

Question and Answer SSS Tender

Amended 13 February 2008 – see questions 14-19 & 68

1. The selection criteria states that all proposed approved advisers must have at least 5 years experience of dealing with LSC funded cases and of providing specialist advice in the relevant category of law. Specialist tax debt advice has never previously been eligible for funding by CLS. Does this mean that any application in this area of work will be disqualified on the grounds of former non-eligibility for funding?

We are not letting contracts in specialist tax debt advice – we are looking to contract with providers who are able to provide a full spectrum of advice across the debt category, i.e. all areas eligible for public funding.

2. Does the ‘5 years of dealing with LSC funded cases’ criteria mean that the bidder would have had to be involved with such cases – either under a contract, or by providing direct casework under the old SSS contract?

Yes – this would clearly demonstrate a requisite level of experience as time spent providing SS advice would constitute time dealing with LSC funded cases.

3. Does the five-year experience in the essential criteria include pupillage and work prior to coming to the bar i.e. at a solicitors firm?

Yes – if the 5yrs constituted direct experience of delivering specialist advice in the categories of law applied for.

4. Can you clarify what you mean by ‘five years post qualification experience’ in the case of non-solicitor NFP Approved Advisers?

5. References to post qualification experience on page 9 of the contract (section 4.2.2.1) seem to imply that it is anticipated that the service will be provided by solicitors? What exactly does post qualification experience mean? Does this mean that the providers must be solicitors, barristers, or legal executives? While this seems logical for housing, it does not seem appropriate for some other areas of law.

6. One of the requirements is having five years experience. Does this mean five years PQE?

We require those providing Specialist Support advice to have five years direct experience of delivering specialist advice. Specialist Support Advisors do not have to be solicitors, barristers or legal executives.

7. If the advisor is level 2 does the advisor still have to have 5 years experience?

Yes, in the Immigration category the Approved advisers, who are employed by organisations that are regulated by the SRA or OISC, must also be accredited.

8. Could you please confirm if barristers without level 2 qualification but over 5 years experience would be considered as appropriate caseworker in immigration category.

9. In the category of Immigration, what qualification accreditation is required from advisers who are barristers?

10. Level 2 accreditation is available for solicitors only. Accreditation for immigration barristers ran as a voluntary scheme for a few years but was not widely taken up and was discontinued. In its current form, therefore, the invitation excludes barristers from tendering to provide specialist support in immigration. We do not believe this could have been intended. Was it? What does the LSC propose for barristers who have been providing specialist support in immigration for up to 8 years under the LSC contract and who wish to tender?

11. Please clarify the requirement under the immigration category. I take it the additional Level 2 of the SRA's Immigration and Asylum Accreditation Scheme requirement is only relevant to solicitors and not relevant to barristers. In other words barristers would only need to satisfy the at least 5 years experience of LSC funded cases and providing specialist advice?

Barristers who are directly employed by an organisation regulated by the SRA or OISC are required to be accredited under the SRA's IAAS. Organisations regulated by the Bar Council i.e. barristers working in chambers are not required to be accredited under the IAAS but must demonstrate that they have 5 years experience of providing the advice services required.

12. Are there any restrictions for an OISC registered practice to apply or must they also be accredited by the SRA?

OISC registered practices may apply. Approved Advisers employed by an OISC regulated practice must be accredited under the SRA's Immigration and Asylum Accreditation Scheme.

13. Is it possible for individuals to bid for the contracts? Do you actually have to be a firm or charity or can individuals bid for contracts? If yes, what are the chances of individuals obtaining a contract?

Individuals are able to bid for contracts. All bids will be assessed against the same criteria so the chances of an individual obtaining a contract will depend on the strength of their bid when assessed against those criteria.

14. Will you accept bids from consortia of providers? If yes, would such a bid need to be made by a single bidder, ie, just one of the consortia members? If it is the case that there must be a single bidder, does the Commission envisage the single bidder holding the contract and sub-contracting to the members of the consortia?

15. The Information states that you favour bidders that can provide the service across multiple categories of law. Would you consider a bid from two or more current providers which would widen the range of categories of law covered? If so, would that affect the requirement of a single phone line? ie, could there be a different phone line for each participating group? Would there still be only one single standby payment in these circumstances? If this is not possible, can specialist support providers use approved advisers from another organisation, such as (in our case) an associated chambers? Or a not-for-profit organisation?

16. Will the LSC accept a joint bid by two or more organisations working in partnership to deliver the service in one or more categories of law?

