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International Legal Aid Group

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Legal Services Commission
for England and Wales:
Use of Contracts

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**LEGAL SERVICES COMMISSION FOR ENGLAND AND WALES:
USE OF CONTRACTS**

1. **Background**

Prior to the introduction of contracting the following types of legal aid existed and could be carried out by any firm of solicitors and any advice agency employing a solicitor, instructing Counsel as appropriate.

Civil

Advice and Assistance – also called “green form” - £90 worth of work for eligible clients on any matter of English Law subject to extension on application to the then Legal Aid Board.

ABWOR – Advice by way of representation to cover, mainly, family proceedings in the magistrates’ courts and mental health tribunal hearings.

Certificated work – Support for litigation, mainly family and personal injury but a wide range of other issues as well.

Crime

Advice and Assistance - also called “green form” - £90 worth of work for eligible clients on any matter of English Law subject to extension on application to the then Legal Aid Board. Also attendance at police station by “own” or duty solicitor to advise arrested persons. Also, Court duty solicitors covering all magistrates’ courts’, either by a panel (call in service) or paid presence.

Representation – under legal aid orders issued by the courts in cases meeting the “interests of justice” test.

This paper sets out the different types of contract that are being used for various types of work. All contracts include quality assurance criteria based on the Legal Aid Board's development of franchising. From 1 April 2001, all new cases must be started by those holding contracts with the Commission.

2. The Legal Aid Board started the development of franchising in 1988 but did not offer contracts in it until 1994. Those contracts were voluntary and, simply, required the contractee to maintain the standards set down in return for devolved powers and marginally improved rates.

CIVIL

3. On 31 December 1999, the day before the introduction of civil contracts for Legal Help and Controlled Legal Representations, there were 3,300 solicitors' offices fully franchised in one or more civil categories of law. In addition, 2000 offices were in the process that could lead to a franchise. Many had left it to the last moment to apply.
4. In May 2001 there are 4,900 solicitors' offices with civil contracts together with 360 not for profit agencies. Most of those that have failed franchising or otherwise lost contracts are those that applied late.
5. **Legal Help and Controlled Legal Representation.**
These contracts cover work previously done under advice and assistance (Green Form) and Advice By Way of Representation, but with significant expansion of the time that can be spent on individual cases and the nature of the work that can be performed.
6. The three-year contracts cover one or more specific categories of law, e.g. Family, Immigration, Debt, Welfare Benefits, Housing etc. and specify the number of new cases that can be started. Each contract also identifies the total amount we will pay over a 12 month schedule. This amount seeks to

anticipate the amount that will be billed over the life of the schedule, based on estimates of length of case and average cost. Both the numbers of case starts and the payment limits can be adjusted upwards or downwards depending on affordability and work patterns, subject to certain safeguards in the contract.

7. The work allowed under these contracts does not include litigation (see below). However, it does cover advice and assistance, negotiation, court appearances in mitigation (for example, on a housing possession case), and appearances before some tribunals, primarily the Immigration Appellate Authorities and the Mental Health Review Tribunal.

8. The nature of this contract allows for strict control of the budget allocated to this work (£232M for 2001/02). This level of control has led to major and positive changes in the past 12 months (these contracts were introduced on 1 January 2000). These include:-
 - (a) extension of tribunal representation to IAA (see above),
 - (b) rate increases for lawyers; the first for many years,
 - (c) funding of different methods of delivery, and
 - (d) from October 2001, increased financial eligibility.

9. While the contracts are specific in the categories of law that are covered, all contracts allow other work to be done, within limitations. Some categories of law are specific to those which hold contracts in that named category. These are:-
 - (a) family,
 - (b) immigration,
 - (c) mental health,
 - (d) clinical negligence, and
 - (e) personal injury.

This is either because there are sufficient contracted suppliers in the category or the work is so complicated it should not be available to dabblers.

10. **Grants and Other Methods of Delivery**

Within the overall budget of £232M we can also make grants, subject to different forms of contracts, to support the overall objectives of the Community Legal Service and fund different methods of delivery.

11. The different methods of delivery include, for example, telephone advice lines. The introduction of contracting for particular categories of law exposed for the first time where supply in some of those categories was thin on the ground or non-existent. The first step was to consider whether there were organisations in the locality that could be developed to meet the quality standards. Where that was not possible we decided to offer contracts, through an open tendering process, to organisations that could offer telephone advice and follow up work. The contracts are fixed price but the price offered is one only of the factors taken into account in decision-making. This is not a competitive price tendering exercise.

