

**UNIFIED CONTRACT (CRIME)
JULY 2008**

**GUIDE TO
CONTRACT DOCUMENTS**

***Including response to consultation
with The Law Society***

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Introduction

In Legal Aid Reform : the Way Ahead (November 2006) we announced our intention to bring all providers onto unified terms and conditions. In April 2007 we issued the Unified Contract for civil providers. We are now issuing a Unified Contract for crime providers, the Unified Contract (Crime) July 2008. Working towards a single set of Standard Terms will be more convenient for providers who undertake both crime and civil work. Although the terms of the Unified Contract (Civil) and the Unified Contract (Crime) July 2008 are not identical, the issue of a Unified Contract for crime is a significant step towards achieving common terms and conditions.

The Unified Contract (Crime) July 2008 will replace the General Criminal Contract (January 2008) from 14 July 2008.

This document is aimed to give a brief summary to providers on:

- the structure of the Unified Contract (Crime) July 2008; and
- the key provisions in each of the contract documents.

Also included in this document is an Appendix detailing the points raised by The Law Society on consultation on the Unified Contract (Crime) July 2008 contract, and our response.

A copy of the Standard Terms 2008 showing the differences between the Unified Contract (Civil) Standard Terms is available on our website at www.legalservices.gov.uk. We will also provide a tracker showing where the old provisions of the General Criminal Contract (January 2008) Specification can be found in the Unified Contract (Crime) July 2008 Specification.

The new Unified Contract (Crime) July 2008

The Unified Contract (Crime) July 2008 is based on the Unified Contract for civil providers. The Standard Terms are closely based of the Standard Terms for civil providers amended and updated for crime providers. The Specification is largely unchanged from the Specification in the General Criminal Contract (January 2008) but we have reordered it to make it easier to understand and work with.

We have had a full consultation with The Law Society on all the contract documents and as a result of this have also incorporated a number of further suggestions made by them.

Key changes in the new contract include:

- We have agree a new protocol for managing Standard Monthly Payments which will result in more stable and predictable monthly payments;
- We have removed the requirement for providers to record travel costs/time in relation to matters and cases which are paid by fixed fees;

- We will no longer automatically apply financial penalties to claims which are submitted more than 3 months late (although it is still a contractual requirement to submit Claims on time);
- Our power to amend the contract are now limited to:
 - changes arising out of court decisions or legislation (clause 13.2) and
 - changes in the justice system;
 - minor changes;
 - correcting ambiguities, errors and omissions, but only with the agreement of The Law Society.
- We have removed the requirement to attend video ID parades;
- A new presumption that you will be allowed to undertake remainder work on the no-fault termination of the contract.

How are holders of the Unified Contract (Civil) affected?

Providers who currently hold a Unified Contract for Civil work are not affected by the termination of the General Criminal Contract (January 2008) or the issue of the new Unified Contract (Crime) July 2008. Their Unified Contracts (Civil) will continue on the same terms and conditions originally issued, even if they are awarded a Unified Contract (Crime) July 2008.

Unified Contract – Contract Structure

The key structural difference between the General Criminal Contract and the Unified Contract 2008 is that each legal aid provider will have one Unified Contract 2008, instead of a contract per office. Each Unified Contract 2008 will contain a separate Office Schedule for each of the Provider's offices, under which work will be allocated in accordance with the Specification.

UNIFIED CONTRACT 2008 FOR EACH INDIVIDUAL FIRM / ORGANISATION IS STRUCTURED AS FOLLOWS:

A. Contract for Signature contains bespoke information about your organisation:

- Signature pages;
- Key Information Tables about your organisations e.g. designated principle office, email address, quality assured standard;
- Constitutional statements;

The Contract for Signature is part of the Application Form.

B. Office Schedule/s contains bespoke information for each office of your organisation, including:

- Authorised work
- Standard Monthly Payment
- Special provisions applying to that office

C. Standard Terms contain information applying to all providers regarding the relationship between the LSC and providers. There are also Annexes to these Standard Terms.

D. Specification contains information about the way in which work must be carried out e.g. category specific guidance.

As under the General Criminal Contract (January 2008) we may also ask you to sign indemnities and guarantees if you are a limited liability organisation and these will form part of your contract.

The main changes from your current arrangements may be illustrated by the examples below:

Example 1- Provider A

Solicitor with 3 offices doing crime only work

Previously held:

- 3 General Crime Contracts for offices in Hackney, Camden and Tower Hamlets.

From 14 July 2008:

- *Provider A will hold one Unified Contract 2008 with separate office schedules for Hackney, Camden and Tower Hamlets*

Example 2 - Provider B

Solicitor with 3 offices doing civil and crime work

Previously held:

- 1 Unified Contract (Civil) 2007 with separate office schedules for Manchester, Cheadle and Wythenshawe;
- 3 General Criminal Contracts in Manchester, Cheadle and Wythenshawe;

From 14 July 2008:

- *Provider B still holds one Unified Contract (Civil) 2007 with separate office schedules for Manchester, Cheadle and Wythenshawe.*
- *Provider B now also holds one Unified Contract (Crime) 2008 with three separate office schedules for Manchester, Cheadle and Wythenshawe*

Contract for Signature

The Contract for Signature forms part of the Application Form which you will fill in to apply for the Contract. This means you will not have to complete a separate Contract for Signature when you are awarded your contract. It specifies the contract term, the parties, the contract documents and the authorised signatories. It sets out the term of the Unified Contract 2008 which will be in force until 13 January 2010, subject to the LSC rights to terminate earlier or to extend the contract term by a further 6 months to 13 July 2010.

In addition to the signatory parts and some conditions of contract (at Section 3 of the Application Form), the Contract for Signature includes Key Information Tables and a constitutional statement. This states what legal entity your organisation is. You will need to complete the required information, for example the names of all your partners/members etc, in the box provided.

Office Schedules

Each office of a provider will have a Schedule to the contract. Schedules will be for bespoke terms and will normally be in force for 18 months from 14 July 2008 to 13 January 2010. They will specify the work that can be done from the office in Table 2.

Table 3 sets out the standard monthly payment that will be made “to” that office

Table 4 will contain special provisions and restriction which apply to that Office.

Standard Terms (including Annexes)

Below is a table showing the Standard Terms Clauses and Annexes and a brief outline of some of the key contractual terms found under the Clause/Annex title. Some of the provisions of the Unified Contract (Civil) have been amended to make the Standard Terms appropriate for Crime or to remove out of date provisions, for example relating to Preferred Suppliers.

| Number | Clause Heading |
|---------------|--|
| N/A | <p>FOREWORD</p> <p>Contains information as to the background and purpose of the contract and the statutory duties of the Commission.</p> |
| 1 | <p>Interpretation</p> <p>Sets out the Defined Terms, which apply throughout all the Contract Documents and includes the provisions on precedence of Contract documents (paragraph 30) and 'Continuity' of contracting arrangements (paragraph 31).</p> |
| 2 | <p>Relationship</p> <p>Sets out how we will work with each other including provisions as to 'value for money' and 'good faith' as well as your status as an 'independent provider of legal services'.</p> |
| 3 | <p>Communication</p> <p>Sets out how we will communicate with each other and requirements to use our website for transactions (as appropriate).</p> |
| 4 | <p>Financial disclosure and risk</p> <p>Sets out the requirements for accounting purposes, under what circumstances we will require you to open your books and when we may require indemnities and/or guarantees from you.</p> <p>We have added a power at 4.2 for the LSC to require disclosure of accounts and other financial information in situations when we have "reasonable concerns about your financial position". This is because we are no longer intending to run financial checks on suppliers as part of the entry process for Preferred Supplier, therefore a more general power to investigate suppliers who may be in financial trouble (and thereby pose a risk to the fund and clients) is appropriate.</p> |

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| 5 | <p>Equality and diversity</p> <p>Sets out how you will help us comply with our statutory obligations and what reasonable steps you must take to ensure your personnel do not unlawfully discriminate.</p> |
| 6 | <p>Logos and marketing</p> <p>At 6.3 we have added the current rule about suppliers not giving gifts or money to clients detained at the Police Station, in the logos and marketing section and, in response to concerns raised in respect of inappropriate client inducements, expanded it to ensure it is of general application i.e. it will be a breach of contract to provide a client with money or other gifts except items of refreshment and smoking materials for immediate consumption.</p> |
| 7 | <p>Looking after Clients, compliance and self-monitoring</p> <p>Sets out the requirement for access to the Manual, how a case management system may be introduced, requirements for reporting, exercising Devolved Powers and monitoring your own performance.</p> |
| 8 | <p>Demonstrating compliance and co-operating in audits</p> <p>Set out the terms for demonstrating compliance, the circumstances when you must give us access to your premises, documents and information and the mystery shopping provision.</p> |
| 9 | <p>Keeping and providing documents and completing and returning forms after the Contract Work has been fully completed, reported and paid.</p> <p>We have clarified that suppliers must keep complete files (including relevant documents) for 3 years. This is because we have experience of suppliers presenting incomplete files for peer review.</p> |
| 10 | <p>Approved Personnel and Supervisors, standard of Contract Work, Independent Peer Review and Key Performance Indicators</p> <p>Sets out the quality standard you must achieve under Peer Review and how the Key Performance Indicators will operate. Please note that failure to meet any of the KPIs for crime will be a breach of contract.</p> <p>We have also added the current rules on use of Designated Fee Earners into the clause dealing with personnel and contract work</p> |
| 11 | <p>Schedules and Key Information Tables</p> |

