

The Unified Contract

Review of responses to the consultation

26 February 2007
Corporate Legal Team

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Introduction

This document is the post-consultation report on the draft Unified Contract Standard Terms issued by the Legal Services Commissions on 9 October 2006.

It provides:

- A background to the report; and
- A summary of the responses to the draft contract clauses.

Further copies of this report are available from the Legal Services Commission website (www.legalservices.gov.uk)

This report should be read in conjunction with the final version of the Unified Contract Standard Terms which can be found at:

www.legalservices.gov.uk/civil.asp

Overview of the Unified Contract Standard Terms

1. The Unified Contract will prepare the way for the Reform programme¹ and will address issues arising from the operation of the General Contracts.
2. 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.
3. The Unified Contract will replace the General Criminal Contract from 1 April 2008. In the interim period the General Criminal Contracts will extend automatically, from 1 April 2007 to 31 March 2008, and a separate consultation was held on changes to the General Criminal Contract from 1 April 2007.
4. 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.

5. 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

6. Example 2: Provider B – NFP with 1 office doing civil and mediation work

Previously held:

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

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

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

7. 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 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)

8. *Key Documents*

The documents which comprise the Unified Contract have now been published and are as follows:

- Contract for Signature and Annexes;
- Office Schedules
- Standard Terms and Annexes; and;
- Specification as prescribed²

² E.g. Solicitor, NfP, Mediation

Background to the Consultation

9. The Legal Services Commission (“LSC”) issued on 9 October 2006, a consultation, which comprised of a number of contract documents making up (in part) the Unified Contract.
10. In our consultation paper Legal Aid: a sustainable future (published July 2006) we put forward a number of proposals concerning legal aid contracts from 1 April 2007. In that paper, we said that we wished to introduce a Unified Contract on 1 April 2007, which would cover civil legal aid from that date (as the current General Civil Contracts expire on 31 March 2007)³.
11. In early October, we sent draft contract documents to representative bodies to begin consultation with them on the detailed terms. We also wrote to all legal aid providers after to tell them what we were doing and informed them that they could see the draft Unified Contract documents on our website.
12. The consultation on the Unified Contract closed on Tuesday 21 November 2006 and a series of meetings with the key representative bodies continued over the following 3 months.
13. In November 2006, the joint DCA and LSC paper ‘Legal Aid Reform: the Way Ahead’ CM6993 explained that, although the Unified Contract will come into force on 1 April 2007, the Contract Specification will remain largely unchanged (i.e. it will remain largely the same as the current General Civil Contract Specification), until revised fee schemes come into force in October 2007. There will be further consultation on proposed changes to the Specification in 2007 with a view to implementation in October 2007⁴.
14. The final meeting with the representative bodies concluded on 21 February 2007.

³ For the outcome of that consultation see - www.legalservices.gov.uk/civil/docs_for_consultation/openConsultations002.asp

⁴ Any responses to the proposed changes to the Specification published in October will be fed into the consultation responses on the Specification due to be published in 2007.

Summary of responses

15. A total of 80 written responses to the draft contract documents were received.
16. Of these 13 were from the main representative bodies, including the Law Society, the Legal Aid Practitioners Group and the Advice Services Alliance.
17. Of the remaining 67 responses, 55 were from NfP organisations and 12 from individual solicitors and solicitors firms⁵.
18. Of the 55 responses from the NfP organisations a number were replications of the national CAB or Law Centre Federation's responses.

⁵ See Appendix A for a full list

Responses to *draft* contract documents

19. The Unified Contract (“the Contract”) documents published in February 2007 have changed significantly compared to those published as part of the consultation in terms of:

- Structure;
- Wording; and
- Contractual provisions.

20. In this section, the response to the consultation on contract provisions has been summarised. Below each summary is the LSC’s response in italics, which sets out the current position in the final Unified Contract documents and reasoning where necessary.

21. A reference to ‘draft Clause’ refers to a clause in the original draft documents published on 9 October 2007. Reference to ‘Clauses’ refers to clauses in the final versions of the contract documents, which should be read in conjunction with this paper.

