

The Preferred Supplier Scheme

Questions and answers for providers

[Link to Lord Carter's Review of Legal Aid Procurement](#)

1. How does Preferred Supplier link to Lord Carter's proposals?

Lord Carter's Review of Legal Aid Procurement, published on 13 July 2006, sets the context for the Preferred Supplier scheme. The Preferred Supplier scheme will determine who we work with, and how, in the future. 'Legal Aid Reform: They Way Ahead' provides the framework for how we will procure services.

Lord Carter identified a market-based approach to procurement where work is purchased from providers who can deliver best value services to clients. Quality will be at the forefront of best value tendering and only providers that have passed the appropriate quality threshold will be asked to bid on capacity and price. 'Legal Aid Reform: The Way Ahead' endorses peer review and the Preferred Supplier approach as the quality threshold for these reforms.

Preferred Supplier provides a platform to deliver changes that underpin Lord Carter's recommendations. More stringent quality assurance through peer review will help consolidate the market and improve value for money. Through relationship management, Preferred Supplier supports provider organisations to manage their performance better, thus allowing them to compete in the market more effectively. Preferred Suppliers will be rewarded with greater autonomy, simpler processes and lower transaction costs.

Preferred Supplier strongly enables the move to fixed, standard and graduated fees, as it delivers a formalised method to ensure the quality of the work undertaken under the fixed fee is maintained.

2. How does Preferred Supplier relate to the LSC's contracting strategy?

Managed competition for all civil legal aid services will be introduced in some form from April 2009 over a two to three year period. Managed competition for criminal legal aid services will be introduced progressively from October 2008. Preferred Supplier will ensure that the services we buy will be of good quality.

Whilst we will apply flexible rules to meet the needs of the early best value competitions and the overall timetable, in future best value tendering processes for both crime and civil work, only Preferred Suppliers will be entitled to a contract award, although Preferred Supplier status in itself will not be a guarantee of a contract.

For the first round of best value competition, we will accept a peer review score of 3 for crime providers in recognition of the fact that not all providers will be able to achieve the Preferred Supplier standard of a score of 1 or 2 in the time available. In subsequent competition rounds we will require providers to meet the Preferred Supplier standard to be eligible to compete.

Consultation

3. What level of response did you receive to the Preferred Supplier consultation?

A total of 117 responses were received from 69 solicitor firms, 24 not for profit (NfP) agencies, 15 representative bodies and nine 'other'. As part of the consultation process the LSC held 55 solicitor events and 11 NfP events across England and Wales. These were well attended by over 50% of

solicitors' firms and 70% of NfPs. We received over 800 feedback sheets from those events. We are grateful to all those who took the time to attend an event and/or produce a written response.

The tone of responses varied considerably: some respondents were entirely in favour of the Preferred Supplier scheme; many were positive overall but had certain reservations; a small minority were strongly opposed to the proposals.

Broadly, respondents were positive about the proposed lighter-touch performance management regime, the use of peer review, the move to relationship management and greater electronic working. Key concerns included the impact of the proposals on clients' access to advice, the impact on providers, the LSC's expectation of improved quality without increasing remuneration, the link to the Carter Review and a lack of detail overall.

Preferred Supplier entry and assessment

4. What has changed on Preferred Supplier since the consultation earlier this year?

Since the Preferred Supplier consultation ended in June, we have analysed the consultation feedback carefully and in light of this and 'Legal Aid Reform: The Way Ahead', we have further developed our proposals for the Preferred Supplier scheme. The result is a revised process using key performance indicators (KPIs) and file assessment value for money (FAVFM) as filters for peer review.

Entry process

KPIs will be used from April 2007 to monitor providers' performance against targets set out in the Unified Contract. This will result in a red/amber/green (RAG) status.

