

LSC response to the Law Society's concerns regarding the General Criminal Contract (January 2008)

GCC (Jan 08) Ref	Law Society Reference and Comment	LSC Response
<p>Contract Documentation Overview Para 3 and 6</p> <p>Peer Review</p>	<p>Pg 10 para 3D Reference to 'Preferred Supplier status'; it is unclear what is happening with Preferred Supplier, nor whether or not it is in fact continuing?</p> <p>Pg 11 Para 6 This refers to publishing the final process in 'October 2005', and is therefore inappropriate in a contract for 2008. Moreover, as this clause relates to potential changes in peer review, it is not compliant with the JR judgment, since it induces uncertainty in how a part of the contract will operate. Clear references should be included to the paper containing the final peer review process, and this process cannot be departed from for the six-month term of the contract.</p>	<p>This Contract Documentation Overview is not of course part of the Contract and has been left in its current form in line with the policy to restrict amendments to the bare minimum. The KPI for peer review is set out clearly at clause 8.3 ST and the powers of amendment have been removed. An announcement in respect of Preferred Supplier will be made shortly.</p>
<p>Standard Terms (ST) 3.11</p> <p>Forms</p>	<p>Pg 26 Para 11 This clause gives the Commission the right to amend the contract by introducing new forms. We would argue that the forms required of firms are part of the technical specification, and this clause should therefore be removed.</p>	<p>We are surprised that the Law Society seeks to argue that Contract Work Report Forms are "technical specifications". This formed no part of their case in the Unified Contract JR and the judgment identified quality and performance standards as opposed to forms for notifying work or making claims. We do not agree with this claim and will continue to make sensible amendments on reasonable notice to such forms in order to</p>

		simplify reporting procedures, which is what we are sure providers will prefer.
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ST 3.2 and 8.3 and Part D Specification Performance Standards	Pg 31 Para 1 'You must achieve.....such level of performance as we may require'. Performance indicators are clearly part of the technical specification, and therefore reserving the right to specify the level of performance is not compliant with the JR judgment. The level that must be achieved throughout the term of this contract must be specified. If it is not, and particularly if the Commission proposes to amend the level then it will be non compliant with the JR judgment.	For the avoidance of doubt, the main performance standard in the contract continues to be set out in Clause 3.2 of the Standard Terms. The sole Key Performance Indicator for the life of this contract is set out at clause 8.3 as peer review 1,2 or 3. This is of course exactly the same standard as the current contract. For the avoidance of doubt, the LSC has no intention of amending this standard during the life of this contract and has deleted the power to amend performance indicators. There is of course no power to amend the Standard Terms unless clauses 16.14 to 16.17 apply (basically amendments following a court decision or legislative change). More specific performance standards are clearly set out in Part D of the Specification, which has been excluded from the general power to amend the Specification.
ST 9.2-3 Devolved powers	Pg 32 Paras 2/3 We would argue that Devolved Powers are part of the technical specification, so this provision is not compliant with the JR judgment.	Again, this is the first time the Law Society has raised the possibility that Devolved Powers are "technical specifications" and again, these are clearly not quality or performance standards. In the circumstances we disagree with the Law Society, although we have no intention to amend the Devolved Powers during the life of this contract.
ST 10.4 Amending the Specification	Pg 33 Para 4/5 We do not take it for granted that only provisions in Part D of the Specification amount to "technical specifications". Therefore this clause is arguably not in compliance with the JR judgment.	It would be assistance if the Law Society would identify any particular provision in the Specification which they believe are technical specifications, although of course no such identification has been made to date. The LSC have therefore acted in good faith to attempt to implement the High Court decision (on the UC JR) pending the appeal by removing the entire section that bears the title "Quality and Performance Standards".

