

**Interim Family Contracts: Summary of key points raised by representative bodies**

Topic	Issue raised	Response in which issue raised*	LSC response
<b>Terminology</b>	The terminology used in the tender documentation needs to be clear. In particular, there needs to be clarity on: -Type of services that providers can tender for -Definition of a sanction - Definition of 'confirmed' peer review	Resolution	We appreciate that Resolution has highlighted potential areas of confusion for its members. A number of helpful suggestions have been made and we will seek to incorporate these into the tender documentation as far as possible.
<b>Terminology</b>	Changing the previous definition of 'essential criteria' to 'selection criteria' will be confusing for providers	Resolution	We recognise the issue highlighted by Resolution. However, we need to align our terminology with recognised terms used in standard procurement exercises, as it has previously been a barrier in trying to explain to those not directly involved (including courts in judicial review proceedings) how our tender was run. We will seek to make this clear in the tender documentation and communications with the profession will clearly set out that this is a non-competitive process.
<b>Timetable</b>	The tender window should be extended from the 4 weeks proposed to allow practitioners more time to respond. The Law Society suggested that the contracts could be extended to March to allow contingency in the tender timetable.	Resolution Law Society	We have considered the request to extend the time for the tender but are unable to do so. We do not agree that September constitutes the high summer period and given that this tender will be a non-competitive one and the criteria to which applicants need to respond will be reduced from the previous tender we believe 4 weeks will be sufficient time. We will also look at ways to reduce the administrative burden on providers, most notably, there will only be one mainstream family ITT covering the whole of England and Wales which will mean that organisations with multiple offices will not need to respond to more than one ITT.  We have further considered the

			tender timetable and believe that there is sufficient time within this to award new contracts for February 2012.
<b>Training and assistance</b>	The responses suggested an active telephone helpline is needed to assist providers using the Bravo system	Law Society	We will be providing a telephone helpline for those applicants having technical difficulties in using the eTendering system. For the purposes of consistency, and to ensure that all applicants have access to the same information, queries regarding the content of the PQQ and/or ITT will again be directed through the Bravo message boards and an FAQ document produced on a regular basis.
<b>Training and assistance</b>	The responses suggested that the LSC should provide workshops to assist firms in understanding the tender process and eTendering system	Law Society	<p>The majority of applicants will have previously tendered using the Bravo eTendering system and will therefore be familiar with the process. We will make the tender documentation as user friendly as possible. Given that the non-competitive approach will simplify the process, we do not consider it necessary to run workshops to assist firms. We will, however, again publish guidance on how to use the eTendering system and how to complete a tender.</p> <p>We understand that Resolution may hold its own training events for members and the Law Society might want to take a similar approach if it feels the membership would benefit from training on specific issues. The LSC would be happy to review any training materials prepared.</p>
<b>Services we intend to buy</b>	The discussion paper proposed that providers would undertake either public or private work or both. If a provider undertook private law they should do the full range of services ie domestic violence, finance and children work.	Law Society ALC LCF	We have considered the concerns raised. We appreciate that many providers will want to undertake the full range of work but that others, for example, those practitioners that specialise in representing children will not. We have therefore decided to remove this requirement and providers bidding for a family contract will be