Once a provider complies with the following:

- a RAG status of green against their KPIs for an agreed period of time
- regularly using the Commission's e-business services
- can produce a suitable future readiness plan for fully electronic processes, electronic case management system, devolved powers, devolved client administration and simplified working,

they will undergo **file assessment value for money** (FAVFM), the result of which will be a separate RAG status of red/amber/green.

If both KPIs and FAVFM are rated green, **peer review** or **file assessment (quality)** will then be used to confirm Preferred Supplier status. All providers who achieve a peer review rating at level 1 or 2 or a file assessment (quality) pass in all their categories will be awarded Preferred Supplier status.

Although crime providers will not move to the Unified Contract until April 2008, we aim to treat crime in the same way as civil in terms of eligibility for Preferred Supplier status. This may include allowing crime providers to sign up to the Unified Contract on a voluntary basis prior to April 2008 if they wish to become a Preferred Supplier. It may also be necessary to undertake elements of the assessment process in a different order for providers that hold criminal contracts due to legal aid reform timelines but so far as possible we will aim to roll out a similar process for crime and civil and will seek to adopt a "whole provider" approach.

Benefits of the revised approach

This revised approach meets many of the concerns expressed on consultation, particularly those highlighting the impact on small firms and the need to give practitioners sufficient time and support

to achieve Preferred Supplier status. It should also enable the Commission to bring forward some of the benefits of Preferred Supplier status including electronic working and devolved powers for those providers who demonstrate good performance and, of course, relationship management.

5. Specifically, how have the entry criteria changed?

As a result of feedback from providers we have reviewed the entry criteria for Preferred Supplier. The table below summarises the comparison of the new entry criteria with the original.

Original Proposed Entry Criteria	Current Proposed Entry Criteria
General eligibility criteria	
Cost Compliance Audit (CCA) rating of 1 or 2 in all General Civil and Criminal Contracts held.	No longer required as will be addressed through contract management.
No Contract Termination Notice.	Prerequisite to grant of the Unified Contract, rather than Preferred Supplier status.
Value for money criteria based on procurement regime implemented following Lord Carter's review.	Incorporated into the Unified Contract Key Performance Indicators (KPIs) and File Assessment Value for Money (FAVFM), both Preferred Supplier entry criteria.
No outstanding Critical Quality Concerns from most recent SQM audit.	Retained as entry criterion.
Provider self-declaration re: - no adverse Consumer Complaints Service or Solicitors Disciplinary Tribunal (SDT) findings in previous 3 years - not subject to any ongoing official investigation.	Retained as entry criterion. The relationship manager working with the provider will investigate adverse findings.
Use of LSC electronic facilities and agreement to deliver all data electronically as facilities become available.	Retained as entry criterion. Submission of suitable readiness plan for future mode of operation, including electronic facilities.
	Green rating for performance against contract Key Performance Indicators.
Category specific eligibility criteria	
Crime	
<ul style="list-style-type: none"> Supervisor – Member of Criminal Litigation Accreditation Scheme (CLAS). <i>Quality assurance 1</i> – Self-declaration at least 80% of police station advice and assistance instances are conducted by designated fee-earners. <i>Quality assurance 2</i> – Self-declaration at least 80% of instances of advocacy at the magistrates' court are conducted by designated fee earners. <i>VHCC criteria</i> – undefined. 	LSC do not intend to proceed with category specific requirements for crime, though may revisit this as part of implementation of legal aid reform.
Family	
<ul style="list-style-type: none"> <i>Best practice</i> – All work to comply with Law Society Family Law protocol for private law cases or the Law Society Good Practice Guide in Child Care cases. <i>Family Advice and Information Service (FAInS)</i> – requirements. 	Requirement to comply with the Law Society Best Practice Protocol and provide clients with an integrated service that focuses on the provision of alternative dispute resolution services.
Immigration and Asylum	
<ul style="list-style-type: none"> <i>Success rates</i> – Devolved powers for 	Requirement will be applicable to all immigration