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| | <p>Sets out what the Schedules are and your responsibility for ensuring that the information contained in the Key Information Tables is accurate. Please note that we have introduced Schedules for criminal work which will specify the Classes of Work you may undertake and any special provisions and restrictions applying to you.</p> |
| 11A | Office Schedules – Civil |
| 11B | Office Schedules – Crime: see above. There are provisions for ‘Next Office Schedules’, although it is our intention to provide an 18 month schedule at the commencement of the contract. |
| 11C | Office Schedules - Family Mediation |
| 12 | <p>Specification</p> <p>Confirms that the Specification and any Guidance within it is part of the Contract documents.</p> |
| 13 | <p>Amendments to Contract Documents</p> <p>As stated above our powers to amend the contract are now limited to:</p> <ul style="list-style-type: none"> o changes arising out of court decisions or legislation (clause 13.2); and o changes in the justice system; o minor changes; o correcting ambiguities, errors and omissions, but only with the agreement of The Law Society. <p>Provisions in relation to consultation and notice remain unchanged in substance, apart from the new provision to backdate changes made under clause 13.5 (ambiguities etc) with the consent of the Consultative Bodies.</p> |
| 14 | <p>Your Account with us</p> <p>Sets out how credits and debits will operate under suppliers’ accounts.</p> |
| 15 | <p>Claims</p> <p>Sets out the provisions for claiming for Contract work and requirements for ensuring that claims are submitted within the time periods specified.</p> <p>We have added a clause dealing with the procedure for amending the LSC Costs Assessment Manuals following a new court or Costs Appeals Committee decision.</p> |
| 16 | Payments and Assessments |

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| | <p>We have clarified the position on VAT and fees and confirmed that in this contract they are all paid exclusive of VAT (unless expressly stated otherwise).</p> |
| 17 | <p>How and when we pay for Contract Work</p> <p>We have added wording to cover payment for Crime Contract Work at 17B. As mentioned above, we have agreed a new SMP Reconciliation protocol for managing Standard Monthly Payments which should result in more stable and predictable monthly payments within a 10% band of claims to payments.</p> <p>We have also added a clause to remove SMPs where we reasonably anticipate a provider will claim less than £2500 per annum for SMP work. Payment for this small amount of work will instead be paid as claimed.</p> |
| 18 | <p>Set off and repayment</p> <p>Sets out how we will deal with overpayments and underpayments and when POAs become repayable (in principle after 3 years).</p> <p>We have added a new provision to allow repayments exceeding £1,000 to be made by instalment.</p> <p>NB. The new process agreed with the Law Society for “historic UPOAs” is not set out in the contract although will apply in addition to contractual provisions.</p> |

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| 19 | <p>Instruction and payment of third parties</p> <p>Sets out suppliers' obligations when you instruct a third party including the requirement for them to time record where the fee will be in excess of £250.00</p> <p>We have added a paragraph in respect of payment to Unassigned Counsel. This is intended to replicate the current position under the GCC (Jan 08).</p> |
| 20 | <p>Referral fees</p> <p>Confirms that in addition to the rule in Clause 6 against making payments to client, you must not make or receive referral fees for the referral or introduction (directly or indirectly) of legal aid work.</p> |
| 21 | <p>Confidentiality and data protection</p> <p>Sets out the presumption that Contract work is not confidential unless it is excluded in the prescribed circumstances or you wish to assert that specified information is confidential.</p> |
| 22 | <p>Warranties</p> |
| 23 | <p>Indemnity</p> <p>Sets out the circumstances when suppliers must indemnify the Commission for example as a result of an act committed by them. We have amended the indemnity provisions at The Law Society's request, in line with good commercial practice.</p> |
| 24 | <p>Giving notices</p> <p>Sets out how notices under the contract will operate and includes the provisions for sending notices to suppliers' designated email address (although a hard copy of any notice will also be sent).</p> |
| 25 | <p>Things you must tell us about</p> <p>Sets out what constitutional and material changes you tell us about, including interventions, when you cannot perform Contract work and disciplinary proceedings concerning your personnel.</p> <p>We have added to the list of material constitutional changes which must be notified to us, the resignation of a sole remaining Duty Solicitor.</p> |
| 26 | <p>Novations</p> |

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| | <p>Sets out the provisions for automatic and non-automatic novations. We have agreed with the Law Society to confirm that we will not recover the same debt from both an old and new firm.</p> |
| 27 | <p>Prohibited gifts, fraud and unethical behaviour</p> <p>This contains rules against bribery of LSC personnel, collusion and false bids. Any breach of this clause is a Fundamental Breach.</p> |
| 28 | <p>General</p> <p>Sets out a number of provisions including, the entire agreement clause, what happens if either party is prevented from performing under the Contract due to causes outside reasonable control, and your obligations to check certificates and authorities issued by a regional office.</p> <p>We have made some minor amendments in consultation with The Law Society. We have also confirmed that the notice period if the LSC opts to terminate the contract following an adverse court ruling is not less than 3 months.</p> |
| 29 | <p>Contract sanctions</p> <p>Sets out the circumstances when we can apply any one of the 7 Sanctions listed in this Clause and which now includes failure to comply with requirements in relation to Duty Solicitor Work, the sanction being suspension or removal of slots.</p> |
| 30 | <p>How this Contract can be ended</p> <p>Due to our limited amendment powers, we have amended the termination provisions to remove the limitation on our no-fault right to terminate the contract on six months' notice (you continue to have reciprocal rights on three months' notice). This clause also sets out the other circumstances upon which the Contract will terminate, e.g. due to fundamental breaches.</p> |
| 31 | <p>Consequences of termination</p> <p>This clause sets out the provisions on termination in relation to Client's files, payments, operation of Remainder work (as amended), TUPE and when you may apply for a new contract after termination.</p> <p>As stated above, we have inserted a new presumption that remainder work will be allowed for up to 2 years unless the contract is terminated as a result of breach.</p> |
| 32 | <p>Reconsidering decisions and the review procedure</p> |

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| | <p>Sets out your rights for informal and Formal reviews of our decisions including the right to attend the CRB (and give oral representations for 30 minutes) following a decision to terminate your contract.</p> <p>We have added a new provision for disputes in relation to SMPs, basically adding in a review by the Director. This should mean that any disputes can be resolved more speedily than by reference to the formal review procedure.</p> |
| <p>33</p> | <p>Dispute Resolution</p> <p>Sets out your right to refer Formal disputes to a further Dispute Resolution process (including Mediation, ENE, and Arbitration) and in particular how the Arbitration process operates.</p> |

| Letter | Annex Heading |
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| A | <p>Liaison Annex</p> <p>Sets out how your Liaison Manager and our Account or Relationship manager will deal with matters arising under the Contract.</p> |
| B | <p>Media Annex</p> <p>Sets out how you help us raise the profile of the legal aid scheme.</p> |
| C | <p>Equality and Diversity Annex</p> <p>Sets out the requirements for an Equality and Diversity Policy, Training plan and Communications plan which must be in place throughout the term of the Contract.</p> |
| D | <p>Client Service Annex</p> <p>Sets out requirements for file management and file review procedures which for crime preserve the current position under the GCC (Jan 08).</p> <p>We have added a paragraph reiterating the duty to inform us of any potential VHCC in crime.</p> |
| E | <p>Monitoring Annex</p> <p>Sets out the IT and Records requirements to assist you in monitoring your own performance.</p> |
| F | <p>Approved Personnel and Supervisors Annex</p> <p>Sets out who are deemed to Approved Personnel who can carry out Contract Work and what requirements Supervisors must meet.</p> <p>Provisions added on Designated Fee Earners – from Annex D to GCC (Jan 08). We have also added a requirement for suppliers to comply with detailed SQM requirements (preserving the current position under the GCC (Jan 08)).</p> |
| G | <p>Key Performance Indicators Annex</p> <p>Sets out the 2 KPIs that you must meet in performing crime Contract Work relating to Costs Assessment reductions not exceeding 15% and accepting 90% of your calls from the DSCC when your Duty Solicitors are nominated on a Duty Solicitor Rota. The KPIs are contractual requirements.</p> |

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| H | Fundamental Breach Annex Sets out the four main Fundamental Breaches under the contract. |
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Specification

Like the Unified Contract (Civil), the Unified Contract 2008 includes a set of Standard Terms and a Specification. The Specification covers the performance of contract work and will be the home for any guidance the LSC issues.

