

General Criminal Contract Information and Standard Terms Amendments 1 April 2007

A Information

Proposed Amendments

- 1 The Commission is proposing to introduce a Unified Contract on 1 April 2007, which will cover civil legal aid from that date and will cover criminal legal aid from 1 April 2008. In the meantime, General Criminal Contracts will extend, automatically, from 1 April 2007 to 31 March 2008.
- 2 This paper sets out proposed amendments to the General Criminal Contract Standard Terms with effect from 1 April 2007. The proposed amendments allow reforms consequent on Lord Carter's report "Legal Aid – a market-based approach to reform" (published July 2006) to be implemented and apply the same peer review and prohibited gifts etc provisions to crime legal aid work as those proposed for civil legal aid work (and one of the performance indicators). Proposing amendments to enable "Lord Carter reforms" to be implemented does not mean that any final decisions have been made. The proposed amendments are merely facilitative. They would have any application only in the event that reforms are implemented between 1 April 2007 and 31 March 2008.

Entire supplier relationship

- 3 As indicated in our consultation papers: "Quality Relationships delivering Quality Outcomes" (published in March 2006) and "Legal Aid: a sustainable future" (published in July 2006) the Commission wishes to move from dealing with suppliers on an office-by-office basis to dealing with suppliers on an entire organisation basis.
- 4 Therefore, if you have more than one office, qualification for Preferred Supplier status (including achieving a rating of 2 on Peer Review) and the criteria for the award of new contracts will be based on assessment of all offices.
- 5 This does not mean that we will not assess individual offices between 1 April 2007 and 31 March 2008, but individual office assessments will, as they always have been, be concerned with compliance and performance under the individual contract for the individual office and not with e.g. qualification for Preferred Supplier status.

B Standard Terms Amendments

Clause 3 Your main rights and obligations

Add to the old text (below) with the new text (in the box)

2. You must perform all Contract Work and exercise your Devolved Powers in a timely manner and with all reasonable skill, care and diligence. You must perform your obligations to record and report data accurately. Your Claims must be true, accurate and reasonable.
3. In performing (and claiming payment for) Contract Work, in exercising your Devolved Powers and in complying with the SQM you must achieve such level of performance, as measured by the Performance Indicators, as we may require.

- 3A. The standard of your Contract Work must meet, or exceed, the standard required by any Independent Peer Review rating. This standard may be higher than the standard required by Clause 3.2 above, in which case, it is the higher standard that your Contract Work must meet or exceed.
- 3B. You agree to the standard of your Contract Work being assessed by the Independent Peer Review process and promptly to provide such information, matter files and case files as may be required for that purpose. Both you and we agree to accept the validity of the Independent Peer Review process and to be bound by any rating determined by it. The Independent Peer Review Process and an explanation of the ratings (1 – 5) are available on our website www.legalservices.gov.uk and from your Regional Office).

The Performance Indicators that you must meet in performing Contract Work (Clause 8 General Criminal Contract)	
Independent Peer Review	Rating of 3
Assessment Reduction	5% (Max)

NOTES ON THE PERFORMANCE INDICATORS

For the purpose of the Performance Indicators, "Contract Work" includes such other publicly funded work that you are authorised to perform by this Contract e.g. Representation in the Crown Court, Court of Appeal and House of Lords.

Independent Peer Review

The provision below takes precedence over the provision in the "Contract for Signature – Performance Indicator Annex"

Your Contract Work must receive either Rating 1, Rating 2 or Rating 3 as determined by the Independent Peer Review process.

If your Contract Work receives a Rating 4, as determined by that Independent Peer Review process, this is a breach of Contract.

If your Contract Work receives Rating 5, as determined by that Independent Peer Review process, this is a Fundamental Breach.

