

CONTRACT NOTICE OF AMENDMENT

AMENDMENTS TO THE GENERAL CIVIL CONTRACT (SOLICITORS)

To be implemented from 17 May 2006.

The contract amendments set out in this notice, which have been subject to consultation with The Law Society and other representative bodies, will be incorporated into the General Civil Contract (Solicitors) from 17 May 2006.

Summary of Amendments

- 1 The introduction of a peer review Performance Indicator set out in an Annex to the Contract for Signature.
- 2 A minor amendment to the rules on leafleting etc set out in the Specification so that they match the rule on visits and telephone calls.
- 3 Amendments to the Specification to reflect the New Focus amendments to the Funding Code already implemented.
- 4 Amendments to the Tailored Fixed Fee provisions in the Schedule to align the voluntary scheme with the mandatory scheme and to make minor amendments to reflect the extension of the scheme for a further year.

A comprehensive summary of the LSC response to consultation will be published on our website www.legalservices.gov.uk.

New text is shown in underline. Deleted text is shown in strikeout.

1 Performance Indicator

Add an Annex to the Contract for Signature as shown below:

Contract for Signature – Performance Indicator Annex

The quality of your Contract Work in any Category of Work, as determined by the Independent Peer Review process specified by us, is a Performance Indicator.

The quality of your Contract Work in any Category of Work must be either Rating 1, Rating 2 or Rating 3 as determined by that Independent Peer Review process.

If the quality of such Contract Work is Rating 4, as determined by that Independent Peer Review process, this is a breach of Contract.

If the quality of such Contract Work is Rating 5, as determined by that Independent Peer Review process, this is a Fundamental Breach.

The specified Independent Peer Review Process is that managed by the Institute of Advanced Legal Studies.

2 Rule on leafleting - Specification

Amend General Civil Contract Specification Rule 1.2 as shown below.

The marketing of contracted services via leaflets, letters or circulars - whether by you or another person or body for you (directly or indirectly) - should not be undertaken ~~except with~~ without our express permission.

3 New Focus - Specification

Rule 1.5.2 amend as shown below:

Guidance on the exercise of the following Devolved Powers in Licensed Work is contained in the “Funding Code Decision Making Guidance” in Part C of volume 3 of the LSC Manual:

- (a) **Grant or refuse an application for Authorised Representation in Specific Family Proceedings in a magistrates’ court** ~~at Section 20.20 of in~~ the Family Guidance in ~~at paragraph 3C 258 of~~ Volume 3 of the Manual.
- (b) **Grant or refuse an application for an emergency certificate** ~~at Sections 12.1-12.15 of in~~ the Emergency Representation guidance ~~at paragraphs 3C 090 to 3C 107 of in~~ Volume 3 of the Manual.
- (c) **Amend or refuse to amend an emergency certificate** ~~at Section 12.6 of in~~ the Emergency Representation guidance ~~at paragraphs 3C 108 to 3C 113 of in~~ Volume 3 of the Manual.
- (d) **Amend or refuse to amend a limitation on a substantive certificate** ~~at Section 22.4 of in~~ the Code Procedures guidance ~~at paragraphs 3C 353.1 to 3C 353.4 of in~~ Volume 3 of the Manual.
- (e) **Grant or refuse an application for Help with Mediation** ~~at Section 20.9 of in~~ the Family guidance ~~at paragraph 3C 242 of in~~ Volume 3 of the Manual.

Rule 4.2 Help at Court – venue – amend as shown below:

Subject to Rule 4.3, Help at Court may be provided only in relation to in the High Court or any county court or magistrates’ court where the proceedings are of a type for which advocacy may be provided under funded in accordance with directions under s.6(8) or paragraph 2 of schedule 2 to the Access to Justice Act 1999.

Rules 6.5 and 6.6:

Show the words “or Support Funding” in underline each time it occurs, followed by the words “(see Rule 6.7)”.

Rule 6.7 Costs of Support Funding:

Add the following words after the heading:

NB Support Funding was abolished with effect from 25 July 2005. No new Support Funding certificates will be granted from that date.

Rule 6.8 Inter Partes Costs:

Amend the fourth paragraph by adding the words (see Rule 6.7) after “**This Rule does not apply to Support Funding**”

Delete Rule 6.8.2 and remove the numbering from the paragraph above.

Rule 7.28:

Amend the last sentence as shown below:

In a more complex case or where negotiations have not succeeded it may be appropriate to use General Approved Family Help to seek to reach a negotiated settlement.

Appendix B of the Specification - Guidance on Payments on Account for Licensed Work

B Payments on account during the currency of the certificate: Specification Rule 6.6

Amend para. 2 as shown below:

2. Rule 6.6 applies to all certificated work except:
 - (a) ~~Support Funding~~
 - (ba) Emergency representation or representation in Specified Family Proceedings in the magistrates’ court
 - (eb) Help with Mediation
3. ~~In the case of Support Funding, separate arrangements for payments on account are made in the application and certificate.~~

New Focus Amendments to the Specification – 15 Clinical Negligence

Delete current paragraphs 11, 12 & 13 and their heading “Alternatives to Litigation”. Renumber current paragraphs 14 & 15 as paragraphs 11 & 12. Insert the following paragraph as paragraph 13 and renumber current paragraphs 16 to 21 as paragraphs 14 to 19.

- 13 Section 18 of the Funding Code Guidance on clinical negligence (Vol. 3 of the LSC Manual) includes important requirements e.g. relating to applications for funding, NHS complaints and minimum damages level. You should ensure that you follow this Guidance in all matters and cases within the clinical negligence category of work.

