

Index to the Agreement between the Ministry of Justice, the Legal Services Commission and the Law Society

This is an index and guide to the key provisions of the agreement.

1. No Termination (Clause 1, page 4)

Clause 1 contains our agreement not to use 30.3 to terminate the Contract early and to limit changes to those spelt out later on. There is one important exception, namely in the event of a “significant legal challenge” which is defined as a challenge to the fee schemes or Specification which a jointly-instructed QC considers has reasonable prospects of success. We have agreed with The Law Society that, should one arise, we will work together to try and quash any challenge but if that is unsuccessful we will probably have to terminate.

2. Law Society discontinue Judicial Review and agree no further challenge (Clause 2, page 4)

The Law Society has agreed to discontinue the JR (with no order as to costs) and not to bring, encourage or support any further claim in relation to the fee schemes or Specification. They have also agreed not to challenge any further Funding Order or amendment to bring the fee increases into force (see below).

3. Remainder Work (Clause 3, page 5; and Appendix 2, page 16)

We have agreed to allow providers who terminate their contract on a no-fault basis (or fail to apply for a new one) to continue Remainder Work for up to two years with the client’s consent and subject to certain conditions. The detailed rules are set out in a new Remainder Work protocol which will also apply to the new criminal Unified Contract.

4. Standard Monthly Payments (SMPs) (Clause 4, page 6; and Appendix 3, page 18)

We have also agreed a new SMP Reconciliation Protocol to be implemented from July 2008, subject to any revisions agreed with ASA (Advice Services Alliance). Provided the claims to payments balance is within 10% of the total claims going back 12 months – or the life of the contract if shorter – there will be no change to the SMP. Generally speaking, there will be two reconciliations a year but ad hoc adjustments will be made where the claims to payments balance exceeds 10%. This process has also been written in to the new criminal Unified Contract.

5. Community Legal Advice Centres (CLACs) and Networks (CLANs) (Clause 5, page 6; and Appendix 7.5, page 38)

We have agreed that there will be a closed list of CLACs and CLANs to be introduced before April 2010 and agreed that The Law Society can join the Advisory Board to the research project evaluating the effect of CLACs and CLANs on process and outcomes.

6. Review of Quality Assurance Mechanisms (Clause 6, page 7; and Appendix 4, page 22)

We have also agreed to review peer review and other quality assurance processes and procedures in a group with representatives from The Law Society, the Solicitors Regulation Authority and others.

7. Contract Compliance Audits (Clause 7, page 8; and Appendix 5, page 26)

Another group (including the NAO) will be looking at the operation of CCAs and we have agreed that any financial recoupment will be made on a genuine assessment of

loss in accordance with the Contract. Effectively this means we must ensure that assessments are carried out in accordance with the Contract and that any reductions on a sample basis are properly representative.

8. Historic Unrecouped Payments (Clause 8, page 8; and Appendix 6, page 30)

We have agreed a new policy in respect of 'historic cases' ie no activity on the certificate including any payment since 31 March 2002, total POA less than £20,000 and no debit note or debit to a BACs statement sent by the LSC before 1 April 2008 (or agreement to repay made). In future, the provider can opt to accept the POAs as the final bill as an alternative to providing evidence of the costs due, although if they want to bill one such case, they have to be able to justify their costs on all the cases. We can also decline the option where we have reasonable grounds to suspect fraud or other dishonesty or criminal conduct. The new procedure is set out in an Appendix (6).

9. Constructive Engagement (Clause 9, page 9; Appendix 1, page 15; Appendix 7 (the route map), page 33; Appendix 8, page 41)

We have agreed to publish a civil and criminal route map. The civil route map is available now and the criminal route map is to follow once we have made a decision on BVT following the recent consultation. We have already announced that BVT will not commence before July 2009, with any contracts to start January 2010, meaning that the new crime Unified Contract will be for 18 months.

10. Consultative Group (Clause 10, page 10; Appendix 9, page 43)

We have agreed to establish a Civil Contracts Consultative Group to review the fee schemes and other provisions for new contracts in 2010.

11. Increase in Rates and Payment (Clause 11, page 11; Appendix 10, page 49)

2% rise for legal help and level 2 Family Lower, increase for Care level 2 fee to £405 and 5% on CLR for mental health and asylum. These will apply from 1 July 2008 and will be brought in via a new Funding Order and 13.2.

12. Family Fee Schemes (Clause 12, page 12)

The fixed and graduated fee schemes for those elements of family that remain under hourly rates will now not be implemented until April 2010.

13. Terms of existing agreement to apply (Clause 13, page 12)

We have agreed to limit amendments to those required under 13.2, in relation to changes introduced by the Borders and Immigration Agency, where required by CLACs and CLANs, to pilot new arrangements for experts and in relation to the powers to amend the Key Information Tables and Schedules of individual supplier contracts.

14. Joint statement (Appendix 11, page 56)

The joint statement issued by The Law Society and the Legal Services Commission is published in Appendix 11.