<p>ST 16.20 Amendments</p>	<p>P 46 para 20 This paragraph gives the Commission the complete discretion to amend / delete forms (cf page 26). This is not compliant with the JR judgment and should be removed.</p>	<p>This is a repeat of the point in relation to powers to amend Contract Work Report Forms, please see the answer in respect of clause 3.11 above.</p>
<p>ST 20 Termination</p>	<p>Pg 57 Para 20 A 3-month termination clause is neither logical nor practical within a 6-month contract.</p>	<p>As we have indicated previously and in order to limit the work necessary to apply for the General Criminal Contract (January 2008), the LSC have endeavoured to keep amendments to the minimum necessary in order to comply with the High Court decision (on the UC JR) pending the appeal and to remove any obviously out of date provisions. We are not clear whether the Law Society is suggesting that the contract should be fixed for both parties for the entire term, however we consider it reasonable to continue to allow this provision and for it to be reciprocal i.e. either party can terminate on three month's notice, although of course the LSC's powers are more limited. Applicants should also be aware that the General Criminal Contract (January 2008) is for 6 months with a power to extend the termination date by up to 6 months.</p>
<p>Contract Spec Part B1.5 & 1.6</p>	<p>Pg 91-92 deletion of transitional provisions For clarification: is the LSC satisfied that the continuity clause on page 23 is sufficient to dispense with the need</p>	<p>The transitional arrangements contained within the deleted paragraphs relate to arrangements for Contract Work commenced prior to May 2004, October 2004 and October 2005. Any work affected by these transitional arrangements will be completed under the General Criminal Contract currently in force, not the General Criminal Contract (January 2008). Therefore there is no need for these to be carried over to the General Criminal Contract (January 2008).</p>
<p>Contract Spec Part B 3</p>	<p>Pg 104 deleted para 7 starting 'where the original attendance' We are unclear as to the reason for this deletion, since this paragraph made it clear that if the case is passed to the Duty Solicitor by the DSCC, even where there has been previous advice, the case may be accepted.</p>	<p>Within their response to the consultation on the wording of the GCC specification, the Law Society questioned the precedence of the proposed Rules in paragraphs 7-10, stating that the requirement to make enquiries of the client appeared to be transitional and would become unnecessary once the DSCC is dealing with all cases.</p>

		<p>It was not our intention that the requirement to make reasonable enquiries of the client prior to providing advice be a transitional rule, rather that this should be undertaken for all clients as appropriate. We agreed that the inclusion of paragraph 7 did appear to override paragraph 6 and therefore removed this paragraph.</p> <p>There are no obligations on the DSCC to make enquiries of those held at the police station regarding provision of previous advice prior to deploying each case, and we believe that this properly falls to the solicitor subsequently contacted.</p>
<p>Contract Spec Part B paras 3.7</p>	<p>Pg 106 para 3 We remain concerned that the requirement to 'telephone' the DSCC prior to attending or telephoning the client remains. This is highly impractical and could give rise to unnecessary delays in clients accessing advice. What of a situation where the solicitor cannot get through to the DSCC? Should they then delay providing advice to the client? The LSC confirmed at a meeting with the Law Society that consideration would be given to allowing other forms of contact than only telephone; such as e-mail or text. This should have been reflected in the contract.</p> <p>Pg 107 para 6 <i>'If the DSCC is unable to contact you, or you do not accept the matter within two hours...'</i> Drafting point: this makes it seem as if the 2 hour limit will only apply once the solicitor has been contacted and is then deciding whether to accept or not. <i>'Unable to contact you'</i> makes it appear that the DSCC does not have a two hour limit to contact the solicitor but only needs to try once & can</p>	<p>The need to telephone the DSCC before giving legal advice to a client following third party instructions was a particular point of discussion between the LSC and the Law Society. Our position is that we must be able to monitor all attendances for which we are paying, and we do not believe that a system involving after the event notification would provide us with an acceptable level of control. ACPO have also consistently opposed any system that would place any additional burden on the police.</p> <p>Our original position was not to allow any direct third party (family and friend) instruction of solicitors at all. Following negotiation with the Law Society we believe we have moved significantly on this and have conceded to allow such instruction on the widest basis under the controlled process as set out in the Contract.</p> <p>We do not consider it unreasonable to require solicitors to contact the call centre prior to giving advice, for the following reasons:</p> <ol style="list-style-type: none"> 1. The DSCC is, after all, a call centre with a sufficient number of staff. It is highly unlikely that callers would be unable to get through. At present 97% of all calls to the DSCC are answered within 20 seconds.

then re-deploy the matter immediately. It needs to be made clear that there must be several attempts to contact the solicitor within a two hour time-limit; that all?? contact numbers held for that solicitor must be used, and that other methods of contact must be tried, such as e-mail etc. What records will be kept that can be inspected of all attempts made at contact with the solicitor?

2. Logging of the call will only take approximately 30 seconds and administrative staff can make this call.
3. By requiring the logging of the call to take place before giving advice, the impetus is retained. After advice is given that time impetus is lost and it is more likely that this step will be forgotten, resulting in loss of payment for that case. We believe that this process, therefore, helps to safeguard the payment for the solicitor.

Whilst consideration was indeed given to other methods of notification, we believe the telephone system to be the most simple and functional for all parties to operate.

