

# **Standard Monthly Payment Reconciliation Process**

**July 2008**

## Standard Monthly Payment Reconciliation Process

### **Contents**

1. Introduction	3
2. Who is this document aimed at?	3
3. Background information	3
4. Aim of the Process	4
5. Reviewing accounts under the Process	6
6. Examples	7
7. Exceptions to the Process	8
8. Frequently Asked Questions	9

## 1. Introduction

The Deed of Settlement<sup>1</sup> between the Legal Services Commission (LSC), the Ministry of Justice and The Law Society in April 2008 included a new Protocol for the reconciliation of Standard Monthly Payments (SMP), which was designed to keep SMP changes to a minimum.

The Standard Monthly Payment reconciliation process ('the Process') implements the Protocol set out in the Deed of Settlement. This document provides guidance on how the Process will apply.

## 2. Who is this document aimed at?

This document is aimed at both LSC Account Managers, and suppliers holding either a Unified Contract (civil), or a Unified Contract (crime)<sup>2</sup>. However, this Process is not aimed at Not for Profit suppliers who are already subject to other reconciliation arrangements.

We hope that the introduction of this revised Process will not adversely affect suppliers and we will continue to closely monitor any impacts during the implementation.

The process will commence from July 2008, although the first reviews will take place in September 2008 when the value of July claims are known. Until then the current process will apply.

## 3. Background information

As part of the negotiations with The Law Society we agreed to revise our approach to the reconciliation of accounts to produce a process that would work better for both suppliers and the LSC. Some of the factors driving the change were:

- The knowledge that the previous reconciliation process, while successful in focusing attention on reconciliation, caused difficulties particularly when forecasting claims meant SMPs were set too high (or low) at the beginning of the contract year, which then required a drastic change later on in the year to balance the position by the year end;
- It was resource intensive for both suppliers and the LSC, with activity heavily reliant on achieving an almost 100% percentage target (of claims versus payments) at the Contract Year end; and
- Reconciliation became over important in meetings and discussions with suppliers, to the detriment of other issues such as how the service was being delivered to clients and quality outcomes.

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<sup>1</sup> The Deed of Settlement can be found at [www.legalservice.gov.uk](http://www.legalservice.gov.uk). Following the pathway Community Legal Service>The Unified Contract>Agreement with The Law Society (Annex 3)

<sup>2</sup> Unified Contract (Crime) due to commence on 14 July 2008

#### 4. Aim of the Process

The aim of the new Process is to reconcile accounts (claims versus payments) to 100%, but where an account is within the 90-110% band, known throughout this document as the 'In Band Target', then no action will be taken to either increase or reduce the SMP.

This means we will no longer forecast future claims and payments with a view to achieving 100% reconciliation by the end of the contract year. Instead the Process depends on the actual claims a supplier has made over the previous months.

From September 2008, Account Managers will review all accounts using the new Process. There will be one of two outcomes from this review, either:

1. The account is **within the In Band Target** and therefore no action will be taken by the Account Manager; or
2. The account is **outside the In Band Target** and therefore reconciliation will take place in accordance with the Process set out in Section 5.

Many of our suppliers will see little or no change to the way their accounts are managed. Our early review indicated that around 60% of our accounts operate within the In Band Target without any intervention to SMP levels. We will make no amendment to SMP levels for such suppliers and we are happy for the accounts to continue to operate in that way.

We will produce monthly reports of all accounts that are outside the In Band Target. Where an account is outside the In Band Target then the Account Manager will take steps to bring the account back within the In Band Target and may contact the supplier to discuss the position.

Should the SMP require amending then the Account Manager will give at least 1 month's written notice of the change to the SMP level. This will mean, for example, that any review undertaken in September will affect the SMP from November.

The table below demonstrates the timetable:

July	August	September	October	November
Cases closed				
	Claims submitted-up to 20 <sup>th</sup> .			
		Review commences See timetable below*		
			New SMPs loaded into SMS from around 2 <sup>nd</sup>	
				New payment level takes effect

## Standard Monthly Payment Reconciliation Process

- \* Majority of submissions processed by around the 5<sup>th</sup> of each month  
Account Manager review takes place between 10<sup>th</sup>-20<sup>th</sup> of each month  
Letters to suppliers to give 1 month's notice of amended to SMP by around 22<sup>nd</sup>

## 5. Reviewing accounts under the Process

Where the Account Manager identifies an account, which is outside the In Band Target, reconciliation will take place in accordance with the Process below.<sup>3</sup> References below to a '10% band' refers to the In Band Target of 90 – 110%:

**'a) Consider the balance of claims to payments to date and define the value of the cumulative variance (i.e. the level of any current underpayment or overpayment).'**

This restates the current process of reviewing the balance on an account as a starting point to see if we may need to take some action.