17. Does clause 25.1 mean that consortia bid will not be accepted? Will organisations who offer to provide some of the contract themselves and enter into an agreement to subcontract some other areas of law be treated the same as a single legal entity applying to deliver the same amount?

18. If two organisations submit a joint bid covering two categories of law and are successful would 2 standby fees be paid or only one?

We will not accept bids from groups of providers, and we will not allow subcontracting.

19. Will you accept multiple bids from the same applicant? For example, could a bidder put in one application to provide one area of law by themselves as well as being part of a joint application?

We will accept multiple bids from providers, for example if a provider wanted to bid for two different combinations of categories, however we will not accept bids from consortia. If a bidder submits more than one bid, each bid must be on a separate application form.

20. We are looking at the specialist support tender, can you state whether you only want to contract with organisations that can provide the service(s) nationally, across the whole of England and/or Wales, or if you would consider a tender to provide a service(s) on a regional basis?

No – the IFA is clear in that the LSC will contract with providers across England & Wales in Immigration and Public Law, while running separate contracts for England and Wales for CC, Deb, Emp, Hou, MH, & WB.

21. Will greater preference be given to providers who can provide all the hours in one category or to providers who can provide a service in more than one category but not for all of the maximum available hours in that category?

Any application will be treated on its merits against the 'Essential' and 'Desirable' criteria in the IFA. The LSC has said, however, that we will favour bidders who can provide advice in multiple categories.

22. Is there a minimum number of categories of law across which the service must be provided by any particular provider?

No – but the LSC will favour bidders who can provide advice in multiple categories.

23. Will you accept bids which offer to provide a service in a different category of law on each day on which we propose cover?

Yes – although the IFA makes it clear that we will favour bids to provide the whole 30hr week service. Applicants must be able to provide a service for at least a whole day every week of the contract duration, ie. 6 hours of availability from 10am to 4pm, and the minimum bid must be for one day. We cannot guarantee to offer specific days of the week to any Service Provider.

24. The 'Information for Applicants' states (p2) that the invitation to tender is 'only for a telephone consultancy service and for the production of quarterly updates'. Can you confirm that "proper, reasonable and proportionate time spent actually providing advice" includes the necessary research for the advice and putting it into writing where it cannot reasonably be given over the telephone?

The nature of this work means that we would expect providers to have to deal with complex enquiries. We accept therefore that there will be occasions when advice will have to be put in writing and may involve preparation.

25. The draft contract defines Specialist Support Advice as telephone based specialist legal advice. Please can you confirm whether SS Providers will be able to claim for time spent dealing with cases in writing: a) as a result of needing to follow up on cases arising out of the advice line and b) in response to an enquiry sent directly to the SSS via email/ post/fax?

The payments for Specialist Support are as explained in the IFA. We would expect the majority of queries to be made via the telephone. However the nature of this work means that we would expect providers to have to deal with complex enquiries. We accept therefore that there will be occasions when advice will have to be put in writing and may involve preparation.

26. Please clarify what areas of law you are including in the public law category? For example public law could be housing related, immigration related and prison related.

Advice available in the Public Law category will be limited to the definitions outlined in the LSC's previously published documentation. The definition being as follows:

1. Legal Help and related proceedings concerning:
 - a. The civil liberties or human rights of a client or a dependant, including under the Human Rights Act 1998, and matters involving the application of the European Convention on Human Rights (and other human rights instruments ratified by the UK) in English law; and
 - b. Public law challenges to acts, omissions or public bodies, including challenges by way of judicial review or habeas corpus.
 - c. For the avoidance of doubt, this includes data protection and freedom of information issues, and matters which may also fall within the definition of any other SQM category including crime.

27. What practical help if any will the LSC provide in setting up the telephone service? Will calls be automatically directed to those who win the bid or do they have to advertise for the work and obtain business that way?

The LSC will not be providing assistance in setting up a 0845 number to successful bidders; it is a requirement to have one in place for the commencement of the service.

There will be no automatic direction of calls. However the LSC will publicise the Service to our Providers, although the Service Provider will have primary responsibility to market and publicise the Service and to take all reasonable steps to ensure that Providers know of and use the Service.

28. I note that the organisations are responsible for marketing the service - an obvious and very useful marketing opportunity would be promotion of the service on the LSC website - will this happen (and with signposting to the service suppliers)?

We will provide an appropriate space on our website dedicated to the service, with (as now) full details of the categories offered by our providers, including availability times and contact details.

29. Is it necessary to have an 0845 number or would our existing 0207 number be acceptable if no significant difference in the cost of the call?