immigration/asylum or demonstrate devolved powers criteria including at least a 40% + success rate for Controlled Legal Representation.	and asylum providers under the Unified Contract. Not Preferred Supplier specific.
Clinical Negligence & other Damages Cases <ul style="list-style-type: none"> • <i>Panel membership</i> – Existing requirement for Clinical Negligence work to be supervised by a member of the Law Society or Action against Medical Accidents (AvMA) specialist panels. • <i>Success rates</i> – Demonstrable record of achieving 50% + success rate on certificated cases where proceedings are issued. 	Remains a Preferred Supplier requirement and likely to become a Preferred Supplier KPI though the percentage is under review.
Financial Assessment	
Full final accounts for the three most recent financial periods.	Most recent set of audited accounts only, plus a short questionnaire. No longer entry criteria for Preferred Supplier but will be used to found the open book relationship with the LSC.
Evidence of compliance with Charities Commission/network bodies' requirements.	Not a routine aspect of the initial financial assessment process. May be required in the case of red/amber indicators only.
Financial information from most recently completed accounting period.	
Copy of current business plan.	
Details of sources of other funding.	
Future capacity (by reference to historic turnover and performance or equivalent proxies) and detailed business plans.	No longer Preferred Supplier entry criteria. May form part of best value competition bid.
Quality of Advice	
Peer review scores of 1 or 2 in specified major categories.	Peer review rating of 1 or 2 for all categories where value of legal aid work exceeds £50,000.
File Assessment (quality) pass for all remaining minor categories.	File assessment pass required for all categories of £50,000 or less. If no category exceeds £50,000 the largest category by value will be peer reviewed and a rating of 1 or 2 required.
Bill Assessment	
Satisfactory bill assessment rates (where a solicitor is employed).	Unified Contract KPI feeding into the provider's overall KPI RAG rating.

6. What are the key differences between peer review and file assessment (quality)?

File assessment (quality) is a new tool designed to indicate whether a provider is likely to meet the peer review standards. A pass at file assessment is equivalent to a rating of 1, 2 or 3 on peer review. A file assessment fail equates to a score of 4 or 5 on peer review.

File assessment (quality) is not another form of transaction criteria or CCA audit. A major difference between file assessment and transaction criteria and contract compliance is that peer reviewers, who are actively involved in the LSC caseworker training programme, have developed the questions specifically to provide a correlation with peer review results. LSC senior caseworkers trained by peer reviewers will carry out file assessments. The criteria questions are objective and are answered on the basis of evidence from case files. The questions have been specifically developed for use by caseworkers and do not require specialist legal knowledge.

Should an organisation fail this part of a file assessment, a peer review will be conducted on the same sample of files. This means that no adverse consequences occur as a direct result of the file assessment outcome. Preferred Supplier status will not be awarded on the outcome of file assessment alone.

7. What is the determinant for deciding whether to use peer review or file assessment to assess quality?

We intend to proceed as proposed on consultation i.e. focus peer review resource on major categories where the total value of legal aid work exceeded £50,000 in the previous year and use file assessment (quality) for categories valued at £50,000 or under.

If no category has a total value of legal aid work above £50,000, the largest category by value will be peer reviewed. No provider will complete the quality assessment process without having received at least one peer review.

8. The paper refers to a value for money assessment. How will this be achieved?

As we move towards fixed fee payment regimes and ultimately best value competition, purchase of services at a fixed agreed price at a quality level controlled by peer review and the contract specification will be our major guarantee of value for money. As well as KPIs, this guarantee will be supplemented by file assessment value for money (FAVFM) used as a precursor to entry.

FAVFM consists of a series of questions applied by trained senior caseworkers, which will result in a risk rating for an organisation on its performance against the Unified Contract, regulations and Funding Code. Any issues identified at this stage will be the subject of a report to the provider. This report is designed to enable practitioners to rectify the issues prior to validation by the LSC.