The Consultation Process

22. The majority of respondents were concerned that the time scale of 6 weeks for consultation on the contract terms was unreasonable and a full 12 weeks should have been the correct consultation period.

LSC response:

The Unified Contract will facilitate the implementation of the reform programme as consulted on throughout 2006 and as set out in Legal Aid Reform: the Way ahead. Substantive proposals to change certain terms were as a direct result of that consultation and in order to ensure the programme of reforms can be implemented in the future.

Consultation on the Contract itself was primarily with the representative bodies. Whilst legal aid providers were encouraged, via the website, to make their views known to their representative body, the LSC did accept and consider all individual responses received.

Following discussions on contracting policy, which commenced in the summer of 2006, the initial contract documents were published in October. Although the formal period for consultation closed on 21 November 2006, the LSC continued to discuss the contract both in meetings and via the

exchange of documents with the representative bodies until the end of February.

In the circumstances the LSC considers that it has fully engaged with the representative bodies on the terms of the contract for an extended period of time.

23. All Nfp respondents stated that there was a requirement for a transitional period for NFPs.

LSC response:

There will be transitional provisions for NfPs, which are currently being considered with ASA and will be communicated shortly. NfPs will be issued with 6-month schedules on current terms, save that payments will be monthly in advance rather than quarterly as at present.

Standard Terms

Foreword

24. A number of respondents did not agree that there should be one contract between a legal aid provider and the LSC and the LSC should continue to contract on an office base and not with an organisation as a whole.

LSC response:

This opinion was contrary to the majority of responses to the earlier consultation 'Legal Aid: a sustainable future'.

The intention of a single Unified Contract for each organisation is to enable Suppliers to both manage their contract more effectively and to facilitate a more streamlined contract management operation especially as the organisations will move towards Preferred Supplier status. It will also enable the LSC to reduce its administrative spend, saving public funds.

Interpretation

25. A number of respondents asked for further clarification as to the definition of 'Maximum POA'. Whilst most respondents accepted that the LSC has to put in place measures to control money and in particular payments made on account, the definition and the draft clauses associated with POAs did not explain clearly how this would operate in practice and the types of payment it would include (draft Clause 17). In addition the ability

in the contract for the LSC to recoup POAs was objected to where a case was clearly still on going. A preferred method was for the LSC to use a system whereby the Supplier would report on the status of a matter.

LSC response:

Limits on POAs will assist the LSC to control its budget. Whilst the Unified Contract gives the necessary ability to set limits, these will not be set from 1 April 07 and not without further consultation. The definition of Maximum POA has been amended to provide further clarification as to the meaning (see Definitions). Provisions regarding POAs will remain the same but the Clauses have been amended to provide further clarification (see Clause 14 and 17).

26. The majority of respondents were opposed to the removal of the clause, which had appeared in the General Civil Contract, guaranteeing Suppliers in their next year's schedule at least 80% of the matter start used in the previous year.

LSC response:

This clause has been reinserted into the Contract (see Clause 11A.9).

Relationship (Clause 2)

27. A majority of respondents did not agree with draft Clause 2.2, which referred to the requirements for Suppliers to 'aim to continually improve services' and 'to notify us of improvements in the judicial system'.

LSC response:

The above terms have been removed from Clause 2.2, although the LSC remains of the opinion that it is in the interests of legal aid to work together to improve the justice system.

Communication (Clause 3 and also Annex A)

28. The majority of respondents found the terms 'Liaison Manager' and 'Compliance Representative' confusing. It was felt that the latter role was not needed and that the term Quality Representative was sufficient.

LSC response:

This point partly reflects the slightly different language used in the current Solicitor and Not for Profit contracts. The term 'Compliance Representative' has been removed from the Contract documents. However Suppliers must still nominate a Liaison Manager (see Clause 3.1) who will liaise with the LSC Account Manager or Relationship Manager on issues wider than just quality. These include performance and other issues arising under or in connection with the Contract. The term Liaison Manager is used to reflect the wider remit of this role.

