

The Unified Contract

Summary of Contract Documents and FAQ

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Introduction

The Unified Contract will prepare the way for the Reform programme¹ and will address issues arising from the operation of the General Contracts.

The Unified Contract replaces both General Civil Contracts (Solicitors and NFP) and both Mediation Contracts (For Profit and Not for Profit) from 1 April 2007.

This document is aimed to give a brief summary to providers on:

- The structure of the Unified Contract;
- The key provisions in the contract documents; and a
- FAQ section

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

Unified Contract - Contract Structure

The key structural difference between the General Contracts and the Unified Contract is that each legal aid provider will have one Unified Contract, instead of a contract per office. Each Unified Contract will contain a separate Office Schedule for each of the Provider's offices, under which work will be allocated in accordance with the prescribed Specification.

Unified Contract Documents for each individual firm or organisation

A. Contract for Signature contains bespoke provisions in relation to your organisation:

- Signature pages;
- Key Information Tables about your organisations e.g. designated principle office, email address, quality assured standard;
- POA account provisions;
- Key Performance Indicators;
- Constitutional statements;
- Prescribed specification which applies to you;
- Additional provisions for payment, licensed work, Nfps etc

B. Office Schedule/s contains bespoke provisions for each office of your organisation, including:

- Matter starts
- Payment limits
- Outreach work
- Special provisions applying to that office

C. Standard Terms contain provisions applying to all providers in respect of the relationship between the LSC and providers.

D. Specification contains provisions about Contract Work e.g. remuneration rates.

E. Indemnities and guarantees contain the personal agreement of individuals, which we may have required from you as a condition of your contract (e.g. if you are an LLP)

The main changes from your current arrangements may be illustrated by the examples below:

Example 1- Provider A

Solicitor with 3 offices doing civil only work

Previously held:

Three General Civil Contract (Solicitors) for offices in Hackney, Camden and Tower Hamlets.

From 1 April 07 Provider A will hold one Unified Contract with separate office schedules for Hackney, Camden and Tower Hamlets

Example 2 - Provider B

NFP with 1 office doing civil and mediation work

Previously held:

One General Civil Contract (NfP) for office in Halifax; and
One Mediation Contract (NfP) for office in Halifax

From April 07 Provider B will hold one Unified Contract with separate office schedules for Halifax (Civil), Halifax (Mediation) in accordance with the prescribed NFP Civil Specification and NFP Mediation Specifications.

Example 3 - Provider C

Solicitor with 3 offices doing civil and crime work

Previously held:

3 General Civil Contracts (Solicitor) in Manchester, Cheadle and Wythenshawe;
3 General Criminal Contracts in Manchester, Cheadle and Wythenshawe;

From April 07 Provider C will hold one Unified Contract with separate office schedules for Manchester, Cheadle and Wythenshawe and three separate General Criminal Contracts.

From April 08 Provider C will hold one Unified Contract with six separate office schedules for Manchester, Cheadle and Wythenshawe (Civil) and Manchester, Cheadle and Wythenshawe (Criminal)

Contract for Signature

The Contract for Signature specifies the contract term, the parties, the contract documents and the authorised signatories. It sets out the term of the Unified Contract, which will be in force until 31 March 2010 with an option for extension up to 31 March 2012.

In addition to the signatory parts, the Contract for Signature includes Key Information Tables and Annexes, which are bespoke to the individual organisations.

The Key Information Tables include:

Table 1: Contact Details – you need to complete this information including your designated Email address (which all providers must have). The table will also list the Office Schedules that apply to each of your offices.

Table 2: Status and Quality Assurance Standard – this simply confirms your current status and QA standard, i.e. the SQM.

Table 3: Maximum Payment on Account limits - this table is blank, meaning that you have no Maximum Payment on Account limit at present. For the avoidance of doubt, we will not introduce maximum limits without further consultation under the Contract.

Table 4: Performance Indicators – again, this table is blank, meaning that you have no bespoke Performance Indicators at present. For the avoidance of doubt, we will not introduce bespoke Performance Indicators without further consultation under the Contract, although Immigration and Asylum providers are still subject to success rates (see Office Schedules below).

