

2010 Standard Crime Contract

GUIDE TO CRIME SPECIFICATION (February 2010)

This document is a short guide to the specification of the 2010 Standard Crime Contract ("the Specification"). The Specification is the key document setting out the rules under which criminal legal aid services must be carried out by you, service standards applicable to you and all the rates and procedures governing payment for the work, which you must abide by. Unlike the Standard Terms, this Specification is specific to criminal work. From 00.01am 14 July 2010, publicly funded crime work will be carried out under this Specification. However certain services such as Very High Cost Case work have their own contractual arrangements.

We hope that the text of the Specification is self-explanatory. This document only highlights key themes, significant changes and issues, which you may find useful. Please note that the actual detailed Guidance to the Specification ("the Guidance Document"), which is referred to in the Specification, will be produced and published on our website before the contract start date to cover any guidance previously in the Unified Contract specification which we have removed, to clarify any contractual terms and assist you generally, when working in accordance with the Specification. However, please note we have published part of the Guidance Document in advance, which deals with crown court case planning for your information.

STATUS OF THE SPECIFICATION

This Specification has been subjected to consultation with the representative bodies, which started in August 2009. Although many changes were made to the original draft Specification in this process, agreement could not be reached on all issues. However, now that the consultation is complete, this version, dated 15 February 2010, is final.

WHAT HAS CHANGED?

Although the structure of the Specification is different from the specification of the Unified Contract (Crime), much of the content in substance remains unchanged. However there have been some significant changes to reflect policy developments since the Unified Contract. The most important sources of changes for the 2010 Standard Crime Contract are the following:

- Prison Law Funding – Consultation outcomes. The LSC consultation, full details of which are still available on our website, set out our detailed proposals for changes to prison law funding. These changes are reflected in Section 12 of the Specification and include the outcome of the recent Ministry of Justice consultation "Refocusing on priority cases".
- Crown Court Means Testing – Prescribed proceedings in the Crown Court are subject to Crown Court means testing, and for this reason, funding which is currently paid for under advocacy assistance will, from 14 July 2010 be funded under representation order. The mechanism for payment and the

costs limitation which presently applies to Advocacy Assistance will continue to apply to prescribed proceedings funded under a representation order in the Crown Court.

- **Duty Solicitor Arrangements.** We have incorporated the salient provisions of the Duty Solicitor Arrangements 2008 into the Specification so as to remove any ambiguities between the Arrangements and the contract and to move the responsibility for compliance from the individual to the organisation. A new set of Arrangements to preserve Regional Duty Solicitor Committees will be produced in time for the start of this contract.
- **Supervisor Standards.** As we will be accepting Lexcel as an alternative quality standard to the SQM, the detailed Supervisors' legal competence standards previously set out in the SQM have now moved to form part of the 2010 Standard Crime Contract. General Supervisor Standards covering how to qualify as a Supervisor and the conduct of supervision are in section 2 of the Specification. Following input from peer reviewers and representative bodies there have been changes to some of the standards but few of them other than prison law and duty solicitors are significant.
- **Key Performance Indicators (KPIs).** Details of all KPIs are set out in section 2 of the Specification.
- **Out-takes from Standard Terms.** Now that the Standard Terms are common to both civil and criminal legally aided work, the crime-specific parts of the Unified Contract Standard Terms have moved over to the Specification.

STRUCTURE OF THE SPECIFICATION

We have significantly re-structured the Specification from the structure of the Unified Contract. In part this was to accommodate the outcomes of the consultations highlighted above, but it is also intended to make the Specification easier to understand, navigate and consistent with the 2010 Standard Civil Contract. A significant amount of guidance material has been removed from the Specification where appropriate and will be inserted into the Guidance Document (referred to above). Part C (Assessment and Review Procedures) of the Unified Contract specification has now been renamed and moved into Part A, Section 8 of this Specification for convenience.

We recommend that you look at the Table of Contents to the Specification to see how it is structured, and hope that you find the numbering and order of Part A and B in particular more intuitive and logical. In summary, the Specification is split into two parts – A and B – with A focusing on general rules you must comply with and B on the more specific rules that govern crime contract work (as is currently the case). Part A is divided into eight sections and Part B into five.

Part A

Section 1 – General Provisions

Most of this section is self-explanatory and derives from the Unified Contract specification. However, it is worth highlighting that there are new rules relating to Schedule arrangements and what work you are able to undertake under the 2010 Standard Crime Contract.

Section 2 - Service Standards

Much of the text in this section did not appear in the Unified Contract specification and derives mainly from the SQM in force under the Unified Contract (which has been updated and clarified during consultation) and prison law (LSC and MoJ) consultation outcome. In particular, we have inserted paragraphs on supervision standards, office requirements, referrals and signposting clients that Providers have to comply with.

You will also find the KPIs that were previously in Annex G to the Unified Contract Standard Terms and apply to all Providers in this section. KPIs are unlike most other contractual obligations in that they typically involve performance and outcomes which are not entirely within the control of Providers. Because of this any breach of the KPI is subject to special procedural safeguards contained in Clause 11 of the Standard Terms. These will ensure that breach of a KPI will not automatically lead to contract sanctions but more usually to dialogue or an action plan for future work. Fundamentally, KPIs are aimed at ensuring good quality services and outcomes for the client and value for the fund, rather than as a route to imposing contract sanctions. However we need to reserve the right to apply sanctions where Providers materially or persistently fail to operate within the KPIs or terms of any action plan. The scope and definition of KPIs are set out in detail on the face of the Contract to ensure that they are consistently and objectively applied and will not be varied during the life of the contract except via the amendment provisions in the Standard Terms.