The Specification has been drafted with the aim of consistency with the Unified Contract (Civil).

Although we have not made many changes to the actual content of the Specification, the Unified Contract 2008 Specification has been re-ordered and we have re-drafted a number of provisions for the purposes of bringing clarity to that provision.

In order to simplify the contract, and to ensure that all the provisions that apply to each different type of work are contained in a single place (rather than having to look in a number of different sections of the General Criminal Contract (January 2008) Specification) we have divided the Specification into three parts:

Part A contains a detailed introduction to the working of the Specification and general rules which apply to all Units of Work.

Part B is divided into Units of Work. Each individual Unit of Work has a designated section which contains all the rules applying to that particular Unit of Work. The rules for Crown Court Representation are still in Regulations, rather than in the Contract.

Part C contains assessment and review procedures which are applicable to all Units of Work.

Although the Specification is still quite lengthy (due to the fact that some provisions are repeated for a number of Units of Work in **Part B**) we hope that it is now in a more logical, user-friendly format.

In response to a request by the Law Society we will put a table on our website which identifies where each of the provisions previously contained in the General Crime Contract (January 2008) Specification is now contained in the Unified Contract (Crime) July 2008 Specification.

Appendix 1: Consultation with The Law Society

Consultation with The Law Society on the Contract Documents for the Unified Contract (Crime) July 2008 commenced on 31 January 2008, and continued with our meetings on 20th and 27th February and 5th and 12th March. We would like to thank The Law Society for their constructive approach throughout the process and set out below the comments raised by The Law Society and our response.

Standard Terms 2008

| Reference | TLS COMMENTS | LSC RESPONSE |
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| General – coverage of standard terms | | We are not proposing to move current civil providers onto the new set of Standard Terms at present but our overall aim is to get all providers onto the same standard terms when appropriate. These terms are intended to be suitable for crime and civil providers and we have called them the Standard Terms 2008. |
| General – clause numbering of the entire Standard Terms | <p>Issue: The fact that clauses in the Standard Terms are not numbered so as to link the main clause and a sub-clause together means the Standard Terms are difficult to navigate as, looking at a single page, it is often difficult to determine which clause one is looking at (especially given the fact that some clauses have many pages of sub-clauses).</p> <p>Potential Solution: A more conventional approach to clause numbering should be adopted. For example, sub-clause 1 of clause 1 would be clearly marked “1.1”. This is a standard contract drafting technique and would make the document far more “user-friendly”.</p> | We have agreed to adopt the proposed numbering convention |
| Foreword | <p>K – Underperformance/non compliance by one office or under one contract becomes non compliance by whole organisation under all contracts.</p> <p>Although the Foreword is not part of the Contract and so this</p> | Our view is this is not a privity of contract issue. If a failure under another LSC contract indicates a wider failure of management, fraud etc then a sanction under this contract may be appropriate. This is always subject to the limitations under clause 29.3 on sanctions generally (must be proportionate and |

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| | <p>provision is not enforceable, the principle behind this comes up in the Standard Terms that are enforceable. Privity of Contract prevents you from seeking eg in cl 29 on sanctions, seeking to impose sanctions in this contract in respect of work done under a different contract.</p> <p>Moreover, the principle of a firm losing its Contract for all its offices because one branch office underperformed is novel and is unacceptable.</p> | appropriate). |
| Clause 1 - Definitions | Independent Peer Review, SQM, LSC Costs Assessment Manuals and LSC Manual. | We have amended definitions of Independent Peer Review, SQM, LSC Costs Assessment Manuals and LSC Manual to make these consistent and clarify the extent to which they may be amended i.e. not material in the light of the Contract as a whole, unless amended in accordance with Clause 13. |
| | Audit KPIs – insert: “if you fail to achieve it, but will in respect of which such failure , not, of itself, constitute a breach of Contract. | Definition of audit KPIs has been deleted in any event, so no longer an issue |
| | Associated CLS Class - this is referred to several times in the body of the Contract but is not defined save for a brief mention in the Specification. For the sake of clarity and good order we suggest that it is fully defined in the Definitions in Clause 1. | There is a full definition. |
| | Case/Matter – these are confused and overlap. They need to be re-defined. | We have looked at this and cannot identify a problem. |
| | CBAM – This is an external document. The “whole contract” clause later in this Contract means that external documents cannot be incorporated by reference into this Contract. It should be set out clearly that you are not intending to do this and are simply explaining what this is. | In our view there is no reason why an entire agreements clause precludes documents being incorporated by reference but we have amended the entire agreement clause to confirm this. CBAM is guidance (which providers are obliged under the current contract, and this one, to have regard to but is not contractually binding in itself) and we think this is clear. |
| | CDS Direct – under this definition delete: certain requests for Police Station Advice and Assistance because CDS Direct Matter is actually defined below that definition with a wider remit. The definitions could be tightened further. | Definition changed to refer to appropriate part of the Specification. |
| | Fixed Acceptance Fee – did not understand this. Please clarify. | Definition changed to refer to appropriate part of the Specification. |
| | Fraud case – We are considering the definition here and will revert to you further on it. | No further comments received, we assume that this is not problematic. |

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| Hourly cost – although this refers to civil work, it is in this contract so we need clarification confirming that it does not apply (as providers are doing this work under the Unified Civil Contract) and we also need clarification of how this is meant to work as we do not understand it in its current format. | This is a civil matter and will be dealt with separately. |
| Independent Peer Review – delete from time to time | Definition has been updated to clarify amendment powers. |
| Individual Case Contract – What is this? We are not aware of any other contracts. | These are individual case contracts issued by CCU for high cost cases. |
| Investigation – This is confusing in light of the definition for police investigation as a stage in the criminal process. | We have considered this further and take the view that providers do understand this and to change it would be likely to cause more confusion. |
| Performance Indicators – this paragraph can be deleted as it is now dealt with under key performance indicators. | Performance indicators are different from KPIs as they are general indicators of performance rather than specific KPIs set out at annex G. |
| Remainder work – we suggest that this now reads: Contract work that commenced before the termination or expiry of this Contract which you are entitled to continue in accordance with the terms of this Contract. | We have amended clause 31 to remove presumption that remainder work will not be allowed in accordance with the new Remainder Work Protocol. |
| Specialist Quality Mark - the following new wording should be added to the end of that definition: “provided that, other than in the case of changes of a purely technical nature which are not material in the light of the Contract as a whole, amendments can only be made to the SQM in accordance with Clause 13.” | Definition amended broadly in line with TLS suggestion. |
| SQM – from time to time. This is not compliant with the transparency requirement and should be deleted. Please see amendment that we propose in our Table. | Definition amended as above. |

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| <p>Clause 4 - Financial disclosure and risk</p> | <p>4.3 We suggest that this is amended as, for compliance, you should provide the form of the guarantee or indemnity in advance in the Contract. We suggest that the wording “in such form as we may reasonably request” is replaced with as set out in this Contract in Annex -.</p> <p>4.2.f Please delete this as it is unnecessary. You already have power in 4.2.e and do not need the additional, vague and extremely wide power that this would give.</p> <p>4.2.e Please amend this to read “that we reasonably consider that there is a significant risk to Clients or public funds.</p> | <p>Wording added. We do not think its appropriate to add the standard form of indemnity on grounds that these may vary according to nature of LLP organisation. We will send you the current standard form indemnities which we work from, customising as required.</p> <p>This is not unnecessary – there may be circumstances where we have legitimate concerns which are not covered by 4.2(e). For example – a complaint that a provider is not paying 3rd party invoices may prompt us to see accounts. As we are not progressing with Preferred Supplier the circumstances when we will see accounts will be limited.</p> <p>“Reasonable” is covered by clause 2.2. We have added in “significant” as requested.</p> |
| <p>Clause 8 - Audits</p> | <p>8.4 For compliance and clarity you need to specify in the Contract how the audit process will be conducted and it should be de-linked from sanctions/penalties.</p> <p>TLS voiced their concerns about the process of sampling, extrapolation and that nil assessment of files and refer to the fact that this is part of the UC negotiations. They ask that we build into this contract the ability to move to a new audit approach for this crime contract if it is agreed as part of the overall settlement</p> | <p>Our view is that this is not necessary; “audit” has a normal dictionary meaning. Not sure what “delinking” is suggested, but our statutory duties and NAO requires us to maintain right to issue sanctions / penalties after audit</p> <p>We understand TLS’ position but, having reviewed the contract, do not think that any change is necessary to allow the assessment procedure to change if agreed as a result of the working party.</p> |
| <p>Clause 9 - Documents</p> | <p>9.3 Typo in line 4? – work under the Contract not Act</p> | <p>On re-reading we agree that its more logical to limit this obligation to docs linked to this contract / previous contract. Clarified.</p> <p>9.7 We have added a provision on giving notice of changes to Contract Report Forms as requested</p> |
| <p>Clause 10 – KPIs (Annex G)</p> | <p>This was discussed at the meeting (20/2/08). It is of great concern that these amount to micro management, that they can ultimately be used for breach/sanctions and that audits in respect of them can be published. We remain of the view that this area needs a great deal of work and that the clauses, as they currently stand are not clear, not reasonable and so are unacceptable.</p> | <p>We have deleted all Audit KPIs and only two Direct Application KPIs remain (costs assessment and Duty Solicitor).</p> |