N.B. To qualify as a Preferred Supplier and to be eligible for a contract extension and to bid for a new Unified Contract (when this Contract expires) you must meet or exceed the Preferred Supplier Performance Indicators

Preferred Supplier Performance Indicator

**Independent Peer Review Rating of 1
or 2**

Assessment Reduction

Until further notice, we will **not** treat a failure to meet the Assessment Reduction Performance Indicator as a breach of Contract, in itself. Instead, we will use it as a measure that may trigger contact with you, or further monitoring of your performance.

Clause 11 Specification

Add to the old text (below) with the new text (in the box)

10. Subject to Clauses 11.11, 11.12 and 11.12A we will require compliance with any amendments to the Specification with effect from either of two points during each year – April or October.
11. If, in any case, The Law Society has requested a longer consultation period than the six weeks or 21 days specified in Clauses 11.6 or 11.7 (as appropriate) we may require compliance with the amendments at another point in the year, but will always consider whether delaying the requirement to comply until the following April or October (as appropriate) is a practicable alternative.
12. Clause 11.10 does not apply (and we may require compliance with effect from another point in a year) if we consider that it is impracticable to require compliance with effect from either April or October, or if the amendments affect fewer than 10% of the number of our Contractors, and in any case where The Law Society agrees. Examples of when we may consider that it is impracticable to require compliance from April or October are if:
 - (a) the Department for Constitutional Affairs requires an amendment; or
 - (b) an amendment is required pursuant to other provisions of this Contract e.g. Clauses 16.16 or 16.17.

12A Clause 11.10 does not apply (and we may require compliance with effect from another point in a year) if we consider it necessary or desirable to do so in order to facilitate a Reform of the Legal Aid Scheme.

“Reform of the Legal Aid Scheme” means such reforms as we may wish to implement in order better to comply with our statutory duties or fulfil our statutory functions including (but without limitation) (a) such changes as we wish to make to, or related to, the CLS, CDS, or both, consequent on, or related to, Lord Carter’s Review of Legal Aid Procurement; or (b) new approaches to procurement and contracting for the provision of publicly funded legal services.

Clause 19 Prohibited Gifts

Replace the text (below) with the new text (in the box)

What must you not do?

- 1 You must not try to bribe any of our personnel, or any person who may perform services for, or who is associated (in any way) with, the Legal Services Commission

What may happen if you breach this Clause?

- 2 Any breach of this Clause 19 by you or anyone employed, or otherwise engaged, by you acting on your behalf (whether with or without your knowledge) entitles us forthwith to terminate this Contract.

19. Prohibited gifts, fraud and unethical behaviour

What must you not do?

1. You must not try to bribe any of our personnel, or any person who may perform services for, or who is associated (in any way) with, the Legal Services Commission.
2. When bidding, or applying for, a contract with us, or for authority to perform work, or for an allocation of duty solicitor or other work, (or for the purpose of, or with the intention of, doing so) you must not collude with any other person or attempt to bribe them.
3. When bidding, or applying for, a contract with us, or for authority to perform work, or for an allocation of duty solicitor or other work, you must not bid any price that is unrealistically low. A price is unrealistically low if you intend to secure the contract, authority or allocation by virtue (in whole or in part) of the low price and intend, or hope, to recover any unrealistic element of it by a subsequent renegotiation of the price.

What must you do?

4. You must be alive to the possibility of fraud and unethical behaviour by your personnel and by any third parties, must not tolerate it and must have procedures to identify, address and counter it.

What if this Clause is breached?

5. Any breach of Clause 19.1, 19.2 or 19.3 by you or by anyone employed, or otherwise engaged, by you acting on your behalf (whether with or without your knowledge) is a Fundamental Breach.