29. A number of respondents were concerned by the requirement for Suppliers to communicate via email (see also Clause 24). Whilst most respondents supported the LSC's move to establish more email communication with Suppliers, there was a general objection to the LSC being able to give notices under the Contract by email. Respondents felt that service via email should be something (at least in the short term), which is voluntary, to allow time for Suppliers to develop their IT capacity.

LSC response:

The LSC consider that electronic communication will be beneficial for all parties by reducing transaction costs and improving communication. The representative bodies agree that the requirement for one designated email address and access to our website is not unreasonable.

Clause 24.2(c), which refers to notices by email, has been amended so that a confirmation copy of the notice sent by DX or first class post will follow all notices sent by email.

Financial Disclosure and Risk (Clause 4)

30. The majority of respondents were concerned about the requirements for financial reporting and in particular the requirement for an 'open book' approach to providing information to the LSC (see draft clauses 2.13 – 2.15). Whilst there was an acknowledgement of the need for the LSC to protect public money, respondents felt that there should only be a requirement for disclosure where the LSC had legitimate concerns about a Supplier's financial stability. A number of respondents were concerned that the clause as drafted gave the LSC a general power, which is unnecessary when certified accounts are sufficient for LSC's purposes.

LSC response:

There have been a number of amendments to Clause 4 on financial disclosure and risk. In particular, it now makes direct reference to Nfp financial requirements being equal to those required by the Charity Commission and an extension to the timeframe for completion of accounts from 4 to 8 months from the end of the accounting period.

The term 'financial viability' has been removed.

Further Clause 4.2 financial risk has been redrafted so that accounts are only required in specific circumstances e.g. if there is an Official Investigation or financial concern (unless you intend to qualify as a Preferred Supplier where you must disclose financial information).

31. All respondents who were Nfps confirmed they would not sign the contract whilst it included indemnity requirements from Trustees etc. A number of respondents accepted that that LSC would require indemnities from organisations operating with limited liability however the contract term as drafted was too wide.

LSC response:

The LSC's current practice is to request indemnities and guarantees from limited liability organisations, where the LSC considers it is in the public interest to do so. In practice, these have been signed by organisations when required. However, Clause 4.4 has been amended to clarify who will be required to sign indemnities should the LSC's discretion be exercised.

With regard to Nfps, the LSC did not intend to require indemnities from registered charities and Clause 4.4 has been amended to reflect that position.

32. The majority of respondents expressed concerned about the 'risk rating', which the LSC intended to attach to a Supplier (draft Clause 2.24). In particular there was no criteria in the Contract to explain how the risk rating would be determined or the mechanisms for a Supplier to make representation against any rating.

LSC response:

The LSC have accepted the concerns of the respondents and this clause has been removed.

Equality and Diversity (Clause 5) and Annex C

33. Most respondents were concerned that the information on Equality and Diversity was not published earlier enough to comment. However those respondents that did address the Contract on this issue felt that the Annex required further development as to its aims and purpose.

LSC response:

The LSC has continued to develop these provisions with the representative bodies, who have approved the terms in Clause 5 and Annex C. LSC are confident that the requirements are necessary and achievable by all Suppliers to ensure the aims of the legislation can be met. In addition and have extended the time for compliance to October 2007 to allow providers to make any necessary changes to their practice and procedures.

Logos and Marketing (Clause 6)

34. The majority of respondents felt that the marketing restrictions were too restrictive and worked contrary to the Commission's policy to move to a competitive market place. As Suppliers were now being asked to operate in a market-based system, a wide restriction on marketing was inappropriate.

LSC response:

Clause 6 now contains the provisions on marketing. The LSC have taken on board the criticisms of the original marketing restrictions and amended the Contract to identify specific circumstances when Suppliers are restricted from marketing their services, consistent with previous practice.

Looking after Clients, compliance and self monitoring (Clause 7)

35. The majority of respondents expressed concern about the extent of the IT requirements and in particular the cost to the Suppliers. Requirements for case management systems and the 28 days notice provisions to change internal systems were deemed unreasonable. More clarification was required as to the extent of any changes, which would be imposed on Suppliers.