	The responses were of the view that firms should be able to choose which kind of private family law they undertake rather than being required to undertake the full range of services. In particular the ALC had concerns regarding providers who undertook children only work.		able to undertake any type of family work (except for work specialist child abduction work) and will not be required to undertake the full range of services.
<b>Content of PQQ</b>	Financial information will be required from providers and the discussion paper suggested evidence of this would include audited accounts. Responses suggested that the LSC should accept certified or inspected accounts as opposed to audited accounts as these were not always prepared for solicitor firms	Resolution Law Society LAPG	We have reviewed this and can confirm that we will implement the same approach as is set out at 4.1 of the Standard Terms in the existing Standard Civil Contract. This means that certified accounts would be acceptable.
<b>Content of PQQ</b>	The discussion paper proposed a question in relation to contract sanctions to ensure that there were no issues with an organisation's business conduct.  The responses were concerned that sanctions relating to the basis on which cases have moved from L1 to 2 should be precluded from consideration in the PQQ and that firms should be allowed to bid if appeals against sanctions were ongoing	Law Society	We intend to follow the same approach as the previous tender whereby providers appealing sanctions/terminations were included in the assessment of tenders and where successful, notified that they would be awarded a contract subject to the appeal being successful.  We do not believe sanctions have been issued against firms on the basis of which cases have moved from Level 1 to 2 in connection with the Point of Principle and so do not consider that we will need to make the distinction in the PQQ.
<b>Content of PQQ</b>	The responses suggested that LSC should retain a discretion not to implement contract notices	Law Society ASA	We accept that our approach should be proportionate to the level of the breach and for this reason do not intend to apply automatic

	where 85% of NMS were not delivered and exceptional circumstances applied		contract notices where providers are delivering 50 matter starts or less. However, we consider that the issuing of an automatic contract notice for providers delivering higher volumes is a key deterrent from overbidding in this tender round. The impact of this contract notice being served will be on any subsequent tender rather than the existing contract, and as such we plan to deal with any extenuating circumstances as to why matter starts were not delivered as part of the next family tender exercise. Therefore, all those providers that have had a contract notice served for failing to deliver 85% of their allocation will be given the opportunity to present exceptional circumstances in any future tender exercise and these will be considered as part of that tender assessment.
<b>Criteria</b>	<p>The discussion paper proposed a change to the supervisor caseworker ratio of 1:4 or 1:3</p> <p>The responses to this question were mixed with some support for both 1:4 and 1:3 ratios.</p>	<p>Law Society LCF Resolution ALC LAPG</p>	<p>Given that the majority of responses express a preference for a Supervisor to Caseworker of 1 to 4, we propose implementing this as a requirement.</p>
<b>SQM</b>	<p>All providers who do not hold Lexcel will be required to have undertaken an audit from the SQM Delivery Partnership within six months of the contract start date. Responses suggested that six months was insufficient for providers to obtain post SQM audit and that providers should be given an equal period of time to obtain Lexcel as to obtain the SQM</p>	<p>Resolution Law Society LAPG LCF</p>	<p>We are exploring further whether it would be possible for providers to have the same time period for achieving Lexcel as the SQM. However, we are minded to align the two time periods if this proves possible in practice.</p> <p>With regard to the time period for securing the SQM we have had assurances from the SQM Delivery Partnership that they would be able to undertake the audits within these time frames and therefore the six month period will remain.</p>
<b>Allocation</b>	<p>The LSC proposed an allocation process based on volumes of work bid for by</p>	<p>Law Society Resolution</p>	<p>The Law Society had proposed that allocation be based on 90% of existing usage. Whilst we</p>

	<p>the provider. This would mean that for providers bidding for more than 150 matter starts would be guaranteed 150 starts but further allocation would be dealt with on a pro rata basis.</p> <p>Responses were concerned about the potential impact of this approach to allocating matter starts on larger firms, particularly those with only one office</p>		<p>appreciate the benefits of this approach for many existing providers, we consider that this approach would be in breach of the duty to treat all economic operators equally, including new bidders. Under our approach all providers can apply for their chosen number of matter starts (subject to other tender requirements). The guarantee of up to 150 matter starts meets the current usage of almost 80% of providers and is intended to encourage providers to bid responsibly and therefore sustain access throughout England and Wales. We have acknowledged that there is a risk that larger firms will not receive the full number of matter starts they bid for, although if all firms bid responsibly and in accordance with their current usage the impact on larger providers is likely to be minimal.</p> <p>We consider this approach to be preferable to a straight pro rata without any guarantees and this was accepted by the majority of the representative bodies. No other suggestions were received.</p>
<b>Allocation</b>	The responses requested further clarity on access points	Law Society LCF	We have shared with representative bodies planned changes to access points. Summary procurement plans setting out the volume of matter starts available in each procurement area or access point will be published in advance of the tender opening. Other than in those areas where we are adding access points, the volume of matter starts being made available will be the same as those for the 2010 family tender. Matter starts available in each area will provide an indication of the volume of matter starts we want to award.

