



Civil Legal Aid Contracts: The Next Five Years

CIVIL LEGAL AID CONTRACTS: THE NEXT FIVE YEARS

Introduction

This sets out a route map for the development of civil legal aid contracts for the next five years. A first draft of this was published as part of the agreement reached between the Law Society (TLS), the Legal Services Commission (LSC) and the Ministry of Justice (MoJ) – this is the final document. Many of the proposals in this paper will be subject to consultation and constructive dialogue with representative bodies and others. However, the LSC hopes that by publishing this timeline and outline principles at this stage civil legal aid providers will be able to plan for the future with greater security.

This route map needs to be read in the context of other LSC publications – particularly the Community Legal Service (CLS) and Family Strategies (published in March 2006 and March 2007 respectively) as well as the review by Lord Carter of Coles published in July 2006, and the subsequent consultation and post consultation papers on the implementation of fixed fees.

The outline timeline for reform is as follows:

April 2008	Publication of consultation paper (Delivery Transformation) on new ways of working between suppliers and LSC from April 2010
May 2008	MoJ and LSC consultation on changes to Family Graduated Fees for the Bar (FGF).
September 2008	LSC 12 week consultation on stage 2 of family fixed fees for solicitors and counsel and the award and terms of new Unified Contracts from April 2010
January 2009	Report on operation of stage 1 fees and 6 week consultation on any changes to those existing fees to be made for April 2010
January - April 2009	Implementation of changes to FGF scheme
Spring 2009	Consultation paper on best value tendering (BVT) in civil legal aid

April 2009	Announcement of decisions on terms of new contract, stage 2 family fees and bid round process
May – December 2009	Bid round process for the award of the new civil Unified Contract in April 2010
April 2010	Current civil Unified Contract expires and new contract awards come into effect along with stage 2 family fees
2010-11	Trials of BVT begin in a small number of geographical areas
From April 2013	Possible roll out of civil BVT

1 The current Unified Contract (Civil)

- 1.1 Subject to the terms of this Deed, the current Unified Contract for civil legal aid providers will run until its expiry on 31 March 2010.
- 1.2 During this period, LSC will give stability to legal aid providers by restricting amendments to the Contract to those set out in this Deed including those necessary to respond to legislative or other changes within the terms of clause 13.2 of the Unified Contract Standard terms. Any such changes will be consulted upon with TLS and other relevant representative bodies. They will also be discussed in advance with the Civil Contracts Consultative Group.
- 1.3 LSC will also use this time to review, with TLS and others, existing cost compliance and quality procedures (including peer review) to ensure that they continue to be fit for purpose. LSC will want to confirm that these procedures maintain the right balance between its requirements to ensure propriety of expenditure and quality of service and the desire held by all stakeholders to reduce the burden of administration on legal aid providers.
- 1.4 LSC will also continue to run interim bid rounds before April 2010 to award additional New Matter Starts to ensure that the volume and spread of civil services are maximised within the capped legal help budget.

2 The Unified Contract (Civil) from April 2010

- 2.1 In April 2008 LSC will issue a consultation on proposed delivery transformation changes to be incorporated into the new contract. These will include electronic working, the devolution of means testing in certificated cases, speedier processing of applications involving a risk based approach and a simplification of contributions. The aim will be to allow legal aid providers and LSC to work together in a more efficient way and reduce the costs of administering legal aid to all stakeholders.
- 2.2 In September 2008 LSC will begin consultation on:
- (a) The terms of the civil Unified Contract which will apply from April 2010. The new contracts will reflect the focus set out in both the CLS and family strategies on priorities within civil legal aid and on integrated services and access for disadvantaged groups. LSC will be aiming to move towards greater certainty for both parties to the contract – for legal aid providers so that they can plan their business, and for LSC so that access for clients can be assured.
 - (b) The criteria and process for awarding the new contracts to meet those priorities. The LSC has published the results of calculations which show that the actual spend on social welfare and family advice services in an area can differ greatly from assessments of need based on the prevalence of particular justiciable problems and income data as a proxy for legal aid eligibility. These results provide some guidance in the allocation of resources available for bid rounds but these also have to take account of local factors such as where clients choose to access services.
 - (c) Remuneration changes from April 2010 (see below).
- 2.3 LSC will run a bid round to award the new Unified Contracts during 2009. A list of the proposed key milestones is included in this Appendix. This will be subject to discussion with the representative bodies.
- 2.4 The new civil Unified Contract will come into effect from 1 April 2010.

- 2.5 Although it will be a matter for discussion with TLS and others, LSC's initial view is that the new Unified Contract will run for three years until April 2013.

3 Remuneration changes from April 2010

- 3.1 In its September 2008 paper LSC will consult on a number of family graduated fee schemes. LSC will be aiming to harmonise payments made to solicitors and barristers and make all payments directly to the contract holder.

Care Proceedings Advocacy

- 3.2 LSC will consult on bringing both solicitors' advocacy (currently on hourly rates) and counsels' fees (currently paid via Family Graduated Fees) into a graduated fee regime. In designing the fees, LSC will aim to create incentives that link to the Public Law Outline objectives of containing the number of unnecessary hearings and determining cases as early as appropriate in the interests of clients.