LSC response:

Clause 7 and the Monitoring Annex now contain all the information on case management systems etc. Whilst the LSC understands Suppliers' concern, the changes will be mutually beneficial when the LSC's new Supplier Management System is launched which will allow Suppliers to log in directly to the LSC's system to see information on their contract and performance. The LSC has however included in Clause 7.3 that it will consult with the Consultative bodies prior to bringing in any mandatory IT requirements.

The Clause remains to allow the LSC to give at least 28 days notice of any changes to systems and reporting.

36. The majority of respondents were concerned that the draft Clause 3.13 and 3.18 regarding the LSC's right to access to premises etc gave the LSC too wider discretion. Respondents felt the draft clause allowed the LSC access at any time with little requirement for it to be reasonable and for a specific purpose.

LSC response:

Access arrangements are now found in Clause 7.4. This Clause has been amended to confirm the situations when we would require 'prompt access' to a Supplier's premises, e.g. to audit or to facility an Official investigation.

37. Whilst most respondents were not opposed to the idea of mystery shopping, concern was expressed as to how this would be carried out and in particular what the agreed protocol would be.

LSC response:

Clause 7.9 now contains the information on mystery shopping. This Clause has been amended to confirm that the LSC will follow the Market Research Society Code of Conduct and that a Supplier will be provided with the information obtained from any assessment.

38. A number of respondents did not consider that there should be a contractual requirement to maintain a risk register, as required by draft Clause 3.25, as this was a matter for the individual organisation.

LSC response:

The LSC agreed with the respondent's position and removed this draft clause.

39. A number of Respondents were unclear as to how the SQM fitted into the new contract documents. A number of respondents were opposed to the removal of the SQM as a contract document.

LSC Response:

The SQM is remaining but not as a contract document. However, the SQM will be the QA standard required for all Suppliers, although Preferred Suppliers can be relieved from compliance with the SQM. This delivers our policy set out in the Preferred Supplier consultation response “Quality Relationships Delivering Quality Outcomes” (December 2006). As the Unified Contract is moving towards a single organisation approach, the same QA standard would need to apply to all offices in that organisation (assuming they all do Contract Work).

Approved Personnel and Supervisors, KPIs (Clause 10 and Annexes F and G)

40. A number of respondents stated that the clauses relating to Approved Personnel were unclear and further Annex F needed to express more clearly the requirements in relation to Supervisors and training.

LSC response:

These requirements have been amended to provide further clarification. However clauses referring to ‘Approved Personnel’ remain to ensure only such staff can undertake contract work. This reflects current practice and is in the interests of clients.

41. A number of respondents were concerned with the provision regarding KPIs, mainly it appears due to the lack of information contained in the draft contract documents. Respondents expressed that no reference should be made to KPI's in the Contract until they were fully developed and only after consultation with the representative bodies. Specific concern was made over the meaning of 40% ‘success rate’ and it was felt that further work was need to clarify how this term to cover all categories of law.

LSC response:

These provisions have been amended and contain more guidance on their operation in practice, although they are an important part of the move away from intrusive auditing and towards remote monitoring. We have set out the KPIs so people know what they are and can form a view on their ability to comply with them. We had already stated that we would not treat

a failure to meet the KPIs as a breach of contract on their own without first making a contract amendment to that effect. We have amended the Clause to make it clear that failure to meet the KPIs will not be a breach of contract until further notice and in any event not before 1 April 2008 (although it is likely that the KPIs will form part of the entry criteria for Preferred Supplier).

42. The majority of respondents were in favour of Peer Review as a process for monitoring quality of legal advice. However concerns was expressed regarding the robustness of the current system.

LSC Response:

The Independent Peer Review process was published in November 2005 following extensive consultation and negotiation with the representative bodies. That process includes a review and provisions to ensure that no contract will be terminated unless a Supplier has effectively failed peer review twice. In these circumstances we think there is sufficient protection for the Supplier.