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| <p>Clause 11 - Schedules and Key Information Tables</p> | <p>Issue: As currently drafted, Clause 11 seems to allow unilateral amendment of Schedules by the LSC. Other than in relation to purely technical or non-material changes, all amendments should be agreed in accordance with Clause 13.</p> <p>Potential Solution: The following wording should be headed at the end of Clause 11.10: “Notwithstanding the foregoing, other than in the case of changes of a purely technical nature which are not material in the light of the Contract as a whole, Schedules (including Office Schedules) may only be amended in accordance with Clause 13.”</p> <p>This is of concern as it can affect SMPs and special provisions/restrictions. We would prefer our amendment on this (above) to stand.</p> <p>11.B.2 – This should refer to 11.B.3 not to 11.3</p> | <p>The power to amend Schedules is on application by the provider or following any decision under the Contract, for example sanctions following a breach. We have added a paragraph clarifying our approach to such changes.</p> <p>Amended.</p> |
| <p>Clause 13 - Amendments to Contract Documents</p> | <p>Issue: The LSC has asked The Law Society to suggest a suitable form of amendment clause which will comply with recent court rulings and allow a reasonable balance between the parties to the Contract.</p> <p>Potential Solution: We suggest a new clause based on the solution recently agreed between The Law Society and the LSC in relation to amendments of the General Criminal Contract (January 2008). On this basis, we suggest that the whole of Clause 13 of the Standard Terms be deleted and replaced by the following: “How may we amend the Contract Documents?”</p> <p>13.1 Unless stated to the contrary elsewhere in this Contract,</p> | <p>Please see new clause inserted. We have a right to amend only:</p> <ol style="list-style-type: none"> 1. for legislative changes/court decisions etc 2. for external changes to the Justice System 3. to correct mistakes and ambiguities (with The Law Society’s agreement) 4. to make minor, technical or procedural changes |

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| | <p>we may only amend the Contract Documents in accordance with this Clause 13.</p> <p>13.2 If in our reasonable opinion there are provisions of the Contract Documents which are unclear, ambiguous, incorrect or which may not reflect our joint understanding with the Law Society of the policy which the Contract Documents are intended to implement, we may make such amendments to the Contract Documents as we consider necessary to achieve any required clarification or correction.</p> <p>13.3 We may at our discretion (but acting reasonably) from time to time make amendments to the Contract Documents which are either:</p> <ul style="list-style-type: none"> (a) favorable to all Suppliers; or (b) agreed with The Law Society <p>provided that in all such cases such amendments do not significantly affect the overall economic balance of the Contract.</p> <p>13.4 We may not amend the Contract Documents (whether under Clauses 13.2 and 13.3 or otherwise) without prior consultation. Consultation will be with the Consultative Bodies and will be subject to the provisions of Clause 13.5 below.</p> <p>13.5 A general principle of the Contract is that any amendments made to the Contract 13 should not significantly affect the overall economic balance of the Contract as between the LSC and the Suppliers. As part of the consultation process, the LSC and the Consultative Bodies shall try to ensure that the overall economic balance of the Contract is maintained.</p> | |
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| | <p>13.6 In the case of amendments made pursuant to Clauses 13.2 and 13.3 above, the amendment will take effect from such date (which may be the commencement date of the Contract) as may be agreed with The Law Society (such agreement not to be unreasonably withheld or delayed).</p> <p>13.7 Any failure to agree a date with The Law Society in accordance with Clause 13.6 within a reasonable period shall entitle the LSC to specify a reasonable and proportionate future date when the amendment shall take effect, provided always that the amendment shall not in such circumstances apply retrospectively or take effect within a period of less than six weeks after the date on which Suppliers are notified of the amendment (unless, in our reasonable opinion, there is an urgent need for Suppliers to comply with the amendment, in which case the amendment may take effect after a period of no less than four weeks after the date on which Suppliers are notified of the amendment)."</p> <p>We look forward to receipt of your draft on this.</p> | |
| <p>Additional comments following LSC's new proposed clause</p> | <p>Broadly LSC's proposed amendment provisions are acceptable to TLS.</p> <p>TLS would like to have all amendment powers in this clause.</p> | <p>We have considered this but having all amendment powers (for example, to amend contract report forms) in clause 13 meant that they did not appear in the logical place. We will clarify the entire agreements clause (28.1) to ensure that we still have a right to amend Guidance and other docs incorporated into the contract (SQM, Peer Review, CBAM etc) to the limited extent inherent in the definition of these documents.</p> |
| <p>13.1</p> | <p>TLS request that we add in a reference to our equal treatment obligations in respect of our powers to make changes which only affect some suppliers</p> | <p>We have amended Clause 13.1 to make it clear that with the exception of amendments to an individual contract Schedule or to facilitate a pilot in a specified region, amendments under Clause 13 will apply to all suppliers.</p> |
| <p>13.2</p> | <p>TLS request that we add word "reasonably" to "We may make such amendments to this Contract as we reasonably consider necessary...."</p> | <p>We have left this clause unamended, although Clause 2.2 will incorporate public body duties in any event.</p> |

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| 13.2 | TLS request that we limit changes that may be made to 13.2 to the amendments listed at 13.2 (a) to (e) rather than making these simply examples of changes we may make. | As above, since the civil unified contract has Clause 13.2 as its sole power of amendment, we think it is better to leave the clause unamended to avoid confusion as to which version applies. |
| | TLS ask that we agree to only make changes to minor amendments and amendments which correct errors/clarify ambiguities in April and October. | We do not intend to make any changes to a short contract other than those which we consider necessary. In relation to errors and ambiguities, we would probably want to correct these immediately. We will try to introduce any other changes together, where possible. |
| | TLS suggest that we add in general wording stating that amendments should not significantly affect overall economic balance. | We have decided against this provision in view of the emerging state of the law in this area. Clearly, we are committed to complying with the law in this area as it stands at the appropriate time. |
| | TLS ask that we give reasonable notice of changes in forms to providers | Agreed – clause 9.7 provides for at least 28 days notice. |
| | TLS ask that when amending CBAM guidance we have like short consultation on amendments based on Costs Committee/court decisions. | Agreed – clause 15.8 provides for up to 14 days consultation and at least 28 days notice of changes. |
| Clause 15 – Claims | This requires submission of claims by your website. However, the online system has crashed and, we understand, is unlikely to be up again in the near future in a usable, secure state. Is this clause still appropriate? | We are working on resolving SMS, please note that there are provisions for alternative arrangement in the interim in clause 15. |
| Clauses 17A and 17B – Standard Monthly Payments | <p>Issue: Practitioners need to be able to budget for their practices and the planning of recruitment and investment will depend heavily on forecasts of future revenue. The Standard Monthly Payment provides a regular income stream offering a level of financial stability for firms. Although we accept that the LSC does need to be able to reconcile claims against payments, and adjust the Standard Monthly Payment where appropriate to maintain a balance between the two, it is important that this is done in such a way as to allow firms sufficient time to plan for changes in revenue.</p> <p>Potential Solution:</p> | We have agreed to review SMP procedures. The contract now incorporates the Supplier Reconciliation Protocol, which will also apply to civil cases from July 2008. |