We would take this opportunity to confirm that the 2-hour limit does also apply to the DSCC, and that they will make all reasonable efforts to do so within that time. A case will not be re-deployed until after the 2 hours have elapsed and only if either the DSCC has been unable to contact the solicitor using all contact numbers provided by the solicitor, or the solicitor has not subsequently accepted the case.

	<p>Pg 110 para 3.7.1 re VHCC Panel members being able to attend the police station</p> <p>This does not make it clear that unless they also have a police station qualification, VHCC Panel members can only attend the police station <i>in VHCC cases identified as such at the police station</i>. Current drafting makes it appear they can attend in any case.</p>	<p>This concern would appear only to apply to those providers who hold a VHCC Panel Contract as well as a General Criminal Contract. Those VHCC Panel members who do not hold a GCC will not be able to rely on any terms set out in this Contract.</p> <p>As the Law Society is aware, the requirement for VHCC Panel members (litigators) to have the Police Station Qualification in order to attend the police station will not be brought in until Oct 2008 and therefore it is not in any event relevant to this Contract, which will finish before this date.</p>
<p>Contract Spec Part B 7.2.19</p> <p>Very High Cost Cases</p>	<p>Pg 148 para 7.2.19</p> <p>This contains provisions that are dependent upon changes to the CDS Funding Order that are still under consultation until 18/10/07 by the MoJ. This contract clause prejudices the outcome of that consultation. The LSC has also itself issued a letter (from Cris Scotter to Timothy Dutton, sent on 26/09/07 but undated) indicating clearly that exceptions will be made to panel exclusivity for certain cases, but this is not reflected here.</p>	<p>The policy is not under consultation as this was settled in the VHCC consultation exercise. The funding order is the subject of consultation simply to ensure that it is technically proficient in giving effect to the already announced policy. There is therefore no inconsistency/prejudging consultation involved here</p>
<p>Contract Spec Part B 8</p>	<p>Pages 150-151: para. 6</p> <p>This clause appears to create obligations on the Duty Solicitor once s/he has accepted a case from the Duty Solicitor Call Centre. However, on page 103, there is a provision that the Solicitor must first establish whether the client has had previous advice from another solicitor, & if so must decline to act. There is therefore a direct conflict between these clauses that needs to be resolved; and it did not exist in the draft on which the LSC consulted, thanks to note 7 on page 104, which has now been deleted.</p>	<p>We do not believe there to be any conflict between these clauses. Part B para 8.6 relates to the Duty Solicitors obligation to provide services to the client once a call has been accepted from the DSCC. There are further clear provisions in Part B 8.8 to allow for the Duty Solicitor to justify non-attendance in exceptional circumstances, provided this is appropriately recorded on the file. In our view, the fact that the client had received previous advice and was therefore ineligible for further advice pursuant to Part B2.12A would constitute an exceptional circumstance under this Rule.</p>
<p>Contract Spec Part B9.1.1 (b)</p>	<p>Pg 157-158 CDS Direct para 9.1.1 (b)</p> <p>This makes a contractual provision which is dependent</p>	<p>This Contract clause has been drafted to take account of the fact that the changes are subject to PACE changes. If the changes to PACE do not</p>

	<p>upon changes to PACE which are under consultation by the Home Office. The changes may not be made / may be different to what the LSC requires.</p>	<p>go ahead the amendment will not come into force and the Contract provides clear provisions for the arrangements to remain as per the current Contract (Part B 9.6).</p>
<p>Part D Specification Para 4.2.3/4 Quality and Performance Standards</p>	<p>Pg 188 paras 4.2.3 & 4.2.4 Refers to non-compliance with Performance Indicators; future changes to these, etc. There needs to be precise indications of what the Performance Standards are in the contract. If not, then paragraph 4.2.3 is non compliant, and paragraph 4.2.4 appears to be non compliant. A clause permitting changes to Performance Indicators is not compliant with the JR judgment.</p> <p>We also note that this clause relates to what the LSC proposes to do in 2001.</p>	<p>Part D of the Specification sets out the Performance Standards in the Contract and we believe the performance standards are clear (Part D is of course excluded from the amendment provisions (see Amending the Specification above)).</p> <p>Clause 4.2.3 applies to all work undertaken on or after 2 April 2001 (i.e. to date) but allows an "amnesty" for a short period from Contract Sanctions. We agree that it is unlikely that this amnesty will apply to current work, although again the policy was to restrict amendments to the absolute minimum and we do not believe any applicants will find this provision difficult to follow.</p>