12. There are some services where financial eligibility is becoming irrelevant. Telephone advice is a good example where a simple proxy test only is carried out. Other services, for example, second tier services also take no account of the clients' eligibility. Second tier services provide expert back up to the front line provider, which must be contracted, by way of training or guidance. Other types of contract will pay for duty advisors on court housing days.

13. All of these contracts covering grants and different methods of delivery are tailor made to the service being purchased but all include quality standards.

14. **Litigation: Certificated Work**

Some categories of law became exclusive to contract holders on 1 January 2000, i.e. Family and Immigration, and others on 1 April 2000, i.e. Clinical

Negligence and Personal Injuries. All of the rest of civil law was covered from 1 April 2001.

15. These contracts are, in effect, licence contracts based on quality standards. They do not limit the number of cases that can be started or the amount of money to be paid over the life of the contract. They follow the same rules as in paragraph 6 above governing what work can be done.
16. **Very High Cost Civil Cases**
These are cases where the costs exceed or are likely to exceed £25,000. Each case is subject to an individual contract based upon a case plan agreed between the conducting lawyers and the Commission. The case plan, and thus the contract, develops and changes as the case proceeds.
17. The contract fixes the next stage of work to be done and the price that will be paid for it. Costs are calculated on two different bases. In cases where costs are unlikely to be awarded to the winning party, e.g. family, normal rates are used, i.e. those that would be used in an ex post facto assessment of the costs. In cases where an inter partes costs order is the norm then a discounted rate is used on the basis of risk sharing. In other words the lawyer will receive significantly more from the other side in a winning case than they will from the public purse if they lose.
18. Cash flow is better in both sorts of cases as the lawyers get paid the contract price as each stage is completed.

CRIME

19. **General Criminal Contracts**

Apart from a growing, but small minority, element of Public Defender Services, all criminal defence services are supplied by private practitioner solicitors operating under contracts. They can, of course, instruct Counsel in appropriate cases.

20. Increasingly, the quality standards that must be complied with include elements related to personal competence. For example, non solicitor representatives attending to give advice at police stations must be accredited under a scheme developed between the Law Society and the Commission or be probationers working towards accreditation. Similarly, all solicitors seeking entry to police station work must be accredited. Solicitors already qualified at 1 April 2001 to do police station work under the old provisions were passported into the new scheme. This approach will, in time, spread across to civil also.
21. The contracts are not limited in terms of case starts or money payable. Crime is still demand led. However, the contracts introduce a tighter regime over what work can be claimed for and how and when it can be claimed. In both civil (Legal Help) and criminal contracts, claims are registered on receipt and sample bills are checked as part of a contract compliance audit conducted annually and accompanying this together with audit of the quality standards and certain performance measures, e.g. numbers of attendances at police stations.
22. **Serious Fraud Cases**
These are limited to solicitors' firms on a Panel, entry to which is dependant upon experience and the firms' infrastructure. From 1 April 2002 all such cases will be conducted under individual case contracts (see below).
23. **Individual Very High Cost Cases**
From 1 April 2001 we have the option of entering into an individual contract for any case expected to last more than 25 days or cost more than £150,000. From 1 April 2002 individual contracts for such cases will be universal. The contracts will be similar to the civil contracts described in paras 13-15 above in that they will be based on developing case plans. Of course, there will be no risk sharing.

24. There are 2900 solicitors' offices with criminal contracts, all of which have met the franchise standard for this work.

25. **Summary**

The total number of solicitors' offices with contracts for civil or criminal work, or both, is approximately 5,200 with, in addition, 360 not for profit agencies. This compares to over 11,000 solicitors' offices claiming for legal aid work prior to 1999. There were only approximately 300 offices that were awarded crime contracts that did not already have a civil contract.

We are satisfied that a contracted structure for all services funded by the Commission has had and will have a positive effect for a number of reasons. It gives the funder confidence; relations with the Treasury and the Lord Chancellor's department have developed in significant ways already. Slackening of the previous rigidity over eligibility and remuneration are a direct result of the delivery of a major reform programme which gives far more effective control of how much is spent and what it is spent on. Much, but not all, historical abuse of the Scheme has been eliminated and that is easier to detect and deal with under contracts. Civil services are better targeted to meet real need rather than the income aspirations of lawyers. There is more flexibility to encourage services that are in short supply by incentives, both financial and otherwise, which we have used to expand immigration supply. What has been created is a structure which can now be used flexibly over a number of years to encourage good quality services of the type and amount that are needed to meet need.

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Steve M Orchard

Legal Services Commission