Clause 20 How the contract can be ended

Replace the old text (below) with the new text (in the box)

1. You may, at any time, serve no less than three months' notice on us terminating this Contract.
2. Subject to Clause 20.3, if at any time while this Contract is in force, we are directed by the Department of Constitutional Affairs to implement new approaches to contracting under the Act we may, to enable us to give effect to the direction, serve no less than six-months notice on you terminating this Contract (or part of it).
3. Unless the direction by the Department of Constitutional Affairs expressly states otherwise, notices under Clause 20.2 are confined to notices affecting (a) all Contractors in a specified geographical area; or (b) all Contractors able to perform Contract Work in a specified Category of Work; or (c) all Contractors in a specified geographical area able to perform Contract Work in a specified Category of Work.
4. Within 14 days of receiving a direction under Clause 20.2, we will send a copy of it to The Law Society.
5. Any new approaches to contracting under the Act will be subject to consultation before implementation.

1. You may, at any time, serve no less than three months' notice on us terminating this Contract.
2. Subject to Clause 20.3, we may, at any time, serve no less than three months' notice on you terminating this Contract, or terminating specified powers, rights and authorities to perform Contract Work under it e.g. we may terminate your right to perform Contract Work in an Authorised Level of Service, or in a Class of Work, in a specified geographical area.
3. We will exercise our rights under Clause 20.2 only when we consider it necessary or desirable to do so in order to facilitate a Reform of the Legal Aid Scheme.
4. "*Reform of the Legal Aid Scheme*" means such reforms as we may wish to implement in order better to comply with our statutory duties or fulfil our statutory functions including (but without limitation) (a) such changes as we wish to make to, or related to, the CLS, CDS, or both, consequent on, or related to, Lord Carter's Review of Legal Aid Procurement; or (b) new approaches to procurement and contracting for the provision of publicly funded legal services.

Clause 21 Consequences of termination

Add to the old clause with the new sub-clause (in the box)

21.11 If TUPE applies on the termination of this Contract or part of it, the provisions in the TUPE Annex apply. TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006

TUPE ANNEX

Definitions

1 In this TUPE Annex:

Contract Work is all the work that you may perform under, or by virtue of, this Contract;

New Supplier means a Supplier selected by us to carry out work, similar to the Relevant Contract Work, on termination or expiry of this Contract (or part of it) or us (if we start to provide the Relevant Contract Work);

Relevant Contract Work means the Contract Work which, by virtue of the termination of this Contract (or part of it) you are no longer able to perform;

Supplier means a party (except us) to an LSC Unified Contract or a General Criminal Contract;

Termination Date means the date of termination of this Contract (or part of it);

Transfer Date means the date on which a New Supplier starts to perform Relevant Contract Work;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

TUPE Employees means all personnel assigned to Relevant Contract Work within the meaning of regulation 4(1) of TUPE.

References to “personnel” include e.g. employees, self-employed personnel, agency workers, partners (partnership), directors (company) and members (limited liability partnership).

Where any provision specifies “for example”, or “e.g.”, or otherwise gives examples, the examples given do not confine the application of the provision to examples of a similar kind.

Any references to part of this Contract terminating mean terminating rights or authorities under it.

Application of TUPE

2 You and we acknowledge and agree that TUPE may apply to this Contract and that, on the termination of this Contract (or part of it), a change in identity of the party performing Relevant Contract Work may constitute a relevant transfer for the purposes of TUPE.

TUPE Compliance on Termination

3 You must, within 7 days of our written request, give us and any third party nominated by us any information we may require about your personnel for example:

(a) Full details of all your personnel engaged in Relevant Contract Work who might be the subject of a transfer under TUPE including e.g. details of terms

and conditions of employment and benefits (including e.g. any bonus, incentive, profit sharing scheme, employee share scheme and life, accident and health insurance), working arrangements, outstanding obligations to increase remuneration, recognition agreements and redundancy schemes (including all those persons temporarily absent from work for any reason); and