This is a national service and it is therefore important that the costs of calls are limited and the same for all service users, a local number is therefore not acceptable. The IFA requires prospective providers to have or obtain a lo-call number.

30. Is it possible to use other lo-call numbers instead of 0845 numbers e.g. 0808?

Other lo-call numbers are acceptable providing the costs are no more than 0845 lines.

31. The list of eligible users in the draft contract does not appear to allow access from those with a General Help with Casework QM. Please confirm whether they will be able to access the Service.

32. Will the Service be open to any adviser/lawyer to use or will there be eligibility criteria as there is currently? If there will be eligibility criteria, what will those criteria be?

Any solicitor or NfP organisation holding the Unified Contract or the General Help Quality Mark with Case Work will be eligible to use the service.

33. When will the draft contract be available?

The draft contract was placed on the website on Thursday 24th January

34. Will applicants get at least 14 days to submit their application after the draft contract is available?

The closing date for bids is Friday 22nd February.

35. How many contracts will be awarded respectively in the fields of housing, immigration and community care?

We would prefer to contract with one Service Provider per Category or Categories. However, we will award contracts on the basis of providers meeting the relevant criteria and, at this stage, we do not know how many contracts will be awarded per category.

36. How is it expected that the hours of specialist advice will be allocated, assuming that more than one firm is successful?

We cannot answer this question as until we have seen all the bids we will not have the detail of what providers are bidding for. Decisions will be taken on the basis of what is viable for providers.

37. We were informed in January that the LSC were not going to proceed with the tender for the delivery of Immigration telephone advice to individuals detained at police stations in England and Wales at this time as they "do not feel it would be appropriate to award new contracts until issues surrounding the Unified Contract have been resolved". In light of this why is the LSC rolling out the Specialist Support Service at this time when the issues surrounding the Unified Contract has yet to be resolved?

The specialist support contract is outside of the Unified Contract and does not contain Clause 13.1

38. We completed the Bid Tender for the delivery of Immigration telephone advice to individuals detained at police stations in England & Wales. We have since been informed that the LSC decided not to process this tender for the time being. Is this bid tender in replace of the Immigration advice tender or is it in addition?

This tender does NOT replace the delivery of Immigration telephone advice to individuals. This tender is for specialist support advice to advice providers.

39. In the application form "Tender Summary" at page 14 both Immigration & public law have been shaded out. Does this mean that we do not need to specify the number of days for these categories?

No – if you wish to provide advice in these categories you must be prepared to do so for England & Wales, as allowed in the relevant column of the table on P.14.

40. Is it possible to submit alternative bids in order of preference e.g. a preferred bid for two categories of law and second and third bids each for a single category of law? If so, does the LSC require a separate bid form to be completed for each bid?

Bidders may make more than one application however each bid will need to be on a separate form.

41. If a provider is able to offer to produce the Quarterly Report free of charge, or at a rate less than £70 per hour, would the LSC be prepared to reconsider the current contractual term which prevents the provider acquiring intellectual property rights in the Report? In particular, would the LSC be prepared to agree that all intellectual property rights will belong to the provider?

If the provider offers to provide the report free of charge then yes the LSC will reconsider the issue of intellectual property.

42. Where does the Commission envisage the quarterly updates will be published? The Information for Applicants only states “may be published on the LSC’s website or in our FOCUS newsletter (or indeed circulated to other periodicals for publication).”

As stated the updates may be published on the LSC website or in FOCUS. When it was thought appropriate updates might be circulated more widely, but this would be considered on an individual basis.

43. The Information for Applicants document states that the LSC will have editorial control and copyright of the Quarterly Update. Please can you clarify the copyright issue where the material requested is likely to be part of the Provider’s own published material.

As the Commission will be paying for the production of updates we would expect them to be produced specifically for the Commission and we would therefore retain copyright. If the Provider wishes to produce an update free of charge then we could discuss copyright.

44. Point A on Page 1 of Draft Agreement states ‘The telephone advice will be limited to expert advice on complex queries relating to new or developing areas of law. There are concerns that this may introduce a new level of difficulty in advising in areas of law which are deemed to be neither new or developing. Examples: the Rent Act 1977 is notoriously difficult to advise on owing to the complexity of the statute. Given that callers under a General Help contract may seek advice on this complicated subject, would SSC advisers be precluded from advising on this area of law? How does the provider manage if an organisation rings with a basic question but the most senior person in the organisation is the caller. If the provider does not think it falls within this definition where does the provider refer them?’