**'b) Where the balance of claims to payments is outside the 10% band the value of the variance to 100% will be brought forward into the monthly SMP amount to be paid over the next 6 months.'**

See Example One below.

**c) Where the balance is within the 10% band then payments will remain at the current level.'**

We will not be intervening to make changes to any account that is within the In Band Target (i.e. 90 – 110%).

**d) Where LSC amends payments, the SMP for the following 6 months will be a combination of the average claim value of the proceeding 6 months and the variance.'**

See Example One below.

**e) LSC will set a maximum band of plus/minus 50% (calculated on the same basis as the 10% band above) that can be reconciled by changes to SMP alone. If at any time the balance is outside the 50% band then this will trigger an exception review. In these circumstances the variance will be paid or recouped over the following 3 months by ad hoc payments or debits and the SMP reset to the average claim of the preceding 6 months.'**

We expect this will happen fairly infrequently but wanted to include this as a potential scenario and so that it was clear how we would approach such instances.

See Example Three below.

**f) In the same way, if following a review, a legal aid provider's account remains outside the 10% range for a period of 3 consecutive months, despite resetting payments under b) above, the variance will be paid or recouped over the following 3 months by ad hoc payments or debits.'**

We anticipate that the new process set out in b) above will produce the desired result without the need for further intervention but recognise that there will be some occasions where claims are more volatile. See Example Two below.

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<sup>3</sup> The Process replicates Annex 3 in the Deed of Settlement

## 6. Examples

### Example 1:

Account reports, as latest balance is 88%. Cash equivalent is £12 000  
Current SMP = £9000  
Current 6month claim rate = £7500

The new SMP will therefore be current 6-month claim rate – (balance owed/6). This would be:  $£7500 - (£12000/6) = £5500$ .

We anticipate that a change like this would produce a positive impact on the reconciliation performance within 3 months (i.e. the level of overpayment will reduce). Where this has not happened however then the Account Manager should undertake a further review to re-set the payments in such a way so that the account is balanced within a further 3 months. Here's an example:

### Example 2:

Contract reports as latest balance is 112%. Cash equivalent is £12000  
Current SMP = £9000  
Current 6-month claim rate = £11000

The new SMP will therefore be current 6-month claim rate + (balance owed/6). This would be:  $£11\ 000 + (£12\ 000/6) = £13000$ .

On the third month of the new SMP the account is reviewed as it is still out of band. The position is:

Contract position 112%. Cash equivalent is £15000  
The cash balance would therefore be paid to the firm in 3 ad hoc payments over the next 3 months

The important point in both examples is that there is no projection forward: we are simply looking at the balance on the account at a particular date, and the claim rate over the 6 months to that point if a change is required.

There may be situations where an account is reported as being significantly out of the In Band Target this we mean by more than 50%. An example would be a small Crime account that has minimal claims but occasionally submits a large CDS 7 claim. It might look something like this:

### Example 3:

Contract reports as latest balance is 155%. Cash equivalent is £6 600  
Current SMP = £0.  
Current 6-month claim rate = £75

The balance here would be cleared by 3 equal ad hoc payments over the next 3 months. Again there is no projection forward: we are simply looking at the balance on the contract at that date and seeking to settle that balance.

## 7. Exceptions to the process

The overarching aim of the Process is to leave a SMP alone while an account is within the In Band Target. This means, for example, that an individual account could be operating at 91% or 109% on a regular basis and we will not approach the supplier to seek an adjustment of the SMP.

Whilst we have tried to keep the Process simple we recognise that it is not possible to produce a Process that works in every case. Inevitably there will be some circumstances where the revised Process will not work and we have highlighted some exceptions to the Process in the scenarios below.

