach that a homelessness application should, in principle, be covered by a single Legal Help Matter Start, but accepts that at certain points it will be reasonable to close the matter and open a New Matter Start if further Legal Help proves to be required.

It is the Commission's view that the Exceptional Case mechanism will provide sufficient protection for suppliers in relation to long running homelessness matters, although average costs per case for homelessness matters have not in fact proved to be significantly greater than for other types of housing case. The Specification confirms that increased remuneration rates (those generally applying for Controlled Legal Representation) apply for reaching the threshold for an Exceptional Case in cases involving assistance with a review under section 202 of the Housing Act 1996 and in providing Legal Help to a Defendant to possession proceedings. The higher rates are available for all parts of a homelessness case that includes assistance with a section 202 review. This avoids the complication of applying different rates within a single Matter.

Welfare Benefits

60. Some Respondents expressed concern over the provision preventing the opening of a Matter Start where the matter 'could easily have been dealt with by the client', and asserted that in reality most clients would seek advice on welfare benefits because they had been unable to resolve the issue.

LSC response:

It would appear that there is no actual contradiction between the above two positions, and that the restriction expressed by this provision as expressed is a reasonable one.

61. Particular concern was expressed throughout consultation about the provision of the Specification confirming that attendance at an interview under caution is not permitted as Contract Work under the Unified Civil Contract. Representations asserted that it was important that an adviser with welfare benefits knowledge attended such an interview.

LSC response:

This provision has remained. The Commission's view is that, on balance, this work is likely to be excluded from CLS funding under section 4(3) Access to Justice Act 1999 as being required to be funded under the Criminal Defence Service pursuant to section 13(1)(b) of that Act, at least to the extent that there is considered (under either scheme) to be sufficient benefit in providing assistance to the Client. In any event, it is clear that such work is and has been a matter excluded from civil Contract Work by virtue of falling within the Crime SQM and not within the stated areas of Crime/Civil overlap.

In relation to the benefits of attendance, it remains the case that substantive welfare benefits issues in relation to the alleged offence can be addressed in writing and, in particular, through challenge of any related decision of the benefits authority. The interview itself may neither be a necessary nor sufficient forum to determine any substantive element of an offence, whilst welfare benefits advisers cannot be guaranteed to have the necessary relevant tactical skills in relation to the conduct of such an interview.

Part 7

Paragraphs removed following consultation

- 1.2 Providing information;
- 2.22 (c) Previous Controlled Work;
- 3.5-3.8 Power to commence Controlled Work;
- 4.6 (c) Commission's right to remove suppliers' powers in relation to licensed work
- 5.28 Monitoring disbursements;
- 5.42 Interpreters and Translators; and
- 5.43 Carrying out CRB checks on experts working with children.

Appendix A – List of Respondents

Name of Representative Body

- THE LAW SOCIETY
- LAPG
- ASA
- CAB
- RESOLUTION
- SHELTER
- IMMIGRATION LAW PRACTITIONERS ASSOCIATION
- EDUCATION LAWYERS PRACTITIONERS
- HOUSING LAW PRACTITIONERS ASSOCIATION
- PERSONAL INJURY LAWYER
- YOUNG LEGAL AID LAWYERS
- BAIL FOR IMMIGRATION DETAINEES
- CAB- MIDLANDS

Name of Individual Organisation

Berwick CAB
Darlington CAB
Ewings & Co
Glouster Law Centre
Hereward & Foster
Ipswich CAB
Lancashire County Council
Maxwell Gillot
Mendip CAB
Public Law Solicitors
Reading Welfare Rights
Stockton CAB
Southend CAB
Swansea CAB
Tower Hamlets Law Centre
Trafford Law Centre
TV Edwards
Walsall CAB
Wilson & Co
Berwick CAB
Darlington CAB