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| | <p>It would seem reasonable that the LSC should only be able to carry out reconciliations and adjust Standard Monthly Payments at fixed intervals and should give firms reasonable notice of those adjustments.</p> <p>Clause 17A.3 should be amended to read as follows:</p> <p>“The aim is that the value of (a) your Claims and (b) your payments for Controlled Work should be equal at the end of each Contract Year. Therefore, to achieve this, we will, no more than once every three months, reconcile the values of (a) your Claims for Controlled Work and (b) your Standard Monthly Payments and, if necessary to maintain an equal balance between them, will amend your Standard Monthly Payments and Schedule Payment Limit by serving two months’ written notice on you in writing (such written notice to explain our reasons for making the amendment). Unless (acting reasonably) we consider that there is a risk to public funds, we will not reduce your Standard Monthly Payments by more than 20% in any Contract Year.”</p> <p>17.B.2 – there may be an error here. The trigger for electronically submitted claims is the 24th of each month not 10 days after the end of the month which we understand is only for claims submitted on paper.</p> <p>Clause 17B.4 should be amended to read as follows:</p> <p>“The aim is that the value of (a) your Claims for SMP Work and (b) the total of your Standard Monthly Payments for Controlled Work should be equal at the end of each Schedule. Therefore, to achieve this, we will, no more than once every three months, reconcile the values of (a) your Claims for SMP Work and (b) your Standard Monthly Payments and, if necessary to maintain an equal balance between them, will amend your Standard Monthly Payments by serving two months’ written notice on you</p> | |
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| | <p>in writing (such written notice to explain our reasons for making the amendment). Unless (acting reasonably) we consider that there is a risk to public funds, we will not reduce your Standard Monthly Payments by more than 20% in any Contract Year.”</p> <p>The third sentence of Clause 17B.7 should be amended to read as follows:</p> <p>“Thereafter we may, no more than once every three months, reconcile the values of (a) your Claims for SMP Work and (b) your Standard Monthly Payments and, if necessary to maintain an equal balance between them, will amend your Standard Monthly Payment by serving two months’ written notice on you in writing (such written notice to explain our reasons for making the amendment). Unless (acting reasonably) we consider that there is a risk to public funds, we will not reduce your Standard Monthly Payments by more than 20% in any Contract Year.”</p> <p>17B.9 definition required of Associated CLS class in def / cl 1</p> | |
| <p>Clause 18 – Set Off and Repayment</p> | <p>Issue:</p> <p>Whilst we accept that there will be circumstances in which it will be appropriate for the LSC to collect the amount of any overpayment or mispayment from a firm, the LSC needs to consider the potential impact on a firm of having to pay back to the LSC in a single instalment a payment (or series of payments) which the firm may have received in good faith. It will also be important for firms that they should be able to “close the book” on payments received after a reasonable period, rather than having the spectre of a repayment or clawback hanging over them without limitation.</p> <p>In addition, Clause 18.2(b) allows the LSC to claim payment of, or set off against payments it is due to make to a firm, any financial loss it has incurred as a result of a breach by that firm. Normally, a party claiming to have suffered loss would be under a duty to mitigate its loss and to demonstrate the level of loss it</p> | <ol style="list-style-type: none"> 1. It is not responsible to give away / limit our rights to recoup payments owing lawfully. In practice we have informal review mechanisms, complaints and appeals procedures which we believe provide sufficient protection for suppliers balanced with our duty to account for the expenditure of public funds. 2. As regards mitigation, this clause predominantly addresses overpayments. In relation to breaches, we do not see how an obligation to mitigate our losses would be meaningful. 3. We have added provisions confirming that we will consider repayment in a reasonable number of instalments provided that: <ol style="list-style-type: none"> (a) payments are at least £1,000 (b) payment is complete in the financial year |

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| | <p>has suffered as a result of the other party's breach.</p> <p>Potential Solution: Amend Clause 18.2(b) as follows:</p> <p>"in respect of a Matter or Case, you have breached this Contract and, as a direct result of that breach, we can demonstrate that we have incurred a financial loss (without prejudice to our obligation to mitigate that loss); or"</p> <p>Add a new Clause 18.2A directly after Clause 18.2 as follows:</p> <p>"18.2A Where we have issued a notice or debit note pursuant to Clause 18.2(b), you shall be entitled to refer our decision to do so for reconsideration, formal review or dispute resolution in accordance with Clauses 32 and 33."</p> <p>Add new Clauses 18.10 and 18.11 immediately after the current Clause 18.9:</p> <p>"18.10 Any notice by us requiring repayment (by any means) of any overpayment or misplayment or the repayment of any sum which is unjustified or repayable under this Clause 18, must be served no later than the date which is 12 months after the date on which the original payment which is subject to the notice was made.</p> <p>18.11 Unless we consider that there is a risk to public funds, we will allow you to make a repayment required under this Clause 18 in a reasonable number (being no less than three) of instalments or by making a reasonable adjustment to your Standard Monthly Payments."</p> | <p>We should make clear that our predominant duties are to protect the fund and clients, only when these duties are met will we be able to consider repayments in instalments.</p> |
| <p>Clause 19 - Instruction and payment of third parties</p> | <p>19.3.d This should read clauses (a) and (b). Otherwise the clause contains a contradiction.</p> <p>19.6 This remains a problem as many experts simply refuse to</p> | <p>Sub-clause removed.</p> <p>This is unfortunate but we cannot agree to pay out public funds</p> |

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| | <p>agree to time record and permit verification by yourselves as the contract. This can restrict the choice of expert and thus cause severe problems.</p> | <p>on services which are not properly recorded or audited by ourselves.</p> |
| <p>Clause 21 - (Confidentiality)</p> | <p>The LSC proposes to publish information about firms' payments and performance including sanctions under the contract and on audits. This is based on too wide a definition of confidential information. For example, publishing information about audit results makes a mockery of the LSC claim at our meeting that this information is for management information only. Clearly it is not. It is to be published and this could be to the firm's detriment. This is of considerable concern where there is already concern at the type of information to be collected, the audit that is to be carried out and the usefulness of this both to yourselves and to the firms. CI 21.9 requires further discussion as to its width and the implications of this for firms.</p> <p>TLS are concerned that we have right to disclose peer review results because (a) they think the process is not reliable and (b) suppliers cannot appeal a 3 if they think they deserve a higher rank.</p> <p>TLS are concerned about us disclosing sanctions if they result in action short of termination.</p> <p>All disclosure of audits/sanctions should only be after all appeals have been exhausted. TLS have had advice that to disclose prior to this is potentially defamatory.</p> | <p>We understand TLS's concerns but the thrust of government policy legislation on confidential information is to promote openness and disclosure unless there is a very good reason why not.</p> <p>The removal of the Audit KPIs has reduced the amount of audit information which is liable to be disclosed in any event.</p> <p>The scope for arguing confidentiality in respect of certain information is in 21.1.</p> <p>Agreed on basis that suppliers are not encouraged to appeal at PR 3 – if we disclose this information we will not differentiate between 1, 2 and 3.</p> <p>We consider that we should retain the right to disclose details of sanctions which affect the ability of persons/firms to practice or to continue carry out legal aid work.</p> <p>We have taken advice and would in all cases clarify that any termination was subject to an internal or external appeal (including arbitration) when appropriate.</p> |
| <p>Clause 23 – Indemnity</p> | <p>Issue: Clause 23 sets out a broad indemnity in favour of the LSC. It is common in commercial agreements for the party offering an indemnity to be entitled to notification and conduct of any claims under, or relating to, the indemnity.</p> <p>Potential Solution: The following new Clause 23.3 should be added at the end of Clause 23:</p> | <p>We have added some provisions giving suppliers rights to:</p> <ul style="list-style-type: none"> (a) notice of claim (b) copy documents (c) have reasonable account taken of any suggestions in relation to the claim. <p>These do not go as far as the TLS suggested drafting but we think are a reasonable position.</p> |

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| | <p>“23.3 If any third party makes a claim against, or notifies an intention to make a claim against, us or if other circumstances arise which we may reasonably consider as being likely to give rise to a liability under the indemnity in Clause 23.1, we shall:</p> <ul style="list-style-type: none"> (a) as soon as reasonably practicable give written notice of that matter or those circumstances to you, specifying in reasonable detail the nature of the relevant claim; (b) not make any statement prejudicial to you, admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of you (such consent not to be unreasonably or delayed); (c) give you and your professional advisors reasonable access to our premises and personnel and to any relevant documents or records within our power or control so as to enable you and your professional advisors to examine such premises, documents or records, and to take copies at your own expense for the purpose of assessing the merits of the relevant claim; and (d) allow you to conduct the relevant claim and, subject to you meeting our reasonable costs and expenses, we shall take such action as you may reasonably request to avoid, dispute, resist, compromise or defend the relevant claims.” | |
| <p>Clause 24 - Giving notices</p> | <p>24.8 Please amend this to read: we may give notice of the amendment by placing it on our website www.legalservices.gov.uk and either by sending you notice of the fact of the amendment in accordance with clause 24.1 such notice to be deemed to have been received in accordance with clause 24.2.</p> | <p>Agreed</p> |