Table 5: Conditions on which this Contract is granted. This is self-explanatory.

The Contract for Signature also contains the following Annexes:

Annex A: Constitutional Statement – this states what legal entity your organisation is. You will need to complete the required information, for example the names of all your trustees etc, in the box provided.

Annex B: Provisions on Licensed Work from 1 April to 30 September 2007. These provisions are taken from your current Contract.

Annex C: Specification – this states which Specification will apply to you from 1 April to 30 September 2007.

Annex D: Payment Annex to the Specification (solicitors) from 1 April to 30 September 2007. These provisions are taken from the current Solicitor Contract.

Annex E: Provisions for Not for Profit providers from 1 April to 30 September 2007. These provisions are taken from the current Not for Profit Contract.

Office Schedules

Each office of a provider will have a Schedule to the contract. Schedules will be for bespoke terms and will normally be in force for 12 months from 1 April to 31 March. They will specify the work that can be done from the office and the payments that will be made “to” that office.

Although, normally, an office will have one Schedule in force at any time, they may have more than one because we may issue a separate schedule specifically for a type of work - e.g. Housing Possession Court Duty Scheme, Family Mediation or a one off pilot – if it is more convenient to do this than to amend a Schedule.

The Schedule includes provisions for minimum and maximum matter and case starts (Controlled work and Licensed Work). However, at 1 April 2007 there will be no controls or minimum matter or case starts (or maximum Licensed Work case starts) and so these sections will remain blank.

Table 5 in the contains provisions which apply to that Office. For example if you have an office which undertakes Immigration and/or Asylum work, Table 5 in your Office Schedule will include the success rate provisions. Alternatively, if you are authorised to carry out certain outreach work e.g Prison Outreach you will find the provisions relating to that work in Table 5.

Standard Terms

The new Standard Terms aim to build on the General Civil Contracts and include similar provisions, although they have been updated and, where possible, simplified. The layout is different but we do not expect the new Standard Terms will make any significant difference to the day-to-day operation of Contract Work. The Unified Contract Standard Terms are in many respects identical or very similar to the existing terms, with key amendments to pave the way for the reform programme.

Below are the Contract Clauses and Annexes and where not self-explanatory, there is a brief outline of some of the key contractual terms you will find under the Clause title.

Number	Clause Heading
N/A	FOREWORD Contains information as to the background and purpose of the contract and the statutory duties of the Commission.
1	Interpretation Sets out the Defined Terms, which apply throughout all the Contract Documents and includes the provisions on precedence of Contract documents (paragraph 30) and 'Continuity' of contracting arrangements (paragraph 31).
2	Relationship Sets out how we will work with each other including provisions as to 'value for money' and 'good faith' as well as providers status as an 'independent provider of legal aid'.
3	Communication Sets out how we will communicate with each other with the provision that from October 2007 we may require you to use our website for transactions.
4	Financial disclosure and risk Sets out the requirements for accounting purposes, under what circumstances we will require you to open your books and when we may require indemnities and/or guarantees from you.
5	Equality and diversity Sets out how you will help us comply with our statutory obligations and what reasonable steps you must take to ensure your personnel do not unlawfully discriminate against others.

6	Logos and marketing
7	Looking after Clients, compliance and self-monitoring Sets out the requirement for access to the Manual, how a case management system may be introduced, requirements for reporting, exercising Devolved Powers and monitoring your own performance.
8	Demonstrating compliance and co-operating in audits Set out the terms for demonstrating compliance, the circumstances when you must give us access to your premises, documents and information and the mystery shopping provision.
9	Keeping and providing documents and completing and returning forms
10	Approved Personnel and Supervisors, standard of Contract Work, Independent Peer Review and Key Performance Indicators Sets out the quality standard you must achieve under Peer Review and how the Key Performance Indicators will operate from 1 April 07.
11	Schedules and Key Information Tables Sets out what the Schedules are and your responsibility for ensuring that the information contained in the Key Information Tables is accurate.
11A	Office Schedules – Civil Sets out when we may amend the allocation of work under a Schedule and how we will calculate the allocation of work for the next Schedules.
11B	Office Schedules – Crime Blank until April 2008
11C	Office Schedules - Family Mediation
12	Specification Confirms that the Specification and any Guidance within the Specification are part of the Contract Documents.
13	Amendments to Contract Documents Sets out the provisions for when we may amend any of the Contract Documents and the process for amending, including consultation. This Clause also confirms your right to terminate the Contract following an amendment.