FAVFM will be used to:

- identify contract issues that would not be identified using quality assessments or from distant monitoring
- ensure that all clients receiving funding have had eligibility correctly assessed and that evidence of means is evidenced on file
- ensure that cases undertaken are both in scope and meet the sufficient benefit test
- assess whether certificated work remains within scope and the costs limits of the certificate
- assess where providers have exercised devolved powers they have done so appropriately
- ensure that recording of matter type and end code are accurate
- provide ongoing monitoring of compliance with the contract to identify areas for performance improvement.

9. Why is financial disclosure necessary and how does this fit into the process?

An open book relationship is a key part of the Preferred Supplier relationship. The purpose of the assessment is two-fold:

- To give real value to a Preferred Supplier, the relationship manager needs to understand the provider's finances. The financial assessment is the relationship manager's introduction to that understanding.
- The LSC needs to be confident of the financial stability of the providers we procure services from. As we move towards best value competition the LSC must be confident that successful providers have the financial stability to deliver the services the LSC wants to buy.

Having considered carefully the comments made on the financial assessment proposals, we have revisited both the level of information required and the way in which the assessment itself fits in with the entry process.

The initial assessment will be carried out on the basis of a questionnaire completed by the provider giving information on staff, partners and key financial information. The questionnaire will be supported by the provider's most recent set of audited accounts, which is the only financial documentation that we will require at that stage. The questionnaire will be completed when a relationship manager is assigned to a provider. The information will be used to found the Preferred Supplier open book relationship, rather than as an entry criterion.

Performance management

10. What will be the primary measures for managing the performance of a Preferred Supplier?

Key Performance Indicators (KPIs) will be used to monitor providers' performance against targets set out in the Unified Contract. This will be an unobtrusive management approach, using data collected throughout the life of the contract, monitoring trends and variances. Relationship managers will communicate any positive findings or concerns on an ongoing basis, resulting in an agreed forward-looking strategy. Our aim is that providers will be able to access current scores and trends using e-business.

Quality Profiles will be used by the relationship manager and provider as part of ongoing remote monitoring once the revised codes are in place, planned for Spring 2007.

Peer Review results are valid for three years, but the LSC reserves the right to peer review a provider again within this time if triggered by a change in fee earner(s)/supervisor(s) or to address concerns raised as part of ongoing performance management.

The LSC's expectations are that, subject to any transitional arrangements, NfP agencies will operate under the same terms as solicitors under the Unified Contract and provide equal value for money.

Scheme benefits

11. What benefits are there to becoming a Preferred Supplier?

Key benefits for the legal aid providers are:

- The provider will be eligible to enter any future best value competition process
- Simplified working
- Lower transaction costs
- Greater devolution in decision making
- Improved customer service via an LSC Relationship Manager
- Faster turnaround on those civil applications and amendments that still need to be referred to the LSC.
- Partnership working which is open and responsive

12. What will happen to current legal aid providers who do not achieve Preferred Supplier status?

Early feedback relating to the provider's performance against the contract KPIs will be advisory only to give time for practitioners to become familiar with the KPIs. Those with initial amber or red ratings for the contract KPIs will be given an opportunity to improve.

Eventually, all providers will need to be preferred, though the transition process is likely to take a period of years. The LSC is committed to supporting providers through this transition and the revised process is intended to give providers longer to prepare for the quality assessment element.

Impact on provider base

13. What impact will the Preferred Supplier proposals have on the provider base?

The revised Preferred Supplier entry criteria create a level playing field as entry to the scheme is open to all and is primarily performance driven. Any size of provider is eligible to apply for Preferred Supplier status.

A single impact assessment has been conducted against both Preferred Supplier and the LSC and DCA publication 'Legal Aid Reform: The Way Ahead'. This is available via the LSC websites at www.legalservices.gov.uk.

14. Will a minimum contract size be introduced?

Minimum contract sizes no longer form part of Preferred Supplier entry criteria. A minimum contract size may be introduced for crime providers when the new police station boundary areas are implemented.