- **New Account (by which we mean a new Office Schedule has been issued to a supplier or a dormant Office Schedule begins to make claims):** We will pay the amount billed by the supplier as an ad hoc payment for months 1-3 and then set an SMP in place for month 4-6. The aim when setting the SMP is that the supplier reaches month 6 with a variance of claims to payments of no more than 10%. At the end of month 6, we use the standard reconciliation process (i.e. to reconcile an account to 100%) to set a new SMP from month 7, at which point the account will be subject to the full Process.
- **Mergers/acquisitions (Crime only):** where a merger or acquisition includes the movement of a number of Duty Solicitors, then a supplier can apply to their Account Manager to be removed from this Process. This would allow an increase to the SMP commensurate to the increase in the number of Duty Solicitors, subject to a minimum increase of 20% in the number of Duty Solicitors. Such increase would however only take effect from the date the new Duty Solicitor rota becomes effective and removal from the Process would be for a maximum of 6 months only. The calculation would be by reference to the firm's claim rate over the 6 months prior to receipt of the application, not the SMP at the time of receipt.
- **Novations:** Where contracts are novated and there is no change in the level of service to be delivered, then the new SMP shall be calculated as the sum of the claim rates of the accounts prior to the novation for the 6 months immediately prior to the date of novation.
- **Contract Compliance Audits:** Where any adjustments are made following a CCA and the contract subsequently moves outside of the In Band Target, we would use the standard reconciliation process (i.e. to reconcile an account to 100%) to bring the account back within the In Band Target going forward.
- **Low-value contracts:** There are around 400 contracts that currently claim less than £2 500 per year and the management of such accounts can take a disproportionate amount of time. We propose, with the agreement of those suppliers, to remove their SMP but instead make ad hoc payments at the 6-monthly reviews.
- **Balance discrepancies:** There may be some accounts where there is a considerable difference between the claims recorded into SMS and those notified to the Account Manager. This might be, for example, where there had been a large number of rejected lines of data. If a supplier indicates that

## Standard Monthly Payment Reconciliation Process

a reduction to their SMP in such circumstances is not sustainable, then the Regional Contract Manager may agree to remove the firm from the Process for a maximum of 3 months. This would however be subject to;

- a) The supplier providing evidence of the discrepancy. So, for example SMS shows claims for October as £4,000 but the supplier can provide a copy of their submission for a much larger amount, and
- b) The agreement of an action plan that would include a full review of claims over the contingency period and a commitment from the supplier that they will work with us to identify and re-submit any missing claims within that 3 month period.

Once all missing claims had been re-submitted, or at the end of the 3-month period, then the account should be added back into the Process and any remaining variance outside the In Band Target is recovered or paid in accordance with the standard reconciliation process (i.e. to reconcile an account to 100%).

- **Nil claims:** Suppliers should be submitting claims on a monthly basis. For the avoidance of doubt, a nil claim will still count towards our calculations of an account balance and claim average. If an account does fall outside of the In Band Target as a result of a nil submission then the standard reconciliation process (i.e. to reconcile to 100%) will be used to bring the account back into line.

### **NB**

**Exceptional cases/Police Station VAT amendments:** We do not consider that any adjustments that may arise as a result of exceptional cases would be sufficiently large to take a firm out of the In Band Target. Where this does occur however, we would use the standard reconciliation process (i.e. to reconcile an account to 100%) to adjust the position.

## 8. Frequently Asked Questions

**Q. I understand that there was a new process agreed recently for reconciling Civil and Crime contracts. Where can I find details?**

A. That's right, it formed part of the discussions between the Legal Services Commission and The Law Society. You can find details on our website at:

[www.legalservices.gov.uk](http://www.legalservices.gov.uk).

Following the pathway Community Legal Service>The Unified Contract>Agreement with the Law Society (Annex 3)

**Q. What's been happening since the agreement was reached?**

A. A working group has been formed and has been putting together new guidance for our Regional Offices. This has also been shared with The Law Society, and we've had constructive meetings with them about the move to the new process.

**Q. When do the new arrangements start?**

A. The first review of payments under the new arrangements will be undertaken in September 2008, based on July claims. However, suppliers will receive 1 month's notice of the intention to change payments from September.

**Q. Will these arrangements apply to all contracts?**

A. They will only apply to Civil or Crime contracts held by solicitors. The Not for Profit sector are subject to separate payment arrangements.

**Q. What change will I see in the way my contract is managed?**

A. For the majority of suppliers very little. More than half our accounts operate with little or no intervention from us.

**Q. What are the benefits of the new arrangements?**

A. We think there are a number of benefits:

- More notice to suppliers of any change in the level of payments
- Fewer interventions, leading to a more stable cash flow
- A simpler process, as we'll simply be looking at an actual balance of claims against payments based on data we know, rather than projecting to a point in the future
- A rolling method of calculating payments, rather than aiming to balance everything to the end of the financial year

## Standard Monthly Payment Reconciliation Process

### **Q. For the last two years I received no SMP for the months Jan to March. Will this happen under the revised process?**

A. We can't say we won't ever reduce an SMP to zero if this is the only way to recover the amount owing or prevent the debt from becoming too large.

