

Annex B

TFF Contract Changes: For suppliers joining the scheme when it becomes mandatory

Amendments to the General Civil Contract

These amendments apply from 1 April 05.

Amendments to the Contract Schedule

Foreword

Add the following:

For the purposes of this Schedule the following definitions apply:

“Assessed” has the associated meaning of “Assessment”.

“Category 1 Firm” means a Contractor whose Claims have been Assessed down by an average of between 0% and 10%.

“ Exceptional Claim” means a Claim agreed by us as such under Annex C to this Schedule.

“Fixed Fee” means the fixed rate per Claim set out in Table 5 of this Schedule.

“Fixed Fee Claim” means a Controlled Work Claim in relation to a Fixed Fee Matter Start on the Consolidated Matter Report Form showing the amount of profit costs (calculated in accordance with the relevant rates set out in paragraph 5 of Annex A to this Schedule), disbursements, counsel’s fees and VAT.

“Fixed Fee Matter Start” means any Matter Start that begins on or after 1 April 2005 except:

- (a) A Matter Start in the Immigration Category of Work
- (b) A Matter Start in the Mental Health Category of Work, unless you have agreed to the inclusion of that Category of Work in the Fixed Fee scheme. A Matter Start in the Mental health Category of Work where the client was, at any time during the case, subject to Part 3 of the Mental Health Act, or where the case relates, in whole or in part, to events at a time when the client was subject to Part 3 of that Act is excluded in any event.
- (c) If, but only if, you have a FAInS amendment to the Specification to your General Civil Contract at this Schedule Office, a Matter Start in the Family Category of Work.

Annex A

Existing paragraphs 5 and 6 are deleted.

Existing paragraph 7 will be renumbered as paragraph 5. Add a new sentence at the beginning of the paragraph:

“5. The rates set out in this paragraph apply to all Licensed Work, and to all Controlled Work except Fixed Fee Matter Starts. For the rates for Fixed Fee Matter Starts, see Annex C to this Schedule.”

A new Annex C will be created as set out below:

Annex C: Fixed Fee Scheme

What will we pay for Fixed Fee Matter Starts?

- 1 We will pay for Fixed Fee Matter Starts at the fixed rates per Claim in each Category of Work set out in Table 5 of this Schedule. The Fixed Fees are inclusive of disbursements, counsel's fees and VAT.
- 2 Each Fixed Fee is based on either the average value of your Assessed Controlled Work Claims in a Category of Work or an average value of such Claims in a Category of Work from Category 1 Firms (or a group of such firms) in a geographical area as notified to you. In either case the average has been calculated by taking the total value of the relevant Assessed Claims in the Category of Work made during the 2003-4 Schedule and dividing it by the number of such Claims. We have also added an uplift of 2.5%.
- 3 You must continue to submit Fixed Fee Claims on the Consolidated Matter Report Form that will show the amount of profit costs (calculated in accordance with the relevant rates set out in paragraph 5 of Annex A to this Schedule), disbursements, counsel's fees and VAT. This will be important to give a record of the time that you are spending, and of how your costs this year compared with last year's and with other firms'. Where the statutory charge attaches at the Controlled Work level, then the Claims should be reported in accordance with paragraph 10 of this Annex C.
- 4 However, subject to the provisions of this Annex C we will make any payment due for a Fixed Fee Matter Start at the appropriate Fixed Fee whatever the amount of the Fixed Fee Claim. For the avoidance of doubt:
 - (a) No payment is due for a Matter Start where no Claim is made, or where the amount of your Claim is nil.

- (b) Payment for late Claims may be reduced under the terms of paragraph B12 of this Schedule.

Can we Assess Fixed Fee Claims?

- 5 We have the right to Assess your Fixed Fee Claims in accordance with the provisions of the Contract. However we will not amend any Fixed Fee as a result of an Assessment except as set out in this paragraph:
- a) We will not pay for work that is outside the terms of the Contract (for example work for non-eligible clients or not within the scope of Controlled Work).
 - b) Where we terminate your Contract under Clauses 20.9 (c) (Official Investigation or Report) or 20.16 (Fundamental Breach) of the Contract Standard Terms then we may pay the lower of the Assessed amount or the Fixed Fee.
 - c) Where more than one Fixed Fee Claim has been made for a case that should, in our reasonable view, have been treated as one Matter Start (see paragraph 13(d) below) then we may Assess the Costs of any additional Fixed Fee Claims as nil, so that only one Fixed Fee is payable for the case. Any appeal or review of such an Assessment under the Specification will proceed on the basis of determining this issue. We will take into account your practice (if any) in relation to relevant separate Matter Starts during the 2003-4 Schedule and will not make any deductions under this paragraph if there has been no material change to that practice.
 - d) If your Fixed Fees have been set prior to completion of a costs compliance audit (including any appeal) in relation to Claims from a previous Schedule we may amend those Fixed Fees to reflect the outcome of that audit (including any appeal). The Regional Director will give you notice of any amendment under this sub-paragraph (d). Any such amendment will apply to all Fixed Fee Claims made under this Schedule.
 - 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) 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 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 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.
- 8 We may make such amendments to the Fixed Fees, as we consider reasonable and necessary to reflect any Access to Justice Act legislation.