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| | <p>TLS want contract sanction notices and notices of contract amendments to be backed up by post if given by email.</p> <p>TLS want LSC to send full contract changes out on paper (rather than referring recipient to the website) because suppliers find website confusing and difficult to navigate.</p> | <p>Agreed</p> <p>We do not think this is necessary or proportionate, but in view of concerns expressed will clarify the route to appropriate webpage in Focus and email updates.</p> |
| Clause 26 Novations | <p>26.4.e Please insert at the end of this clause:before the novation, and the old firm remains liable for any debt or obligation provided that we may not recover the same debt from both the old firm and the new firm.</p> | <p>Agreed</p> |
| Clause 28 Severance | <p>28.12 As discussed at the meeting, we are most concerned by this clause which is garbled. It needs to be completely redrafted before we can consider it properly. As it currently stands, it makes no sense.</p> | <p>We have clarified this clause (now 28.11). We have confirmed that if we need to terminate the contract in the unlikely circumstances outlined in clause 28 we will give not less than 3 months' notice.</p> |
| Clause 28 Entire Agreement | | <p>We have clarified the entire agreement clause in response to TLS' concerns</p> |
| Clause 28 Intellectual Property | <p>28.18 Firms should have the IP rights in work they produce under the contract just as they do for private clients. Rights should vest in firms not vest in LSC with only a licence to firms. Therefore, this clause is not agreed.</p> | <p>Please see redrafted clause which addressed TLS' concerns.</p> |
| Clause 29 Sanctions | <p>29.1 This is not transparent as it was not known when firms signed the civil Unified contract in April 2007 that you would later apply sanctions or terminate because of work done under a different contract or by a separate branch office. This clause is not compliant and must be deleted.</p> <p>29.2.b Please insert: if your financial situation is such that we consider on reasonable grounds that there is a significant risk to Clients or to public funds.</p> <p>We are also concerned at the lack of restrictions on the use of sanctions in 29.4 and 29.5.</p> | <p>We concede that if we were attempting to insert this into the Civil contract this would be a legitimate point. But it is fair and lawful in relation to the new crime contract. We flagged in Foreword (K) that Unified Contract (Crime) would be on firm, not office, basis.</p> <p>Amended to read “...if your financial situation is such that we reasonably consider that there is a significant risk to Clients or public funds;”</p> <p>Please note the restriction in 29.3 requiring all sanctions to be proportionate and appropriate</p> |
| Clause 30 – Termination | <p>Issue: Under Clauses 30.3 and 30.4 as originally drafted, the LSC could terminate on a “no fault” basis on six months’ notice but</p> | <p>We agreed to consider how 30.3 and 28.12(b) relate in addition to giving wider consideration to severability and termination</p> |

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| | <p>only where this would be necessary or desirable to facilitate a Reform of the Legal Aid Scheme. The “Reform of the Legal Aid Scheme” concept has now been removed from the Contract. As, previously, the LSC could only terminate the Contract on a “no fault” basis in certain defined circumstances, and as those circumstances are no longer contemplated by the Contract, logic dictates that the LSC no longer needs that right to terminate. Therefore, Clause 30.3 should be deleted; the LSC has adequate other grounds for termination should this prove necessary.</p> <p>In addition, although we recognise that termination on immediate notice (under Clause 30.9) may be necessary in certain circumstances, it is a remedy that will have serious consequences for a firm, its employees and clients. Therefore, it is important that this remedy is not used in respect of merely technical breaches where there is no material risk to the LSC, clients or public funds.</p> <p>Potential Solution: Clause 30.3 should be deleted - There is no need for you to have no fault termination on six months notice in a contract with a term of only 12 months. This is particularly the case since you have deleted clause 30.4 but you justify 30.3 solely by reference to 30.4. Therefore, both 30.3 and 30.4 should now be deleted.</p> <p>The following wording should be added at the end of the first paragraph of Clause 30.9 (i.e. before the colon introducing the sub-clauses):</p> <p>“(provided that we shall not terminate under this Clause 30.9 for merely technical breaches of the Contract or in circumstances in which we cannot demonstrate that we have reasonable grounds for suspecting that public funds or Clients’ interests may be at risk)”</p> <p>30.9.a Please insert: We receive a Report and reasonably</p> | <p>We require retention of a six month no fault termination clause, in view of the limited ability to change the contract.</p> <p>Please see the revised clause 28 which now allows for 3 months’ notice of termination as a result of court decision/change in legislation etc, as a result of our discussions.</p> <p>Termination on immediate notice is subject to 29.3 (as termination for breach is a sanction) which requires our decisions to be proportionate and appropriate.</p> <p>We cannot accept this. None of these situations is capable of being a ‘technical breach’. Demonstrating grounds for risk to fund / clients is not reasonable under (b), (d), (e), (f) or (g) and is inherent in (a) and (c).</p> <p>30.8(a) amended as follows “...we receive a Report and</p> |
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| | <p>consider that termination is required...</p> <p>30.9.c Please insert: Your financial situation is such that we reasonably consider that we or Clients are at significant risk of financial loss.....</p> <p>30.9.d This is a breach that should be met by a sanction not by termination. If you do require termination for this, (which we do consider to be unreasonable here), then the time given to remedy that breach should be 28 days not 7 days as in cl 30.10 for consistency and to comply with good practice.</p> | <p>reasonably consider that termination is required to protect Clients or us from possible harm..."</p> <p>30.8(c) amended as follows "Your financial situation is such that we reasonably consider that we or Clients are at significant risk of financial loss."</p> <p>We cannot accept this. Refusal to give access to demonstrate that work we have paid for on behalf of clients has not been done satisfactorily goes to heart of relationship. Rules / notice period etc give suppliers protection and there is an appeal</p> |
| <p>Clause 31 – Termination / Remainder Work</p> | <p>Issue: We understand that practitioners are to be entitled to carry on with Remainder Work after termination or expiry of the Contract if they wish to do so. We understand that this right would be lost if the Contract were to be terminated as a result of any breach by the practitioner. This will require an amendment to the definition of "Remainder Work" and an amendment to Clause 31.10.</p> <p>Potential Solution: Amend the definition of "Remainder Work" in Clause 1 as follows:</p> <p>"'Remainder Work' means Contract Work that commenced before the termination or expiry of this Contract which you are entitled to continue in accordance with the terms of this Contract after this Contract (or part of it) has ended;"</p> <p>Replace the existing Clause 31.10 with the following Clause 31.10:</p> <p>"If you wish to do so, you may perform Remainder Work unless this Contract terminates pursuant to Clauses 30.5, 30.6 or 30.7 or is terminated by us pursuant to Clauses 30.8, 30.9, 30.11 or 30.12."</p> | <p>This has been amended to refer to the Remainder Work Protocol which will also apply to civil contracts.</p> |

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| | <p>31.11 TUPE. There may be a drafting error here. Please check. We suggest the following amended wording for the last sentence of this clause: ... we reserve the right ... if at any time we consider that TUPE may apply on any such termination, subject to our compliance with clause 13.1.</p> | <p>Agreed</p> |
| | <p>TLS state that the UC deal is that we will go further than removing presumption that Remainder Work will not be allowed (reflected in current drafting) to state "If you wish to carry on with Remainder Work you may do so unless your contract has been terminated [on application of a sanction] for up to 6 months.</p> | <p>As above</p> |
| <p>Clause 32 – Reconsidering decisions and the review procedure</p> | <p>Issue: Decisions relating to adjustments to the Standard Monthly Payments (under Clauses 17A and 17B) and relating to the repayment of mispayments or overpayments (under Clause 18) are of critical importance to firms and may even be material to the viability of their practices and the services they offer to clients. These decisions are not currently subject to the formal review procedure but should be.</p> <p>Currently, the formal review procedure runs the risk of being severely biased as the Legal Director of the LSC may, at his or her own discretion, conduct the review himself or herself or refer the review to the Contract Review Board (CRB). However, even the CRB is not independent as the majority of its members is appointed by the LSC and the chair (with a casting vote) may be an employee of the LSC.</p> <p>Potential Solution: Further grounds for invoking the formal review procedure should be included by adding the following words at the end of Clause 32.4(d):</p> <p>"or our decision relating to an amendment of your Standard Monthly Payments (under Clauses 17A or 17B) or relating to any repayments we may require under Clause 18; or"</p> | <p>We have clarified that SMP decisions are subject to internal review, but have added a provision requiring providers to raise this with their Director prior to applying for a Formal Review. This is because under the new Supplier Reconciliation Protocol we expect decisions to be more certain and that the Regional Office will be best placed to conduct reviews. We have retained the Formal Review process for disputes which go beyond this.</p> <p>We clarified Internal Review & CRB is not fully independent and it was never intended to be. Arbitration provides the independent review.</p> |