However, under the revised process this is much less likely to happen as;

- Where the balance of actual claims to payments moves outside the 10% band we will reduce the payment to recover the money over the next 6 months.
- The revised process doesn't try to achieve a 100% at any fixed point in time (i.e. end of March), which has in the past required a drastic intervention at the end of the year. This process assumes a rolling reconciliation balance may be achieved within 6 month periods.
- Where claims to payments become seriously out of step we will make the adjustments over a 3 month period and then re-set the SMP.

### **Q. So when will you change my payments?**

A. We'll calculate balances every month on the same rolling 12-month basis we used last year. If the balance owing or owed is less than 10% of the value of claims over that period then your payment will be unchanged.

### **Q. Does that apply whether my contract is underpaid or overpaid?**

A. It applies equally to both.

### **Q. How will you calculate any change to my payments?**

A. We will reset the monthly payment to match your average monthly claim over the last 6 months, plus an adjustment to either repay or recover the financial balance over a 6-month period.

*Example;*

#### **Month 1**

Account appears on the exception report as the latest claims and payments have brought the contract to 112%-or underpaid by 12%.

Current balance £9 000

6 month claim average £6 000

So the new SMP is calculated as 6-month claim average + (current balance/6). This would then be: £6 000 + £1 500 = £7 500.

The Regional Office writes to the firm to give 1 month's notice of the change in SMP.

#### **Month 2**

No action: payment made at previous agreed level

#### **Month 3**

New SMP of £7 500 paid. 1<sup>st</sup> month of new SMP.

#### **Month 4**

## Standard Monthly Payment Reconciliation Process

New SMP of £7 500 paid. 2<sup>nd</sup> month of new SMP.

### **Month 5**

New SMP of £7 500 paid. 3<sup>rd</sup> month of new SMP. Account performance is reviewed to check that the new SMP is having a positive impact and has brought the account back within the In Band Target. Contract is now at 106% so no further action.

### **Month 6 and thereafter**

SMP of £7 500 continues to be paid and will only be reviewed again if the contract slips out of the 'in-target' band.

### **Q. The agreement mentions more notice of any change-how will that work?**

A. We have agreed to give a clear month's notice of any change to the level of payment. As an example-in our first review in September, we'll be looking at the balance on accounts as at July. If we have to change a payment we would write to you in September and let you know the new SMP to apply with effect from the payment due in November. The payment in October would be made at the previously agreed level.

### **Q. Will that notice period apply the same whether my account was overpaid or underpaid?**

A. Yes, it will.

### **Q. You mentioned that the balance would be repaid or recovered over a 6-month period, does that mean that the payment level would only apply for 6 months?**

A. No, it will remain in place until the account moves outside the 10% band again.

### **Q. The agreement mentions a tool that will be available to help us monitor performance on our contracts. When will that be available?**

A. Our resources are being focussed on the re-launch of SMS at the moment so it's a little way off. We will however be making financial statements available and are planning on incorporating a calculated contract position on these. These will be available internally to our Contracting teams at first but will be accessible through SMS later in the year.

### **Q. The agreement mentions that you will leave accounts alone if they are operating within a band of 10%. I am underpaid against the value of my claims but the balance is less than 10%. Can I have my monthly payments increased?**

A. You can apply at any time to amend your SMP. However, the revised process works on the 'swings and roundabouts' principles. One of the key changes that both the Law Society and the LSC wanted was a reduction in the level of interventions into the monthly payments. In order to achieve this then we set a level at which it was agreed accounts could be both over and underpaid.

## Standard Monthly Payment Reconciliation Process

**Q. There used to be a 'pull-forward' margin equivalent to about 1 month's claims in Crime. What's happened to that?**

A. The Monthly Payments Rules included the provision for the "pull forward" and were part of the General Criminal Contract. There are no similar provisions in the Unified Contract (Crime). The Deed of Settlement however confirms that crime suppliers can request that future SMP's are set with a view to achieving a reconciliation at 92.5% rather than 100%. For the avoidance of doubt this does not change the In Band Target of 90-110% and where any criminal suppliers account is outside of this band reconciliation may take place.