<p><b>Verification</b></p>	<p>The verification that takes place will differ according to whether an applicant bids for Lot 1, 2 or 3.</p> <p>The responses suggested that the approach to Lot 2 could be simplified by only verifying staff details where the applicant was tendering for more than 100 matter starts.</p>	<p>Resolution</p>	<p>We have considered this proposal but have concluded that it would be simpler to follow the same process for all providers in Lot 2 rather than seeking to further differentiate according to bid size. Although most providers bidding for less than 100 matter starts in Lot 2 should easily meet the capacity test, there may be instances where supervisors are only employed part-time. This will need to be taken into account when reviewing capacity.</p>
<p><b>Verification</b></p>	<p>There was also concern that the approach of more detailed verification of those providers tendering for higher numbers of matter starts did not necessarily capture those with a higher Fund take</p>	<p>Law Society</p>	<p>The additional verification for those bidding in Lot 3 (over 150 NMS) is intended both to protect the LSC from a financial perspective and to ensure that access to services for clients is maintained. We appreciate that those undertaking a higher volume of Controlled Work will not necessarily always be those with a higher Fund take overall, but we consider that the primary risk is at Controlled Work level given that matter starts are self authorised. In relation to Licensed Work, because individual applications for funding are made to the LSC and assessed at the end of the case there is less financial risk. Recent experiences of larger providers entering administration have demonstrated the need to ensure that those undertaking large volumes of matter starts are financially viable to protect client access to advice.</p>
<p><b>Housing</b></p>	<p>The discussion paper proposed a minimum matter start size of 25 matter starts.</p> <p>There were concerns in the responses that this number was too small to allow providers to sustain a service</p>	<p>Law Society LAPG ASA LCF</p>	<p>We have considered the concerns raised by representative bodies on this point and have undertaken further work on this. We can confirm that the minimum matter start size will be increased to 50 matter starts to help ensure a reasonable level of client access and that housing work is sustainable for those delivering it.</p>

<b>Housing</b>	<p>The discussion papers proposed that the capacity test in housing should be 250 matter starts per FTE.</p> <p>There were suggestions in the response that this was too high and the capacity test should be reduced to 170</p>	Law Society	<p>Housing work undertaken under the 2010 contract with social welfare law has been awarded on the basis of a capacity test of 250 matter starts per full time equivalent. It would be inconsistent to introduce a different measure for purposes of delivering housing alongside family. Given the experience of the 2010 tender we do not believe that this will be an issue for housing contracts as it was for family.</p>
<b>Impact on clients</b>	<p>Responses were concerned that there was likely to be adverse consequences for BAME groups and those outside big cities</p>	Resolution	<p>It is unclear on what basis that this conclusion has been drawn. However, given that the LSC is seeking to follow a non-competitive process, which will ensure all those meeting our minimum requirements are awarded a contract, we do not consider that our tender approach would lead to any significant access issues for clients. An impact assessment will be published with the tender.</p>
<b>Impact on providers</b>	<p>There were concerns that the proposals would make it difficult for practitioners to work part time</p>	Resolution	<p>We are unclear of the basis of this assertion. Both the supervisor to caseworker ratio and capacity test are based on full time equivalents which means they would be adjusted accordingly if a fee earner worked part time. For example, a Supervisor working 2.5 days per week would be able to Supervise up to 2 Caseworkers.</p>

\* Both LAPG and LCF endorsed the response of the Law Society, for the purposes of the above they have only been mentioned separately where they raise specific issues in addition to endorsing TLS' response.