14	<p>Your Account with us</p> <p>Sets out how credits and debits will operate under your account and any Maximum POA limits (although the latter will not be applied at 1 April 2007).</p>
15	<p>Claims</p> <p>Sets out the provisions for claiming for Contract work and requirements for ensuring that Claims are submitted within the time periods specified.</p>
16	<p>Payments and Assessments</p> <p>Sets out how we will Assess claims and the provisions with respect to VAT.</p>
17	<p>How and when we pay for Contract Work</p> <p>Sets out the reconciliation provisions for Controlled work and how POAs can be claimed under licensed work (including the Clause allowing a POA claim after 3 months (previously 6 months)).</p>
18	<p>Set off and repayment</p> <p>Sets out how we will deal with overpayments and underpayments and when POAs become repayable (in principle after 3 years).</p>
19	<p>Instruction and payment of third parties</p> <p>Sets out your obligations when you instruct a third party including the requirement for them to time record where their fee exceeds £250.</p>
20	<p>Referral fees</p>
21	<p>Confidentiality and data protection</p> <p>Sets out the presumption that Contract work is not confidential.</p>
22	<p>Warranties</p>
23	<p>Indemnity</p> <p>Sets out the circumstances when you must indemnify the Commission for example as a result of an act committed by you.</p>
24	<p>Giving notices</p> <p>Sets out how notices under the Contract will operate and includes the provisions for sending notices to your designated email address.</p>

25	<p>Things you must tell us about</p> <p>Sets out what constitutional and material changes you tell us about, including interventions, when you cannot perform Contract work and disciplinary proceedings concerning your personnel.</p>
26	<p>Novations</p> <p>Sets out the provisions for automatic and non-automatic novations.</p>
27	<p>Prohibited gifts, fraud and unethical behaviour</p>
28	<p>General</p> <p>Sets out a number of provisions including: the entire agreement clause, what happens if either party is prevented from performing under the Contract due to causes outside reasonable control, and your obligations to check certificates and authorities issued by a regional office.</p>
29	<p>Contract sanctions</p> <p>Sets out the circumstances when we can apply any one of the 7 Sanctions listed in this Clause.</p>
30	<p>How this Contract can be ended</p> <p>Sets out the 6 month 'no fault' termination clauses and the circumstances upon which the Contract will terminate, e.g. due to fundamental breaches.</p>
31	<p>Consequences of termination</p> <p>Sets out the provisions on termination in relation to Client's files, payments, operation of Remainder work, TUPE and when you may apply for a new contract after termination.</p>
32	<p>Reconsidering decisions and the review procedure</p> <p>Sets out your rights for informal and Formal reviews of our decisions including the right to attend the CRB (and give oral representations for 30 minutes) following a decision to terminate your contract.</p>
33	<p>Dispute Resolution</p> <p>Sets out your right to refer Formal Disputes to a further dispute resolution process (including Mediation, ENE, and Arbitration) and in particular how the Arbitration process operates.</p>

Letter	Annex Heading
A	<p>Liaison Annex</p> <p>Sets out how your Liaison Manager and our Account or Relationship manager will deal with matters arising under the Contract.</p>
B	<p>Media Annex</p> <p>Sets out how you can help us raise the profile of the legal aid scheme.</p>
C	<p>Equality and Diversity Annex</p> <p>Sets out the requirements for a Equality and Diversity Policy, Training plan and Communications plan.</p>
D	<p>Client Service Annex</p> <p>Sets out requirement for file management and file review procedures.</p>
E	<p>Monitoring Annex</p> <p>Sets out the IT and Records requirements to assist you in monitoring your own performance.</p>
F	<p>Approved Personnel and Supervisors Annex</p> <p>Sets out who are deemed to be Approved Personnel who can carry out Contract Work and what requirements Supervisors must meet.</p>
G	<p>Key Performance Indicators Annex</p> <p>Provides details of the 5 current KPIs and what providers are expected to achieve.</p>
H	<p>Fundamental Breach Annex</p> <p>Gives examples of the four main types of Fundamental Breach.</p>

Specification

Like the General Civil Contract, the Unified Contract includes a set of Standard Terms and a Specification. The Specification covers the performance of Contract Work. Until 30 September 2007, the current Specification will apply, subject to some minor amendments as described in the annexes to the Contract for Signature.