Schedules (Clauses 11A –C)

43. Respondents expressed concerns as to the minimum matter start requirements because there could be a wide range of legitimate reasons why this may not be achieved e.g. staff absences, or a change in LSC policy restricting clients. The requirement to start 75% by 31st of December in the contract year or lose them all in the following year was seen to be an unfair penalty clause.

The majority of respondents opposed the Commission's policy to move towards minimum contract sizes. More understanding was required into why smaller contracts existed, for example to serve rural communities or minority ethnic communities.

LSC response:

The LSC will not introduce the additional provisions in relation to maxima and minima without further consultation. However, Suppliers need to recognise that the LSC does have to live within a limited budget and setting maximum numbers in relation to all Contract Work will give us greater control in relation to the budget while minimum numbers ensure services for clients. Bid Zones will remain as part of the Office schedules to assist in meeting identified need in a specific area.

Amendments (Clause 13)

44. The majority of respondents were opposed to the Commission being able to amend the Contract at any time (and not twice a year as in the General Contracts). Any amendments are disruptive for Suppliers and remove certainty. However at the very least changes should only be implemented after consultation.

LSC response:

The ability to amend the Contract is necessary because of the magnitude of the forthcoming reforms, however we are committed to not making major changes without consultation. Further clauses have been inserted to allow a return in 2010 to twice yearly “windows” for amendments.

Your account with us (Clause 14)

45. The majority of respondents were opposed to the removal of the automatic £250 payment on account on the grant of a certificate. A number of respondents believed that a high initial POA was required to assist Suppliers with cash flow.

LSC response:

There will be no automatic £250 POA. However a POA can be claimed after 3 months (previously 6 months) for licensed work, which we are confident, will improve Suppliers’ cash flow and financial control of work done under a Certificate. Both Suppliers and the LSC have acknowledged that changes must be made to control payments on account to protect public monies and assist contract management for all parties. The Contract includes tighter provisions covering payments on account (POA), although Suppliers will be given an opportunity to make representations against recoupment before it is made.

Claims (Clause 15)

46. A number of respondents were opposed to the draft Contract clause requiring claims to be made on time or the Supplier risking not being paid. This Clause was deemed to be a penalty clause.

LSC response:

This Clause remains (see Clause 15.8). It is important for the LSC to control its budget to enable it to forecast expenditure. However this Clause is discretionary and only 'frequent failure' to submit claims on time may lead to a sanction etc.

Payment and Assessment (Clause 16)

47. A number of respondents were concerned that the LSC could withhold VAT payments, which may have been omitted by the Supplier in its original claim.

LSC response:

It is for Suppliers to ensure that their Claims are accurate and include VAT where properly due. Therefore, Clause 16.3 does not oblige the LSC to pay VAT if it has been omitted in the original claim. However where there has been an occasional clerical error' the VAT will be paid.

How and when we pay for Contract Work and Repayment (Clauses 17 and 18)

48. A number of respondents were unclear as to the payment arrangements under the Unified Contract and in particular the composition of the Standard Monthly Payments.

LSC response:

Clause 17 relating to payments has been amended to provide further clarification. As per the Reforms, NfPs will be paid monthly in advance from April 2007.

Instruction and payment of third parties (Clause 19)

49. The majority of respondents were concerned as to how they could manage the reporting requirements for third parties. In particular concerns were expressed as to how Suppliers could ensure third parties make a note of their time spent etc.

LSC response:

Clause 19 remains. However time recording is required only where fees are likely to be over £250 and we have made provision for “reluctant” experts where it is in the client’s interest for them to continue to provide their services. We consider this provision reasonable given the obvious public interest in greater scrutiny of third party costs.

Referral Fees (Clause 20)

50. A number of respondents expressed reservation about the payment of referral fees in relation to the risk of a Supplier buying clients, rather than competing for clients on the basis of the ability to provide quality services. Suppliers should be bound to comply with the Practice Rules rather than this Contract setting out individual requirements.

LSC response:

Clause 20 remains in a revised form to clarify the position on referral fees under the contract.