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| | <p>The second sentence of Clause 32.11 should be deleted and replaced with the following:</p> <p>“Thereafter he or she will refer the review to the Contract Review Body (“CRB”) by sending all papers and documents relevant to the review (including his or her own notes or comments, where appropriate) to the secretary of the CRB.”</p> <p>If this amendment is made, Clause 32.12 can be deleted.</p> <p>Our preference is that the CRB should be completely independent with members being drawn on each occasion that the CRB is constituted from a pool of available independent experts. If this is not deemed to be practicable, the following amendments represent our minimum acceptable position to try to eliminate bias from the CRB:</p> <p>Replace Clauses 32.13 (a) and (b) as follows:</p> <p>“ (a) two members nominated by us (one of whom shall be chair of the CRB, provided that such chair shall not be an employee, officer, agent or independent contractor of the LSC and shall be under a duty owed to both the relevant Supplier and the LSC to act reasonably and fairly in carrying out the review); and</p> <p>(b) two members nominated by The Law Society or the Advice Services Alliance (provided that where the relevant Supplier is a firm of solicitors or a solicitor sole practitioner, at least one member of the CRB will be nominated by The Law Society).”</p> | |
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Specification

Terms of specification have not been changed, except as set out below, from General Criminal Contract (January 2008). We list the changes, TLS comments and our responses below.

| Clause in Crime Specification (July 2008) | Reasons for amendment | Law Society Comments | LSC response |
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| PART A | | | |
| General | | The Society is of the view that a new contract is not necessary at this stage; we believe that it would cause far less disruption to continue with the current contract. Given the amount of changes that practitioners have had to deal with recently, many are questioning the perceived necessity of introducing yet another new contract when the current one only started in January this year. | Whilst we understand your concerns we think working towards a single set of Standard Terms will be more convenient for providers who undertake both crime and civil work. The Unified Contract 2008 will be a significant step towards achieving this. With specific reference to the Specification there have been no significant changes to the GCC Jan 08 Spec other than a structural redesign. We have produced a clause-by-clause tracker document to assist Suppliers with finding provisions in the new Specification as well as a guide to the whole contract.. |
| A1. Introduction to the working of the Specification | New clause added for clarity/explanation of the new Specification. | None. | |
| A2. Structure of Specification | New clause added to explain the new structure of the Specification. | None. | |

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| <p>A3 and A4. Qualifying Criteria</p> | <p>New clause added for clarity/explanation of the new Spec.</p> | <p>Queried 3.2(b) in relation to financial eligibility tests.</p> <p>TLS also thought the reference to "guidance" in clause 3.3 was not transparent.</p> | <p>Redrafted to exclude financial eligibility tests</p> <p>We have added a definition of "Guidance" to the standard terms which refers to guidance as at the date of the contract (and allows only minor technical or procedural amendments). We have reviewed references to "guidance" in the Spec and replaced with the defined term where appropriate.</p> |
| <p>A6. Limits on Claims</p> | <p>Re-drafted for clarity.</p> | <p>TLS queried the word "perform" in the second sentence of 6.1.</p> | <p>We have replaced "perform" with "claim" and have reviewed the Specification for other references to "perform".</p> |
| <p>A7. Application Rules</p> | <p>New clause added for clarity.</p> | <p>None.</p> | |
| <p>A8. Application Forms (clause 8.4)</p> | <p>Amendment provisions deleted.</p> | <p>None.</p> | |
| <p>A10. Application from a Child (clause 10.1(a))</p> | <p>Removal of provision entitling direct applications where a child is entitled to "begin/prosecute" proceedings. This is a correction of a drafting error in the previous contract terms.</p> | <p>None.</p> | |
| <p>A12. Devolved Powers (clauses 12.1, 12.2, 12.4, 12.5 and 12.6)</p> | <p>Amendment provisions deleted.</p> | <p>None.</p> | <p>Note, "guidance" replaced with defined term "Guidance".</p> |

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| <p>A16. Where can you perform Contract Work?</p> | <p>These provisions have been re-drafted and new paragraphs 16.1 and 16.4 added for clarity and to cross-refer to the Office Schedule.</p> | <p>TLS wanted us to delete clause 16.4. This is not a strict obligation and LC does not think it adds anything. She suggested that if we did wish to keep this clause we ought to distinguish between travel required due to the practice management of a firm (for example, it is possible that a firm's criminal solicitors are all based at one office but that another of the firm's office is closer to the court) and fraudulent travel claiming. 16.4: 'we expect you to...' is not a contractual term. Either it is a contractual obligation or it is not.</p> | <p>We have reviewed the drafting of this clause and amended.</p> |
| <p>A18. Very High Cost Cases</p> | <p>We have amended the VHCC provisions to incorporate wording from the final version of the VHCC Contract and to correspond with Funding Order.</p> | <p>18.8: This clause should be qualified to read 'unless there are good reasons for the delay'. There are likely to be some cases in which it may not be clear at the start that they are likely to become VHCCs, and there must be some allowance for such cases where any delay in reporting is not deliberate or the fault of the solicitor.</p> | <p>The application of a sanction is <u>always</u> subject to the limitations under clause 29.3 of the Standard Terms - must be proportionate and appropriate. In light of this we do not intend to make the proposed amendment</p> |
| <p>A20. Change of solicitor/counsel</p> | <p>This is a re-draft of the previous wording, combining clauses 4.9 p128) and 5.5 (p133) of the January 2008 GCC. We have also added a cross-reference to the payment provisions applicable where a Representation Order is amended.</p> | <p>TLS queried the reference to Regulation 16 at clause 20.1 and wanted us to set out the Regulation in an Annex or in the contract itself.</p> | <p>We agreed to check what Reg 16 contains, that it still applies and consider adding the wording of the Regulation to the contract although we had already considered doing this but been advised this was a bad idea as it causes problems when Regulations are amended. After checking, we confirm that Reg 16 relates to transfer of Representation Orders. We have added some wording to clause 20.1 to clarify what this relates to.</p> |

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| <p>A21.Specialist Quality Mark (clause 21.1)</p> | <p>We have removed the provision which stated that the SQM was one of the Contract Documents and added a provision requiring compliance with the SQM (at 21.1), to clarify the contractual nature of this document.</p> | <p>TLS queried why this wasn't in the standard terms.</p> <p>TLS also queried whether this could be replaced with other quality marks in the future (in line with discussions elsewhere).</p> | <p>We have clarified the status of the SQM as incorporated in the Standard Terms under the entire agreement clause (cl 28.1)</p> <p>We discussed this and thought it would not be possible to make provisions in the contract until an agreement had been reached. We agreed that we may need to highlight to providers (probably in the IFA) that the quality mark is under review and may be amended during the contract. Alternatively the change may take place for the next round of contracting.</p> |
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| <p>A22. Payment provisions (including Disbursements) (table at clause 22.19, clause 22.20 and table on p39)</p> | <p>22.20 added (to exclude payment for hotel expenses for Duty Solicitors on standby (see also paragraph B1.1.22(15) of Part B)).</p> <p>Amendment made to prevent duty solicitors claiming payment for unnecessary hotel expenses whilst on standby (e.g. to prevent disturbance to partners/families or because they live far away from a scheme which they have joined).</p> <p>We wish to encourage solicitors to work on local schemes so they are able to attend the police station within required time limits. However, we recognise that there may be exceptions to this rule and clause 22.20 allows the Regional Director to approve payment of hotel expenses where it is necessary to maintain sufficient levels of coverage.</p> <p>The table summary of payment provisions (at page 39) is new. This was added for clarity and ease of reference.</p> | <p>TLS said the table on disbursements was slightly confusing as it looked as though the two columns related to each other.</p> <p>TLS also pointed out that the reference in the table to accommodation expenses did not expressly relate to Duty Sols.</p> <p>TLS also thought that the payment summary table should be moved to the beginning of the document or set out in an annex as a point of reference for providers.</p> | <p>We have amended the format of the table and added the reference to duty solicitor at the appropriate part of the table.</p> <p>Agreed and moved to annex.</p> |
| <p>A25. Solicitors with Higher Court Advocacy rights</p> | | <p>Requirement for independence - impact on in-house lawyers</p> | <p>To clarify there is nothing to prevent in-house solicitors with Higher Court Advocacy right undertaking advocacy. However, we understand the issue in respect to advice / opinion. We do not propose to amend the Spec however, we will review this issue and if necessary issue guidance.</p> |