From 1 October 2007, a new Specification will apply, subject to consultation with the Consultative Bodies (the Law Society and LAPG for solicitors, ASA for NfPs). That consultation exercise will commence shortly, with the announcement of the proposed fee package for October 2007.

Indemnities and Guarantees

The Contract allows the Commission to ask for Indemnities and Guarantees but we may not do so in every case (for example a limited entity might be willing to offer a bank guarantee for an acceptable amount or its most recent audited accounts may demonstrate that the risk is fairly small relative to its size).

However we will be continuing our existing policy of seeking personal commitments in most cases and already have indemnities in respect of most of our suppliers who choose to practise in this manner. Once signed a Personnel Indemnity applies across all contracts, which you enter into with the Commission. Therefore if you have previously signed a personal indemnity under the General Civil Contract this will automatically apply to the Unified Contract.

FAQ

Q.1 Why is the Commission replacing its General Contracts with the Unified Contract?

A.1 The current General Civil Contracts expire on 31 March 2007. The existing terms have been in force for at least three years and were due for updating.

General Contracts operate on an office-by-office basis. The Commission wishes to take a “whole organisation” approach to contract management, which will lead to significant savings from its administrative budget. The Unified Contract Standard Terms will also bring firms of solicitors and not-for-profit agencies together operating on the same contract terms.

The Unified Contract will facilitate the introduction of the Commission’s Preferred Supplier programme, enabling a “lighter touch” approach to auditing, a more partner-like relationship with service providers and simplifying documents and procedures.

The Unified Contracts’ provisions in respect of amendment and termination will facilitate the implementation of the reform programme spelt out in the joint DCA and LSC paper “Legal Aid Reform: the Way Ahead” Cm 6993 (November 2006) and other new approaches to contracting and procurement.

Q.2 What is happening to the General Criminal Contract?

A.2 The General Criminal Contract will be extended to 31 March 2008 (unless lawfully terminated before that date). From April 2007 there will be some amendments to the existing contract to facilitate the reform programme. From 1 April 2008, the Unified Contract will also cover crime.

Q.3 What about the General Civil Contract (Not for Profit)?

A.3 The General Civil Contract (NfP) also expires on 31 March 2007 and will be replaced by the Unified Contract. Because the basis of payment under the Unified Contract will be different, the Commission has agreed transitional provisions with Advice Services Alliance.

Q.4 The SQM isn’t part of the Unified Contract. What is happening to it?

A.4 Although it will cease to be a formal contract document, the Commission will maintain the SQM for three main purposes:

- we will continue to use and apply it, as now, for non-Preferred Suppliers
- we will use it as a standard by which to assess new providers’ management systems and procedures
- it will be a best practice guide for Preferred Suppliers

Q.5 Why is the Commission requiring service providers to have a case management system that meets its requirements (clause 7.3 Unified Contract Standard Terms) and won't this be expensive?

A.5 The requirement - which will not apply from day one, but after the Commission has given reasonable notice – will enable the Commission to exchange information with service providers electronically, saving costs all round. The Commission will not be requiring expensive functionality, but expects to be looking for no more data and system requirements than are normally found in any case management system acquired in the past few years and are unlikely to be a radical departure from the current IT requirements which are spelt out in the Contract.

The Commission is intending to liaise closely with providers including seconding our staff to a provider's office to understand first hand what is needed.

Q.6 The Unified Contract has provisions requiring financial disclosure (clause 4 Unified Contract Standard Terms). How will they be used in practice?