It is clear that issues of access and impact need to be considered carefully before any minimum contract size is introduced. A minimum contract size may be introduced in the future and the new Unified Contract will include the power to introduce one if and when it becomes appropriate.

Next Steps

15. What is the plan for Preferred Supplier going forward and when might we be invited to attain Preferred Supplier status?

Peer review of very high cost criminal case providers began in September 2006 and will run until spring 2007. Competition for criminal legal aid services will be introduced progressively from October 2008. We will make an announcement early next year on how we will target further peer review roll out from April. This is likely to be linked to the areas that will be subject to best value competition for crime.

All civil legal aid services are likely to be competed for in some form from April 2009 over a two to three year period. Preferred Supplier will ensure that the services we buy will be of good quality. Whilst we will apply flexible rules to meet the needs of the early best value competitions and the overall timetable, in future best value tendering processes for both crime and civil work, only Preferred Suppliers will be entitled to a contract award, although Preferred Supplier status in itself will not be a guarantee of a contract.

For crime, we will accept a peer review rating of 3 (Threshold Competence) to qualify for entry to the first best value competition round. A rating of 3 will not qualify the provider for Preferred Supplier, but recognises the fact that not all providers will be able to achieve the Preferred Supplier standard of a peer review rating at 1 or 2 in the time available. In subsequent competition rounds we will require providers to meet the Preferred Supplier standard to be eligible to compete.

A detailed timetable will be published shortly setting out how Preferred Supplier fits with the key milestones for the civil and criminal schemes in light of the timetable for implementation of the procurement reforms.

The LSC's move to relationship management is progressing well with the first round of relationship manager recruitment and training underway.

Key milestones:

Timeline/event	Civil contract providers	Crime contract providers
Early 2007		<ul style="list-style-type: none"> Further announcement on best value competition roll out areas
	<ul style="list-style-type: none"> Preferred Supplier final scheme and timetable published 	
Spring/Summer 07	<ul style="list-style-type: none"> Unified Contract introduced (April 2007) KPI monitoring commences 	<ul style="list-style-type: none"> Peer reviews begin in line with best value competition roll out Peer review 3 result means eligible to bid for best value competition contract Peer review 1 or 2 is a precursor for Preferred Supplier status
Throughout 07/08	<ul style="list-style-type: none"> KPIs become green FAVFM undertaken Peer review if KPIs and FAVFM are rated green (peer review may be undertaken sooner by agreement with provider) 	<ul style="list-style-type: none"> Where peer review 1 or 2 is achieved, FAVFM undertaken KPI monitoring commences (April 2008)
October 2008		<ul style="list-style-type: none"> Best Value Contract awarded to firms with peer review 1, 2 or 3. Some will be Preferred Suppliers that have bid successfully; some may not yet have achieved that status
Subsequent best value competition contracts	<ul style="list-style-type: none"> Best Value Contract awarded only to Preferred Suppliers 	

16. What can providers do to prepare for Preferred Supplier?

The most effective way of preparing for quality assessments is to ensure adequate and comprehensive supervision arrangements are in place and that your organisation formally examines feedback from that supervision. This should be supplemented with a rigorous file review process, ensuring that a good range of work from every advisor is assessed.

The LSC is committed to supporting providers to improve the quality of advice provided to clients. Best practice workshops have been delivered in partnership with the Law Society and Advice Services Alliance and led by peer reviewers, focused on improving quality. The LSC has also published general findings from the peer review process, which highlight common problem areas with suggested identification mechanisms to enable improvement on a category specific basis.

These are available via the LSC website at www.legalservices.gov.uk. File assessment questions for each category of law will be available on the LSC website in Spring 2007.

You can start to use our existing e-business services, if you are not already doing so. You can also start to give some thought as to how you may prepare for the process of procuring (if necessary) an IT system and developing your future business processes.