Can you claim other payments in addition to the Fixed Fees?

- 9 In taking on the Client on a Fixed Fee basis, then except as provided in paragraphs 10 to 12 below, you are accepting that Fixed Fee as full payment for all work reasonably required for the Client in that matter at the Controlled Work level.
- 10 Statutory charge (Family, Clinical Negligence or Personal Injury Category of Work cases only)
 - a) The amount of the statutory charge under section 10(7) of the Access to Justice Act 1999 that applies in your favour at the Controlled Work level will be the lower of either the 'costs' of the Fixed Fee Matter Start (calculated as the amount of your profit costs at the relevant rates in paragraph 5 of Annex A to this Schedule plus disbursements, counsel's fees and VAT) or the value of the property recovered or preserved, excluding any exempt property.
 - b) Nothing in this Annex C affects your right to recover costs from another party in proceedings or prospective proceedings in excess of the amount payable by us.

- c) Where the statutory charge applies in your favour then the amount due from us in respect of your Claim will be the difference (if any) between the appropriate Fixed Fee and the amount of the statutory charge.
 - d) Where the amount of the statutory charge in your favour equals or exceeds the appropriate Fixed Fee you should report the matter on the Consolidated Matter Report Form as a 'nil' Claim. No payment will be due from us in relation to the Claim.
 - e) Where the amount of the statutory charge in your favour is less than the appropriate Fixed Fee then you may either:
 - (i) Report on the Consolidated Matter Report Form the difference between the Fixed Fee and the amount of the charge. Since the Consolidated Matter Report Form does not include information in relation to the charge, you will need to include details of the amount of the charge in the form referred to in sub-paragraph (f) below, so that we can net this off from the Fixed Fee due for the matter;
- or
- (ii) Accept the amount of the charge as full payment for the Controlled Work and report the matter on the Consolidated Matter Report Form as a 'nil' Claim.
- f) You must submit, at such times as we shall require (not to be more than once every three months), a report (on the form provided by us for the purpose) of the total amount of the statutory charge retained by you at the Controlled Work level in relation to any matters reported under sub-paragraph (e) above. We will then deduct this total from the amount payable to you under your Schedule. In reporting under this paragraph you do not need to include the amount of the charge recovered in any cases where you have made a 'nil' Claim.

11 Exceptional Claim

- a) Where the Assessed amount of any Fixed Fee Claim exceeds either three times the amount of the Fixed Fee payable for that Claim or £2500 (whichever is the lower) then you can apply to us for the Claim to be treated as an Exceptional Claim.
- b) We will agree to treat a Claim as an Exceptional Claim where you can demonstrate to our reasonable satisfaction that the Claim should have not been the subject of an application for a Certificate before the Exceptional Claim limit was reached.
- c) We may Assess the costs of each Exceptional Claim.

- d) Since your Fixed Fees already include an allowance for Exceptional Claims, we will make only such additional payments in relation to Exceptional Claims as are due in accordance with guidance.
- e) Where we refuse an application to agree a Claim as an Exceptional Claim on the grounds that an earlier application should have made for a Certificate an appeal may be made against that decision to the Costs Committee and subsequently to the Costs Appeals Committee on a Point of Principle of General Importance. The procedures in the Specification shall apply to any such appeal.
- f) For the avoidance of doubt any refusal by us of a request by you to treat a Claim as an Exceptional Claim is excluded from Clause 23 of the Contract Standard Terms.
- 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 paragraph 7 above.

12 Disbursements

Where the average per Fixed Fee Claim of reported disbursements in all Categories of Work (excluding counsel's fees and any disbursements in Exceptional Claims) in this Schedule exceeds the average of such disbursements in the Claims used to calculate your Fixed Fees then we will, subject to Assessment, pay the difference multiplied by the number of Fixed Fee Claims in this Schedule.

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.

Amendments to the Contract Standard Terms

Clause 12A.4

Add the following sentence at the end of the Clause

‘However, where the assessed Claim relates to work for which a Fixed Fee applies, then subject to the provisions of your Schedule, the amount due from us in respect of that Claim will be the appropriate Fixed Fee.’

Clause 12 B.2

Amend the clause to insert the words in bold:

‘Subject to our right to Assess your Claims, the amount due from us in respect of any Controlled Work Claim is the amount properly claimed by you, **or where the Claim relates to work to for which the a Fixed Fee applies, the appropriate Fixed Fee, less:**

- (a) the amount of any contribution payable by the Client; and
- (b) except where the Specification provides otherwise, the amount of any charge (whether contractual or statutory) arising under the Act.

Amendments to the Specification

Rule 2.14 Assessments

Add the words –‘subject to Annex C of the Schedule ’ at the end of the first paragraph of this Rule.

Rule 3.6 Upper Financial Limit

Add the following at the end of the Rule:

“ This Rule does not apply to any matter for which a Fixed Fee is payable “.