A.6 Whilst the Contract requires that providers maintain annual accounts (as we would hope they would do anyway), if we consider there is a financial risk (as defined in clause 4.2) then you must disclose those annual accounts to us. However should you wish to qualify and remain as a Preferred Supplier we will be requiring an 'open book' agreement from you.

Q.7 The Unified Contract has new Key Performance Indicators (KPIs) (clause 4.6 and Annex G Unified Contract Standard Terms). How will they be used?

A.7 KPIs represent the LSC's move away from intrusive auditing towards remote monitoring. The General Contracts allow the Commission to introduce performance indicators however these are, for the time being, solely for monitoring purposes and failure to meet them will not be treated as a contract breach. Further Performance Indicators will not be introduced without further consultation.

Q.8 Why does the Unified Contract allow the Commission to specify (clause 11 Unified Contract Standard Terms) numbers of Licensed Work (certificated) cases and minimum numbers of Controlled Work matters?

A.8 The Commission wishes to be able to be sure that service providers will deliver services to clients where it has identified need. This is not consistent with service providers being able to choose whether or not to provide contracted services. The Commission has no plans to introduce volume requirements for Licensed Work from 1 April 2007 and will consult further before introducing any such requirements. However, it makes sense to have the facility available from the start of the contract, to avoid future amendments, should this be implemented.

Q.9 Why doesn't the Unified Contract confine amendments to the Specification to April and October (clause 13 Unified Contract Standard Terms) like the General Contracts?

A.9 The strict April and October "windows" have been a problem in practice. We must have the right to make changes so that we can react to a changing environment and implement the Reform programme. However our track record in this area, given that legal aid contracts have always had the right to amend, shows that we do not make major changes without consultation and there are provisions for consultation in the contract, followed by 6 weeks notice to providers unless the amendment is urgent. This means that providers will have at least 12 weeks advance warning in non-urgent cases, which should give them plenty of opportunity to consider their position.

After 2010, the Contract contains provisions (Clause 13.9) to return back to the 2 'window' approach, albeit for a wider period (April/May and October/November).

Q.10 The Unified Contract makes some changes to the Licensed Work payment on account (POA) provisions (Clauses 14 and 17 of Unified Contract Standard). What are these?

A.10 First, there will be a specified maximum POA limit - to enable the Commission better to monitor payments to service providers (However we have agreed not to impose maximum POA limits at 1 April and not without further consultation) Second, the £250 initial payment on the issue of a certificate will be abolished but, to compensate, eligibility for the first POA has been brought forward from six months to three months after the issue of a certificate. Third, POAs become repayable on the third anniversary of a certificate – but the Commission will not require repayment if the service provider makes out good reason e.g. because the case is continuing. This will secure better control in longer-running cases and prevent the reoccurrence of problems identified in the ongoing exercise to deal with Unrecouped Payments on Account.

Q.11 Why does the Unified Contract allow the Commission to terminate the contract on Six-months notice (clause 30 Unified Contract Standard Terms)?

A.11 Clause 30 allows us to terminate the Contract or parts of it, on six months' notice only if we think it necessary or desirable to facilitate a "Reform of the Legal Aid Scheme". It is normal for public sector contracts to allow termination for any reason at all on 6 months notice or less, so that the government can move funding into other areas if it thinks that is desirable.

We accept that "reform" gives some flexibility but that flexibility is not endless. As an example it would clearly not allow us to terminate individual contracts in isolation. It will clearly only apply if we are looking at a change that affects the legal aid programme generally. We must have the right to make changes as the government may rethink its priorities.

Q.12 How have the appeal procedures changed(Clauses 32 and 33 of the Unified Contract Standard Terms)?

A.12 The process is simpler but the Unified Contract still includes provision for an informal and Formal Review and for a hearing before the CRB in appropriate cases. The changes do not represent any change of approach by the Commission, which will continue to take care and to act fairly when making such decisions. However, some service providers were using the procedures to avoid a decision being made. The provision preventing sanctions from taking effect, unless there was a risk to the fund, has been removed as this also encouraged delay.

We have agreed that in termination cases the right to attend the CRB to make oral representations will remain and in fact this right has been extended to 30 minutes.