4 Amendments to the Tailored Fixed Fee provisions - Annex C to the Contract Schedule

Amend the heading and the following paragraphs of Annex C to the Schedule as shown below.

Annex C Fixed Fee Schemes ~~[Voluntary and Mandatory]~~

In this Annex, words in *italics* apply only to the ~~voluntary scheme~~. Words underlined apply only to the mandatory scheme.

Can we Assess Fixed Fee Claims?

- ~~e) We may reduce the Fixed Fee in any Category or Categories of Work to reflect the outcome of a costs compliance audit (including any appeal). However, we will only make such reductions where the assessed costs of the file sample for the audit are more than 10% below the lower of either the amount claimed, or the amount of the Fixed Fees due and we have significant concerns about either value for money or quality of work. If we are considering a reduction under this sub paragraph we will normally arrange for your files to be peer reviewed.~~
- e) We may reduce the Fixed Fee in any Category or Categories of Work to reflect the outcome of a costs compliance audit commenced before April 2005 (including the result of any appeal) on a sample of your Claims from this Schedule. However we will only make such reductions where the Assessed costs of the file sample for the audit are more than 10% below the lower of either the amount claimed, or the amount of the Fixed Fees due.
- f) Any reductions made under sub-paragraph (e) above will apply to Fixed Fee Claims made after the Regional Director gives you notice of the reductions. Where you appeal the decision, we will not implement the reductions pending the appeal, but may backdate any reduction that would apply following the appeal to the same date that it would have taken effect had no appeal been made.

Can we vary the Fixed Fees during this Schedule other than on Assessment?

6. We may amend any Fixed Fee as we reasonably consider ~~reasonably~~ necessary to correct any error (such as a miscalculation of the total of your Claims used to make up an average). If you have not requested the amendment, we will give you a reasonable opportunity (at least 21 days) to comment on the amendment before it is made. The amendment will take effect from such date as is necessary to correct the error (and may, for example, be backdated to the start of this Schedule).
7. We may ~~also~~ reduce the Fixed Fee in this Schedule in any Category of Work where the average of your Claims in that Category of Work over the ~~2004-2005~~ 2005-6 Schedule was significantly (as defined by Guidance) below the Fixed Fee.
- a) 'Average' in this context means the total value (less any amount Assessed off) of all your Controlled Work Claims in any Category of Work made during the 2005-6 Schedule, divided by the total number of such Claims.
- b) If we amend any rate under this paragraph 7, then the new rate must be set at a level no lower than that 'average' and may be set at a level in between that 'average' and the existing Fixed Fee.
- c) Any amendments made under this paragraph may be backdated to the beginning of this Schedule (i.e. to 1 April 2006) provided that we serve notice of the amendment on or before 31 July 2006. We will need to backdate the amendment because the full data in relation to the Claims in your previous Schedule will not be available until some weeks into this Schedule. If we serve the notice of amendment later than 31 July 2006, the amendment will take effect from the date of the notice.
- d) We will only make an amendment under this paragraph 7 where we have significant concerns about either value for money or quality of work.

Amendments to the General Civil Contract (Solicitors)

- 7A We may *also* reduce the Fixed Fee in any Category of Work where the average (the total value recorded on the Consolidated Matter Report Form, less any amount Assessed off, divided by number of Claims) of your Assessed Controlled Work Claims in that Category of Work over any six-month period is below the Fixed Fee. If we amend any Fixed Fee under this paragraph, then the new Fixed Fee must be set at a level no lower than that average and may be set at a level in between that average and the existing Fixed Fee.
- 11(g) Any Claims which we have agreed to treat as Exceptional Claims under the provision of this paragraph 11 will not be included in any sample used for the purposes of paragraph 5 (e) above or in any “average” calculated under paragraphs 7 or 7A above.

~~When do you open separate Matter Starts?~~

~~13 You should not commence two or more Matter Starts for the same Client where, under the previous payment arrangements, you would only have commenced one. You should continue to apply the Rules on separate Matter Starts as set out in the Specification. You should note that:~~

- ~~(a) The provision of Help at Court or Controlled Legal Representation is a matter for which you have been providing Legal Help will not count as a separate Matter Start.~~
- ~~(b) In the Family Category of Work, one Matter Start covers the whole proceedings or contemplated proceedings decree and all ancillaries including Children Act Applications.~~

Should payment of Fixed Fees affect your performance of the Contract?

- 13 Notwithstanding the fact that you will only be entitled to payment of the Fixed Fee:
- a) You should continue to act reasonably in the best interests of the Client as if you were paid on an hourly rate.
 - b) You should not intentionally change your case mix in order to have the effect of targeting lower cost work.
 - c) You should apply for Legal Representation on a Client’s behalf at the appropriate point (see the Specification).
 - d) You should not commence two or more Matter Starts for the same Client where, under the previous payment arrangements, you would have only commenced one. You should continue to apply the Rules on separate Matter Starts as set out in the Specification. You should note that:
 - (i) The provision of Help at Court or Controlled Legal Representation in a matter for which you have been providing Legal Help will not count as a separate Matter Start.
 - (ii) In the Family Category of Work, one Matter Start covers the whole proceedings or contemplated – decree and all ancillaries including Children Act Applications.
 - e) You should report cases in the most appropriate Category of Work, and not according to the amount of the Fixed Fee.