45. Can you confirm that queries will not be restricted to ‘new or developing areas’ of law? If no, can you provide a definition of the phrase ‘new or developing areas’ of law?

We accept that there will be occasions when the query will relate to complex area of law that is not ‘new or developing’ and it will be appropriate for Specialist Support to deal with these types of query. However we would not expect this to happen in situations where an adviser was trying to advise in a category of law where they have no expertise – in these situations a referral to a suitable specialist provider would be more appropriate.

46. Clarification for Definitions and Interpretations on page 3 of the draft contract:

- **“Contract End Date” Does this mean that the LSC may or would extend the contract if it judged it to be successful? (See also 3.4)**

We are restricted under EU procurement law as to how we can extend contracts. We would, however, subject to appropriate level of funding, seek to re-tender the contracts.

- **“Eligible Organisation “Some organisations may find it hard to ascertain if they can ring the advice line in view of the qualification to the type of advice given. What publicity will the LSC provide to expand on what they can ring about?”**

We will provide full information on our website as to the type of work where advice was available.

47. Section 4.2.2.3 of the draft contract states that the approved advisers must 'where appropriate' have achieved the SQM Supervisor Standard. Guidance is needed. When is this going to be appropriate?

This will be appropriate in cases where bidders have used the SQM Supervisor Standard to illustrate how their bid meets Essential Criterion 6.

48. It is our understanding that no-one can apply for a QM now (unless they can show their resources depend upon having a QM). Given this and your desire to improve access to justice for clients, please can you say why you think it is still appropriate to link eligibility to holding the QM and whether you would consider making SS accessible to anyone working in the legal and advice sector. This would also make the system simpler to administer.

At this stage we do not intend to change the eligibility for usage of Specialist Support but we will keep the position under review and may introduce changes in the future if required.

49. Section 6.1 of the contract refers to peer review. Will the LSC consult on the development and implementation of the peer review process?

Development of any peer review process would be done in conjunction with a suitable independent organisation. The Commission would then discuss with the profession any proposals.

50. Section 11.4 of the draft contract states that, for auditing purposes, the LSC seeks access with only 48 hours notice - is that working days or could it be Saturday morning notice to come in on Monday morning? In every organisation there is usually one key person who is the Relationship Manager and it is crucial for them to be present. However, if only 48 hours notice is given and that person is on holiday for example this would be extremely unsatisfactory. Could more time be given and 48 hours notice be used only where there is cause for concern?

As stated in the Specialist Support Service draft contract, we would provide “at least 48hrs notice (unless otherwise agreed)”. This does refer to working days, and we would certainly work with our providers to ensure that the appropriate key personnel were present and available for any audit.

51. Amendments/Change Control Procedure (page 13 of the draft contract) - does the LSC have concerns that recent and pending litigation will impact on these clauses?

No, these Clauses were drafted to reflect the substance of the recent Court of Appeal Judgement.

52. Can clause 13.2 of the draft contract be amended so that late receipt will delay payment only if there is fault on the part of the provider?

It is difficult to ascertain what other circumstances could lead to late submission. However, we would consider each potential delay on its individual merits and take a view at the time as to whether it would be reasonable to delay payment.

53. How will the Commission define what is meant by ‘proper, reasonable and proportionate time’ to provide specialist support advice and what activities can be included?

In the same way in which we assess legal aid bills submitted to the commission for assessment and by contrasting the times taken by different providers.

54. The LSC will give the provider 30 days to validate any piece of advice that was not proper, reasonable or proportionate. Please explain who at the LSC will make the initial and subsequent decision and what their level of casework experience will be.

The initial decision will be made by the relevant Account Manager. In the event of the provider disagreeing with the decision they will be entitled to ask for the decision to be reviewed.

55. Will providers be paid the stand-by payment on top of the Advice payment where the advice is being provided during the advice line session itself?

Yes in this situation the provider will be paid for both.

56. From your knowledge of the existing scheme, what was the average hourly take up, say on a weekly, basis for the categories of Immigration, Mental Health and Housing?

Due to inconsistent reporting and restrictions in marketing this information cannot be provided. The allocation of funding for the new contracts has not been based upon the performance of the previous contracts.

57. How were the total allocation of hours' provision calculated?

There is a total budget of c£2m per year available for the service.

It was decided to make the service available from 10 til 4 five days a week, 52 weeks a year compared to the irregular service that is currently available. Remuneration for the availability of the service was calculated at roughly the equivalent of the payment rate for travel and waiting and this amount was subtracted from the available budget.