- (b) Copies of all personnel and employment records (including without limitation National Insurance and PAYE records), employment contracts and statements of terms and conditions of employment and disciplinary records relating to your personnel engaged in Relevant Contract Work who might be the subject of a transfer under TUPE.
- 4 You warrant the accuracy of all the information provided under clause 3 (above) and authorise us to use it as we may consider necessary and for informing any New Supplier or prospective New Supplier.
- 5 Subject to Clause 6 (below), within 12 months prior to the expiry of this Contract and when either party gives notice of termination of this Contract (or any part of it), you are prohibited from:
- (a) Making any changes that would materially affect the liability of any New Supplier (or us) under TUPE;
 - (b) Terminating the employment of any TUPE Employee unlawfully or unfairly within the meaning of the Employment Rights Act 1996; and from
 - (c) Acting in any way that is unlawful.
- 6 You may make changes within the scope of Clause 5(a) (above) if they are necessary for your effective performance under, and compliance with, this Contract. However, where you do make any such change, the presumption shall be that the change was not necessary for your effective performance under, and compliance with, this Contract and the onus shall be on you to demonstrate (on the balance of probabilities) that it was.
- 7 Examples of changes within the scope of Clause 5(a) (above) are:
- (a) Terminating the employment of any TUPE Employees;
 - (b) Altering the terms and conditions of employment of any of the TUPE Employees;
 - (c) Recruiting employees to perform Relevant Contract Work;
 - (d) Reorganising the way in which you perform Relevant Contract Work, relocating the TUPE Employees or re-assigning their duties; and
 - (e) Making any promises that give rise to any benefits, or offering new terms.
- 8 You shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the TUPE Employees, including without limitation all wages, holiday pay,

bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions and otherwise up to the Transfer Date.

- 9 You will keep us and the New Supplier indemnified against all losses, claims, damages, other liabilities, costs and expenses (including reasonable legal costs and disbursements) arising directly from:
- (a) Any of your acts or omissions (and any acts or omissions of any sub-contractor of yours) prior to the Transfer Date; and
 - (b) Any liability in relation to any person who is not a TUPE Employee but who has been or is an employee of yours (or of a sub-contractor of yours) and which becomes our liability or a liability of a New Supplier by reason of the operation of TUPE.
- 10 You must indemnify us and the New Supplier against any action or claim by any appropriate representative (as defined in TUPE) or employee or former employee of yours (or of any sub-contractor of yours), arising out of your failure (or the failure of any such sub-contractor) to inform and consult with any appropriate representative or employee with regard to affected employees (as defined in TUPE) except to the extent that any such action or claim (or any part of such action or claim) arises from any failure to comply with Regulation 13(4) of TUPE.

Race Relations (Amendment) Act 2000

- 11 You warrant that you will comply with all our relevant obligations under the Race Relations (Amendment) Act 2000 (and any code of practice issued under it) and will indemnify us for any loss, expense or damage incurred as a result of any breach of such obligations.
- 12 You agree that you will provide us with all the information we reasonably request to allow us to monitor compliance with the Race Relations (Amendment) Act 2000 (and any code of practice issued under it) and to discharge our own obligations.

Disability Discrimination Act 2005

- 13 You warrant that you will comply with all our relevant obligations under the Disability Discrimination Act 2005 (and any code of practice issued under it) and will indemnify us for any loss, expense or damage incurred as a result of any breach of such obligations.
- 14 You agree that you will provide us with all the information we reasonably request to allow us to monitor compliance with the Disability Discrimination Act 2005 (and any code of practice issued under it) and to discharge our own obligations.

Equality Act 2006

- 15 You warrant that you will comply with all our relevant obligations under the Equality Act 2006 (and any code of practice issued under it) and will indemnify us for any loss, expense or damage incurred as a result of any breach of such obligations.
- 16 You agree that you will provide us with all the information we reasonably request to allow us to monitor compliance with the Equality Act 2006 (and any code of practice issued under it) and to discharge our own obligations.

Sub-Contractors

- 17 If you enter into any sub-contract in connection with this Contract, you must impose obligations on the sub-contractor in the same terms as those imposed on you pursuant to this TUPE Annex and ensure that the sub-contractor complies with them.
- 18 You must indemnify us and keep us indemnified, in full, from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by us as a result of, or in connection with, any failure on the part of the sub-contractor to comply with such terms.