Private Family Law Legal Representation

- 3.3 LSC will aim to bring representation in private law finance and children cases within a graduated fee regime, replacing hourly rates for solicitors and Family Graduated Fees for counsel. This will include fixed fee schemes for domestic violence applications and financial provision proceedings under the Trusts of Land and Appointment of Trustees Act 1996.

Other family changes

- 3.4 LSC will also consult on other family remuneration changes. These are likely to involve the incorporation of a proportion of exceptional care proceeding cases, currently paid on hourly rates, into the fixed fees. A file review project is currently underway and part of its remit is to measure the cost drivers in these cases.

Other remuneration changes

- 3.5 As a separate piece of work, LSC will be reviewing the operation of the first stage of graduated and fixed fees (implemented in October 2007 and January 2008) with the Civil Contracts Consultative Group to see if any changes should be made to those existing schemes for April 2010. During the consultation on stage 1 of the fees, some respondents sought to make the

case for more graduation of the fees, although the data was usually not conclusive as to whether the factors suggested were cost drivers. LSC's solution was to leave a significant number of cases to escape as exceptions, and LSC would be interested to explore whether, by introducing further graduation, it could reduce the number of those exceptions. This would provide greater certainty to legal aid providers, as well as reduce the burden to legal aid providers and LSC caused by the need to cost assess exceptional cases.

3.6 LSC intends to publish the outcome of that review in January 2009, with a further 6-week consultation on any changes to be made to the stage 1 fees as a result. Any such changes would take effect in the new contracts from 1 April 2010.

3.7 As part of the process of budget control and of moving towards new fee arrangements covering both barristers and solicitors in family cases, MoJ and LSC will be consulting on a number of interim changes to the FGF scheme. This consultation is likely to take place in May 2008 for implementation in early 2009. These interim changes will not affect the fees paid to solicitors or not-for-profit agencies.

4 The introduction of best value tendering

4.1 It is LSC's view that the introduction of best value tendering remains the best way ultimately of establishing services that provide the appropriate levels of quality and access at a price that is viable for both the taxpayer and legal aid provider. LSC also considers that best value tendering contracts will allow both legal aid providers and LSC the certainty of duration and service provision that will give long-term stability. LSC has already operated best value tendering for certain services, such as telephone services and Community Legal Advice Centre contracts (and will continue to do so as centres and networks roll out).

4.2 LSC recognises the importance of consulting on any significant extension of best value tendering for civil legal aid services, and of proceeding carefully and in a staged way with any wider introduction. Additionally, in family legal aid, the extension of graduated fees for certificated work means that

practitioners will need time to adapt to those changes and ways of working before competition on price is undertaken.

- 4.3 LSC will therefore be proposing that any roll out of best value tendering for civil legal aid mainstream services should not begin until 2013. By mainstream services LSC means standard Unified Contracts for face-to-face services, excluding special contracts like telephone services, duty schemes and Centre/Network contracts. This will give a five-year period for proposals to be fully discussed, worked through and tested.
- 4.4 To inform this process, LSC will be proposing to trial best value tendering for mainstream services in a small number (two or three) of geographical areas between 2010 and 2013, offering a mix of dispersed and non-dispersed populations. LSC will discuss the criteria for choosing these areas with the representative bodies and any trial areas will have been identified before the award of contracts in 2010, so that practitioners signing contracts in those areas will be aware of the position. The award process for these trial best value tendering contracts is likely to take place during 2010–11.

5 Social welfare law

- 5.1 It continues to be LSC's aim to establish Community Legal Advice Centres and Networks by jointly commissioning social welfare law services with other funders, primarily local authorities.
- 5.2 LSC will provide to TLS a list of procurement areas in England and Wales, where discussions on the commissioning of new social welfare law services are advanced and may lead to a Community Legal Advice Centre or Network being established (following tendering) before 1 April 2010. Where LSC lets a contract for a new Centre or Network it will expect to terminate other social welfare law provision as appropriate in that area in line with its commitment to integrated services.
- 5.3 Save for those included in the list provided by LSC, other Centres and Networks will not be implemented before 1 April 2010 (although discussions with other prospective funders and tendering processes will take place before that date in order to support further joint commissioning of social welfare law services when new contracts are let from April 2010).

5.4 In those areas where LSC will not be moving to joint commissioning in April 2010, LSC will be seeking to move towards purchasing all five social welfare services together as part of the contract award process.

Milestone for contract award process for 2010	Date
Civil Route Map published	April 2008
Consultation: publication of consultation document, and briefings to legal aid providers.	September–November 2008
Publication of summary consultation responses	February 2009
Publication of final fee schemes, and bid criteria	April 2009
Expressions of Interest for April 2010 contracts	May–June 2009
Notification of award of contracts in one-stage areas	July 2009
Bid period in two-stage areas	July–September 2009
Notification of award of contract in two-stage areas	December 2009
New contracts and fees go live	April 2010

‘One-stage areas’ will be those procurement areas where LSC considers that it can award a contract to all those that have completed an expression of interest and meet any essential criteria, without the need for a further stage. ‘Two-stage areas’ will be those procurement areas where LSC considers that it needs to choose between bidders by assessing them against desirable criteria.

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