Confidentiality (Clause 21)

51. The majority of respondents were opposed to the presumption that all information was not confidential and stated that the presumption should be reversed or the Commission was at risk of breaching competition law. They also felt that any blanket disclosure of a Supplier’s performance against key performance indicators should not be published in a way, which identified that Supplier.

LSC response:

There is a balance to be struck between the public interest and confidentiality for Suppliers. The contract allows us to disclose information regarding the contract and payments under it. We are subject to the Freedom of Information Act and also publicly accountable which means such information cannot be confidential. We can also disclose other information if it is in the public interest.

However, we have made amendments to this clause, which confirms that we must ordinarily maintain confidentiality in information about a firm that is genuinely confidential. In addition the Clause has been amended to allow a supplier to seek to justify why designated information should be confidential.

We realise that some Suppliers may not regard this as ideal, but again we need some flexibility to allow us to carry out our statutory obligations. As noted above, we intend to act in good faith and as a responsible public body and believe Suppliers will take comfort from our track record and the fact that this clause is largely identical to the current contract.

Indemnity (Clause 23)

52. The majority of respondents were concerned about the requirement for Suppliers to indemnify the Commission against any loss it suffers as a result of the firm's actions and how this would operate in practice. A number of respondents also pointed out that the Contract contains no provision for reciprocal indemnities from the Commission and that this was in its self unfair.

LSC response:

Whilst at the extreme end of the spectrum this may expose a Supplier to frivolous claims that it cannot control, the LSC considers the Supplier to be closer to the client and therefore is in the best position to manage any claim. Any normal risk allocation would therefore leave this risk with the Supplier.

In any event, a frivolous case will lose, so the only issue there will be one of cost and time. We assume the firm's insurance cover will cover the costs and it is likely that the firm will be being sued as well and that it will incur the time penalty anyway. Hence we do not think the indemnity involves any unreasonable risk for practitioners as it stands, but watering it down could expose the Commission to claims that it should not fairly be subject to.

As for the contract containing no provision for reciprocal indemnities from the Commission, we do not think a supplier would expect any as they are the service providers and have control of the matters they take on. In the circumstances the Commission has no reason to give an indemnity.

Contract Sanctions (Clause 29)

53. A number of respondents expressed concerns that the draft clause was too widely drawn and did not provide enough detail as to when a Sanction may be required and the effects of this.

LSC response:

Given our position as a public body and the fact that legal aid clients are

often the most vulnerable members of the public, we must have the right to take immediate action if a Supplier is not performing under the contract.

We think our track record in this area is strong and do not think this will be an issue in practice. However we accept that it is a sensitive subject and so Clause 29 has been amended confirm our current approach that any Sanction will be proportionate or appropriate to the relevant problem.

How this Contract can be ended (Clause 30)

54. All respondents fundamentally objected to the 3-month 'No Fault' termination clause. Concern was expressed over the uncertainty on Suppliers and the impact of this Clause on a Supplier's ability to, for example, secure financial lending or recruit staff. A number of respondents referred to the Commission strategy (on direction from the DCA) to implement CLAC/CLANS and how this could potentially lead to termination where a Supplier was unsuccessful in their tender and a CLAC established in their area. The majority of respondents felt that the current contract provision, allowing for termination with six months notice on direction from the Lord Chancellor' should be the minimum requirement;

LSC's response:

This Clause has been amended to allow 6 months (no fault) termination notice for LSC. We have amended the clause so that it can only be invoked to facilitate a "Reform of the Legal Aid Scheme". The General Contracts permitted termination in this way following a direction from the DCA. "Legal Aid Reform the Way Ahead" is, effectively, that direction. This does not allow us to terminate individual contracts in isolation but only where a change is required affecting the legal aid programme generally. We have also revised the amendment provisions to reflect the reform agenda. If we can achieve our objective by amending the contract rather than terminating it, we will do so.

Reconsidering decisions and the review procedure (Clause 32)

55. The majority of respondents were opposed to the removal of the Suppliers' right to make oral representations at the CRB and most suggested that oral representations should be allowed for 30 - 45 minutes particularly where the appeal is against termination. Further more clarification should be in the contract as to the time frame of dealing with any reviews.