Section 3 – Funding Criteria

Most of the provisions in this section are similar to those in the Unified Contract. You may notice that we have moved some paragraphs relating to general qualifying criteria that need to be satisfied before you are able to carry out contract work from Part B of the Unified Contract specification to this section.

Section 4 – Carrying out Contract Work

Most of the provisions in this section are also similar to those in the Unified Contract. In this section, you will find the following rules relating to: -

- our general powers
- devolved powers
- electronic working
- use of agents, counsel and approved third parties
- solicitors with higher court advocacy rights
- applications
- unique file numbers and filing requirements
- boundaries between classes and units of work

- matter or case ends
- continuity of service
- change of provider
- misrepresentation by clients

Section 5 – Remuneration for Contract Work

There are no major changes to rules regarding remuneration for CDS work but you should note that the rules on setting, amending and reconciling Standard Monthly Payments have moved from the Standard Terms to the Specification. As now, it is proposed that the detail of the rules will be in a separate SMP protocol published on the website the contents of which are subject to discussions with the representative bodies.

This section deals with all provisions relating to remuneration for contract work.

Section 6 – Duty Solicitor Scheme Rules

We have incorporated the Duty Solicitor Arrangements 2008 that are presently in A27 of the Unified Contract in this section and moved the responsibility for compliance from the individual duty solicitor to the Provider. Providers, rather than individual Duty Solicitors, will apply to join Duty Schemes and membership for Schemes will be determined solely on a Provider's office postcode. This approach seeks to establish an objective qualification process. The numbers of Duty Solicitors a Provider employs will continue to determine how many Duty Slots are allocated to the Provider during a six-month Rota. Any guidance has been removed from the Specification and will be placed in the Guidance Document.

Section 7 – Very High Cost Cases

This section sets out the rules that you must follow only in relation to cases that may become VHCCs. VHCC work itself is currently not within the scope of this Contract and is subject to separate contracting arrangements.

However, please note the LSC has recently issued a consultation on VHCCs, one of the proposals to which is to amend the definition of VHCC (to cover only those Crown Court cases that last 60 days or more) so as to allow such work to fall within the scope of the 2010 Standard Crime Contract. If the decision were to proceed with this option, then only Providers that hold a 2010 Standard Crime Contract would be able to undertake these cases. The LSC Response to Consultation on the VHCC proposals is expected to be published at or after the close of the tender period.

We suggest that those VHCC providers who would not ordinarily apply for the 2010 Standard Crime Contract, but wish to ensure that they can continue to undertake 40 to 60 day cases whatever the outcome of the VHCC consultation, might therefore wish to apply for the 2010 Standard Crime Contract.

Section 8 – Claims, Costs Assessments and Reviews

Part C of the Unified Contract specification has been moved to this section. No significant amendments have been made to this section; only wording has been clarified and guidance removed, where appropriate, and placed in the Guidance Document.

Part B

Section 9 - Criminal Investigations

The structure and order of this section has been re-ordered and we hope you will find it more user friendly in terms of its layout.

The remaining sections under the Investigations Class of Work have been substantially shortened and tailored to the Work covered by each Unit of Work. Much of the guidance previously in Part B of the Unified Contract has been removed and will be placed in the Guidance Document which we will publish before the Contract starts.

Section 10 – Criminal Proceedings

We have moved Virtual Court work to the beginning of this section (from its current position at B2.6 which is the end of the Criminal Proceedings section in the Unified Contract).

Additionally, from 14 July 2010, Prescribed Proceedings in the Crown Court will be funded under a representation order granted either by us or by the magistrates' court (and will no longer be funded under Advocacy Assistance in the Crown Court). This applies to Prescribed Proceedings that start in the Crown Court (such as for Serious Crime Prevention Orders), and also to appeals to the Crown Court from the magistrates' courts in respect of an order made in Prescribed Proceedings (such as ASBOs). This change has been made to take into account the changes introduced by Crown Court Means Testing. The payment provisions will remain the same as currently exist for Advocacy Assistance, including an Upper Limit for costs which will apply to work done under a representation order in Prescribed Proceedings in the Crown Court.

We have duplicated the similar provisions in the Appeals and Reviews Class of Work, because predominantly, Prescribed Proceedings in the Crown Court relate to an appeal from an order made in the magistrates' court.

We have included a new Unit of Work, which covers Crown Court Representation under a Representation Order. Whilst the rules governing the grant of legal aid, and payment are set out in CDS (General) (No.2) Regulations 2001 (as amended) and the CDS Funding Order 2007 (as amended), we thought that it would be helpful for Providers to see how we expect Crown Court cases to be planned (which we have outlined in the extract of the Guidance Document we have published) and how these cases are remunerated.

Section 11 – Appeals and Reviews

Other than what we have said in section 10, this section remains largely unchanged from the Unified Contract specification. Guidance has been removed, where appropriate, to make this section more concise and will be placed in the Guidance Document.

Section 12 – Prison Law

Following the LSC Prison Law Consultation in 2009 and MoJ response to its consultation on the scope of Prison Law, we have set out in this section more detailed rules concerning how Prison Law matters will be funded. Providers will no longer have the power to grant legal aid to commence a Treatment Case, but instead, will have to apply to the LSC for prior approval in every Treatment Case.

Section 13 – Associated CLS Work

This section remains largely unchanged from the Unified Contract specification, save for some additional clarification on practical issues arising out of this section of the Contract.

Payment Annex

There is one Payment Annex, which lists all the fees payable under the Contract other than for:

- Crown Court work in mainstream criminal proceedings (which are specified in the CDS (Funding) Order 2007 (as amended));
- associated CLS work (which are specified in the civil Payment Annex).