Expenditure per category was then calculated based on a combination of the relative priority of the category of law (eg asylum has a higher priority than debt because of the impact on the client), the likely demand for the service (eg there is far more debt casework carried out than mental health), and historic information on usage (eg there has been far more requests for assistance in housing than welfare benefits). Having established the advice budget per category the hours were calculated by applying an hourly rate of £70 which is roughly the equivalent of the advocacy rate for Controlled Legal Representation.

The allocation for Wales is based on roughly 10% of the usage in England as this is roughly the equivalent number of cases started in Wales compared to England.

58. How does the LSC intend to allocate the hours' provision. The tender document indicates that preference will be given to an organisation bidding for the whole contract - does the LSC expect that one provider can provide the cover for each (or all) category/ies - given the number of hours available.

As stated in the IFA, preference will be given to bidders tendering for more than one category. However, each application will be judged on its merits and we do not necessarily expect to issue single contracts for each or multiple categories.

59. The LSC cannot guarantee the number of hours advice taken up by providers; what level of shortfall on allocation will trigger a review of the contract?

Under the funding for this scheme, paying the standby costs alone will cost the LSC £900pw per category of law. If the actual advice hours are so low that this does not represent value for money then the LSC may carry out a review of the contract.

60. What happens if demand per contract is predicted to outstrip supply?

While we have to remain within the allocated budget, where demand is greater than supply we have the capacity, provided that the fundamental nature of the contract does not change, to reallocate resources between underperforming and over-performing categories.

61. There doesn't appear to be a reciprocal right on the provider to terminate the contract on 30 days notice - why not? It may become difficult or impossible for a provider to continue for business reasons - the ability to terminate in certain circumstances seems essential.

Both the LSC and the provider have the right to give 6 months notice in the case of 'no fault' termination. The LSC cannot give providers the right to terminate on 30 days notice as this would not give sufficient time to set up a replacement service.

62. With the agreement of the LSC we currently undertake external supervision, under our current specialist support contract, for another supplier to enable it to meet SQM requirements. Will external supervision be permitted under the new contract to which the tender relates?

No, external supervision will not be allowed under the new contract.

63. We are aware that the Commission does not wish to pay for more than one telephone line entry point. Does this mean that there has to be one entry point only for multiple subjects or can multiple numbers be used (providing any extra costs are met by the specialist support provider)?

The Commission would prefer one entry point where multiple categories are provided, however this does not preclude bidders from proposing multiple numbers in a bid.

64. Would the service need to be available between Christmas and New Year as, in our experience, demand levels are likely to be insignificant?

The service should be available Monday – Friday, excluding Public Holidays. How providers run their services to manage peaks and troughs in demand is a decision for the provider.

65. Can the Commission clarify what is meant by the LSC ‘factor(ing) in time’ necessary for advisers to maintain their expertise?

We would not expect advisers working under these contracts to spend all their working hours delivering the service. We would expect that they would devote some of their time to updating and developing their expertise further.

66. Can you clarify whether you actually want all individual case records in full detail monthly rather than summary statistics and sample records? This would mean that you will have to review many hundreds of detailed case files every month?

The LSC would require a monthly summary, however we would expect providers to maintain all case records.

67. Assuming the answer to question 9 is yes, how do you intend to deal with the data security issues that follow from the transfer of confidential information by e-mail?

As explained we do not expect providers to send individual records to the LSC on a monthly basis. If confidential information was required then we would arrange for encrypted emails to be received.

68. Can you clarify the status of the contract as published on the website? On the website you state that this is the final contract, but the document is headed ‘Draft’

It is intended that this will be the final contract, however minor changes maybe required.

69. The last sentence of Stage 2 in the Information for Applicants states: The contract will be awarded to the highest-scoring bidder(s) as appropriate, but in making this decision the panel will have regard not only to the scoring but also to the proportion of the Service bid for and the number of proposed Approved Advisers. What is meant by proportion of the Service bid? Will there be more weight given to a bid with a higher number of Approved Advisers?

This means how much of the service a bid is proposing to deliver – in terms of the number of categories, stand-by days and advice hours. Bids will not be scored more highly simply because they have a greater number of advisers – the issue for the Panel will be to check that the number of approved advisers make the proposed service sustainable.

70. Should current SS Providers start “winding-down” the work under their current contract work – stop taking any new supported cases and start closing current cases?

Providers should contact their account manager to discuss how they manage cases over the remainder of the existing contract.