LSC response:

This Clause has been amended significantly to provide additional clarity. We have reinstated the right to make oral representations at the CRB in relation to termination and extended those representations to 30 minutes.

Dispute resolution

56. A number of respondents were unclear as to the impact of the mediation/arbitration clauses and the status of the Contract during these processes. In particular, further clarification was needed as to the role of the Arbitrator and his or her powers.

LSC response:

The Clause on dispute resolution (Clause 33) has been amended to clarify the circumstances when a Formal Dispute can be referred to arbitration and the powers of the Arbitrator to consider what remedy is appropriate should he/she have considered the LSC to have been unreasonable.

Mediation is only available once a Formal Review has been completed unless the matter is urgent and there is no determination within 4 weeks.

Annexes to the Standard Terms⁶

Annex A – Liaison

57. Apart from some queries in respect of the language, no particular concerns were raised.

Annex B – Media

58. No remuneration is available for Suppliers for media expenses; the LSC considers that it is beneficial for all parties to invest in raising the profile of Legal Aid.

⁶ Please note the following Annexes were removed following consultation:
LSC – Consultation Code Annex
TUPE Annex

Annex E - Monitoring and reporting

59. The majority of respondents felt that the monitoring and reporting requirements under the Contract were contrary to 'lighter touch' approach to contract management endorsed by Carter. The term 'micro-management' was used by a number of respondents to describe the administrative requirements under the contract, for example the need to provide an annual report. The requirement for an annual report has now been removed. However, the contract places greater emphasis on self-monitoring by the Supplier. This is a necessary to enable less intrusive LSC auditing etc.

Appendix A – List of Respondents

Name of Representative Body

- Advice Services Alliance
- CAB
- CAB – North Region
- Education Law Practitioners Group
- Housing Law Practitioners Association
- Immigration Law Practitioners Association
- LAPG
- Law Centres Federation
- Law Society
- Mental Health Lawyers Association
- Resolution
- Shelter
- Young Legal Aid Lawyers

Name of Individual Organisation

- Barnsley & District CAB
- Berwick CAB
- Bob Nightingale
- Borneo Hughes Martell
- Brent Community Law Centre
- Cambridge House Law Centre
- Cardiff Cab
- Charnwood Cab
- Chester CAB
- Community Links Trust
- Congleton & District CAB
- Darlington Cab
- Disability Law Service
- Ewings & Co
- Fisher Meredith
- Guildford CAB
- Guile Nicholas Solicitors
- Hackney Community Law Centre
- Halton Cab
- Hammersmith & Fulham Cab
- Hammersmith & Fulham Community Law Centre
- Hancock Caffin Solicitors
- Hodge Jones & Allen Solicitors
- Hyndburn Cab
- Islington Law Centre

- Joan Kostenko
- Keer and Keer
- Kirkless Law Centre
- Lambeth Law Centre
- Leigh Day & Co
- Lewisham Law Centre
- Macclesfield CAB
- Maidstone Cab
- Medway Cab
- Metcalf Copeman & Pettefar
- Miles & Partner Solicitors
- Morecambe & Heysham CAB
- Newcastle Cab
- North Kensington Law Centre
- North Kirkless Cab
- North Tyneside CAB
- Norwich Cab
- NYAS
- Oldham Law Centre
- Plymouth Cab
- Refugee Legal Centre
- Rushmore CAB
- Sharrow Cab
- Sheffield Mental Health Cab
- Shoreham & Southwick Cab
- Shropshire CAB
- Solihull Cab
- South Cumbria CAB
- South Kirkless Cab
- St Helens CAB
- Streetwise Community Law Centre
- Surrey Law Centre
- Swale CAB
- Swansea CAB
- Thanet CAB
- The Howard League for Penal Reform
- Tower Hamlets Law Centre
- Trafford Law Centre
- Vickers & Co
- Walsall CAB
- Wilkin Chapman
- Wythenshawe Law Centre