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| <p>26. Independent Funding Adjudicator</p> | <p>References to “Funding Review Committee” now changed to “Independent Funding Adjudicator” to reflect new terminology adopted.</p> | <p>None.</p> | |
| <p>27. Duty Solicitor requirements</p> | <p>Clauses 27.1 and 27.2 were added to clarify responsibility for compliance with Duty Solicitor requirements in the contract.</p> <p>Clause 27.8 – provision added to refer to KPI A2.</p> <p>27.13(c) and (d) - We have added to the circumstances in which a Duty Solicitor can act for a client who has his/her own solicitor to prevent reported delays caused where a client’s Own Solicitor fails to turn up to court or refuses to act due to the fact that a Representation Order has not yet been granted.</p> | <p>TLS queried the interaction between the Duty Solicitor Arrangements and contractual obligations on firms.</p> <p>TLS asked for 27.1A to be amended to read “Contract Work carried out under a Duty Solicitor Scheme” rather than “Duty Solicitor Scheme Contract Work”.</p> <p>TLS asked for all references in the Spec to KPI A2 to be deleted following our agreement to remove KPI A2.</p> <p>TLS thought that solicitors would be unable to act for a client who already has a solicitor as professional rules prevent duty solicitors acting for a client who already has his own solicitor. They also thought that 27.11 covered the circumstances in which a solicitor could act could act anyway (i.e. when the client gives consent).</p> <p>In relation to 27.7, LC did not think we needed the additional wording to ensure suppliers use the DSCC website to notify us of changes (she thought that the obligation to notify us was enough and that we could specify how this was to be done outside of the contract).</p> | <p>We have redrafted these provisions and emailed a copy of the revised Arrangements and extracts of the revised Clause 27 from Part A of the Specification to TLS to review.</p> <p>Agreed and amended.</p> <p>We agreed that the sentence in 27.8 is to be deleted following the removal of KPI A2 and this has been done.</p> <p>We have re-drafted this and 27.13(c) and (d) have been deleted</p> <p>We have reviewed the drafting of clause 27.7 and B1.1.13(5) and amended to refer to use of the DSCC website “wherever possible”. We will give six months’ notice of the requirement to use the DSCC website and this will not occur before January 2009.</p> |

| PART B | | | |
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| General Point: paragraph numbering. | | The paragraph numbering becomes confusing in this section, and is inconsistent with what was used in the previous section. Paragraph numbers need to include the main section number/reference, followed by the sub-clause number, (i.e: 1; 1.1; 1.1.2 etc), so that it is clear which section is being looked at. | We are willing to make this change as we have done to the Standard Terms. There is a footer on each page of Part B which shows the full name and number of the main clause. In light of your comments we have increased the font size of this to assist further. |
| B1.1.3 – Immigration advice | The drafting of this clause has been amended to clarify when criminal providers should attend in relation to immigration matters. | TLS said this clause was confusing and asked us to revise the drafting. | We have reviewed the drafting of this clause and amended it. It now follows the structure of the GCC Jan 08 Spec more closely. |
| B1.1.10(1)(b) and B1.1.19(2)(c) and (f) – mandatory attendance | Our intention here was to remove the compulsory requirement to attend the Police Station for video identification procedures unless the client is vulnerable and present at the Police Station and to give more discretion to providers' professional, informed judgement as to whether attendance is necessary. | <p>TLS had agreed to consider the wording.</p> <p>Any wording which allows the solicitor to exercise discretion as to whether s/he attends at an ID procedure needs to make clear that the significance of the procedure to the case is also an important additional factor (i.e. the client's vulnerability / presence are not the only factors).</p> <p>TLS queried clause B1.1.13(8) – “where no times are recorded we will assume that the target was not met”. They thought this was an unfair assumption.</p> <p>TLS also asked if we could delete B1.1.18(4) as this is repeated at (7).</p> | <p>We have amended this to allow providers discretion to decide when attendance is necessary, according to their professional duties. This will be monitored via peer review.</p> <p>We have amended the wording so that it is clear we will consider circumstances and isolated incidents before recording non-compliance.</p> <p>Agreed and deleted.</p> |

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| B1.1.19(9) – Panel and backup cases | A cross-reference to KPI A2 had been added. | TLS asked for all references in the Spec to KPI A2 to be deleted following our agreement to remove KPI A2. | We have deleted this provision. |
| B1.1.23(14) – Payment of accommodation expenses | Wording added to exclude payment for hotel expenses for Duty Solicitors on standby (see also paragraph 22.20 of Part A, and comments above). | None. | |
| B1.2.5(2) Postal Applications | | The list of ‘good reasons’ should be shown as not exhaustive or removed | We have amended this provision to make it clear this list is not exhaustive |
| B1.2.7 Telephone Advice | | This reference, and all subsequent provisions concerning Telephone Advice may need expanding to cover Voice Over Internet Protocol (VOIP) or equivalent methods of technology | We do not propose to amend the Spec however, we will review this issue and if necessary issue guidance. |
| B1.2.12(12) Complaints of police maltreatment | | Provision contains guidance on time / units | Reference to time / units removed to CBAM 17.13 |
| B1.2.14 Prior Authority & B1.1.23(2) Exceptional Case Further Assessment | | Double assessment issue | This is a Cost assessment issue and will be picked up in guidance |

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| <p>Various provisions regarding Advocacy Assistance & Representation</p> | | <p>Potential irrelevant provisions – entire rule does not always apply to the specific unit of work (eg Withdrawal of Advocacy Assistance, Previous Advocacy Assistance, Postal Applications etc)</p> | <p>Since this issue was raised we have amended / deleted as many as irrelevant provisions as possible (listed below). We are continuing to review the relevancy of all provisions so as to be meaningful to suppliers .</p> <ul style="list-style-type: none"> B1.3.5(1) B1.3.5(3) to (8) B1.3.6 B1.3.7 B1.3.8 B1.4.5(1) B1.4.5(7) to (8) B1.4.6 B1.4.7 B1.5.5(1) B1.5.5(8) B1.5.6 B1.5.7 B2.3.6 B2.5.2 B2.5.3 B2.5.4 B2.5.5 B2.5.6 B2.5.7 B2.5.8 B2.5.9 B3.2.3 B3.2.4 B3.2.7 B3.2.8 B3.2.10(4) –(7) B4.1.3 B4.1.6 B4.2.3 B5.1.4(1) B5.2.4(1) |
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| <p>B1.3.9 B1.4.9 B1.5.9 B2.4.8 B4.3.13 B4.4.13 Instructing Counsel</p> | | <p>Query policy</p> | <p>We do not propose to amend the Spec however, we will review this issue.</p> |
| <p>B2.2.11 – Payment for Magistrates’ Court Representation</p> | <p>Substantial drafting amendments have been made to this section (e.g. terminology amended - “Revised Standard Fees” replaced with “Designated Area Standard Fees”) for clarity.</p> <p>We have also clarified at B2.2.11(15) that where Standard Fees are claimed, providers must still report the <u>cost</u> of travelling and waiting time to us (as opposed to the <u>time spent</u> travelling and waiting) as this was causing some confusion.</p> | <p>TLS queried the figures in the table at p131.</p> <p>They also pointed out that reporting travel and waiting cost/time is particularly objectionable to providers. Not only does this create an unpaid administrative burden on firms, but any data obtained is unlikely to be realistic. If there is no incentive to record this information, firms should not be expected to spend unpaid time checking if any such information is accurate or not.</p> | <p>B2.2.11 / Table B / Higher limit rate for Category 3 work confirmed as £888.86. We have amended the table accordingly.</p> <p>We have removed the requirement to record travel time/cost. We cannot remove the requirement to record waiting time because of its relevance to wider CJS initiatives.</p> |
| <p>B2.3(c) – Means Test Form Completion Fixed Fee (B2.3.4 and B2.3.8(3))</p> | <p>We have added provision for payment of a ‘refused means test form completion fee’. This amendment was contained in a “Notice of Amendments” produced by the LSC for implementation on the 16th April 2007 but was not subsequently adopted in the contract. We have used this opportunity to make the appropriate amendment which allows providers to claim a fixed fee for completion of the means test form in the circumstances set out in the clause.</p> | <p>RM questioned how we would monitor B2.3.4(f) as we cannot look at provider’s non-legal aid files.</p> | <p>We accept that monitoring this may prove difficult but do not intend to add any new audit rights to cover this point.</p> |

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| B3.1.1(3) Instructions to Counsel | | Provision contains guidance on time / units | Reference to time / units removed to CBAM 2.13 |
| B4.2.1(2) Reps to the Home Office | | Provision contains guidance on time / units | Reference to time / units removed to CBAM 2.14 |
| PART C | | | |
| 1.5, 1.7, 1.8 and 1.9 | The automatic percentage reduction of payment for late claiming has been removed. | None. | |
| 7.6 | Amendment provision deleted. | None. | . |
| ANNEXES | | | |
| Annex 1 | The rates for police station attendance are now clearly stated to be exclusive of VAT (to remove any ambiguity) and erroneous fees corrected. | RM had received a query about the accuracy of the figures. | We have revised the figures for VAT exclusive rates which are precisely based on the VAT inclusive figures stated in the January 2008 contract. |
| Annex 2 3E-009 -14 3E -010 -17 | The SQM Definitions have been updated to reflect the current online version of the SQM Category Definitions. | RM queried whether providers who hold both a crime and civil contract can chose to do CLS Work under either contract or whether they had to do this under the civil contract. | We confirm providers who hold both a crime and civil contract can chose to do CLS Work under either contract |