

Unified Contract (Crime) July 2008

These notes summarise some of the more important provisions contained within the Legal Services Commission draft Unified Contract (Crime) 2008 which is due to replace the General Criminal Contract (January 2008) in July 2008.

This summary is designed to provide an overview of the main terms and you should not therefore assume that all you need to know is included in this summary. A full copy of the draft documents can be accessed from the LSC's website or by copying the following link into your internet browser:

<https://consult.legalservices.gov.uk/inovem/consult.ti/cds.contract/listdocuments>

Background

The Unified Contract (Crime) is to replace the General Criminal Contract (January 2008) in July 2008.

The Unified Contract (Crime) will consist of:

- (1) Contract for Signature
- (2) Office Schedule(s)
- (3) Contract Standard Terms (with Annexes)
- (4) Specification

The Contract for Signature, Office Schedule and Contract Standard Terms have been drafted with the aim of consistency with the Unified Contract (Civil). The Specification has been reordered to make it easier to read and amendments have been kept to a minimum.

It is important to note that Unified Contracts are offered to organisations rather than offices, which means an underperformance or non-compliance at one office is an underperformance or non-compliance by the organisation as a whole.

Standard Terms

Clause 1 - Interpretation

This section contains the definitions of terms and expressions used throughout the Unified Contract.

Clause 2 - Relationship

This provides an overview of the contractual relationship between the Commission and its suppliers.

Clause 3 - Communication

This requires a person from the organisation to be nominated as a Liaison Manager (previously known as a Quality or Franchise Representative) who will be named in the organisation's Key Information Table to liaise with the LSC. The LSC will nominate an Account Manager or Relationship Manager to liaise with the organisation about their Contract.

The organisation must have an email address and access to the LSC website.

Clause 4 – Financial Risk and Disclosure

You must maintain annual accounts which are either audited or certified by an accountant within eight months of their ending, unless a longer period is agreed with the LSC. The supplier must inform the LSC within 14 days if the independent auditor refuses to certify the accounts or qualifies them. (Note: in reality there is no such thing as 'certified accounts' – they are either audited or unaudited)

If the LSC consider there is a financial risk the supplier must provide them with annual accounts and any related documentation within 28 days.

Appropriate guarantees and indemnities may be required from organisations with limited liability, unless they are a registered charity

Clause 5 – Equality & Diversity

A supplier must use all reasonable endeavours to help the LSC comply with current and future anti-discrimination legislation.

Suppliers are obliged to comply with the requirements of the Equality and Diversity Annex (Annex C). This includes the following requirements:

- Suppliers must have a written Equality and Diversity Policy available for audit at the LSC's request;
- Suppliers must have an Equality and Diversity training plan for their personnel;
- Suppliers must also have a communications plan to promote and raise awareness of policies and procedures for ensuring that their services are accessible for people with a disability and meet the foreign language needs of the clients that they serve in their locality;
- Policies must be reviewed not less than twice a year and appropriate remedial action taken in the event of non-compliance.

Clause 6 – Logos and Marketing

The prohibition on providing money or gifts to clients except items of refreshment and smoking has been moved to the Standard Terms.

Clause 7 – Looking after clients, compliance and self monitoring

Suppliers must self-monitor their performance and contract compliance effectively and maintain records of performance and compliance in accordance with the Monitoring Annex (Annex E). Swift corrective action must be taken if your monitoring identifies any failures. Note: this means that you must have an internal audit mechanism in place.

Clause 8 – Demonstrating compliance and co-operating in audits

Where a supplier's quality assurance standard is audited by a third party the LSC must be informed as soon as the supplier is made aware of an audit date so that the LSC may attend to observe and monitor it. The supplier must write to the LSC with the outcome of the audit and provide them with a copy of any report within seven days of receiving it.

Suppliers must advise their staff that the LSC may carry out 'mystery shopping' as part of their assessment of performance and compliance.

Client files must be kept by suppliers for a period of three years.

Clause 9 – Keeping and providing documents and completing and returning forms

This sets out the rules in relation to the retention of case files and related documents. It states that client files must be kept for a minimum period of three years after the matter has been reported to the LSC.

Clause 10 – Approved Personnel and Supervisors, standard of Contract Work, Independence Peer Review and Key Performance Indicators

Only Approved Personnel may carry out contract work or be a supervisor. The approved personnel, supervisor and supervision requirements are set out in the Approved Personnel, Supervisors and Designated Fee Earners Annex (Annex F)

Suppliers must achieve a rating of 1, 2 or 3 as determined by the Independent Peer Review Process.

A failure to achieve any of the specified standards for the Audit Key Performance Indicators will not constitute a breach of contract but may trigger an audit or further investigation.

A failure to achieve any of the specified standards for the Direct Application Key Performance Indicators does constitute a breach of contract and may result in the application of a sanction.

The current Key Performance Indicators are set out in the Key Performance Indicator Annex (Annex G). The indicators are as follows:

A	Direct Application KPI's	
A. 1	Assessment reduction on Claims for Magistrates' Courts Non-Standard Fees and Police Station Advice and Assistance Exceptional Cases	Maximum of 10% reduction on assessment on all your Claims for these Fees in any 3 month period during the Contract Term.
A. 2	Acceptance of calls from DSCC for Duty Solicitor Police Station Telephone Advice and Police Station Attendance when you are allocated Supplier on Panel Duty Solicitor Scheme or nominated as Back Up.	Minimum of 50% of calls made to you by the DSCC in any 3 month period during the Contract Term accepted and dealt with appropriately
A. 3	Acceptance of calls from DSCC for Police Station Telephone Advice and Police Station Attendance when you are allocated Supplier on Rota Duty Solicitor Scheme.	Minimum of 90% of calls made to you by the DSCC in any 3 month period during the Contract Term accepted and dealt with appropriately
B	Audit KPI's	
B. 1	Percentage of all Matters undertaken by you in Criminal Investigations Class of Work in any 3 month period during Contract Term resulting in no further action by the Police	Within the range applicable to the CJS Area in which the relevant Police Station is located (as set out in the "Crime Audit KPI ranges" table below)
B. 2	Percentage of Matters undertaken by you in Criminal Investigations Class of Work in any 3 month period during Contract Term resulting in Clients being charged at Police Station	Within the range applicable to the CJS Area in which the relevant Police Station is located (as set out in the "Crime Audit KPI ranges" table below)
B. 3	Percentage of Cases undertaken by you in Magistrates' Court Representation Unit of Work in any 3 month period during Contract Term resulting in Clients being acquitted or their case being discontinued	Within the range applicable to the CJS Area in which the relevant Police Station is located (as set out in the "Crime Audit KPI ranges" table below)

C	Other KPI's	
	(a) 80% of instances of Police Station Advice & Assistance (both attendances and telephone advice) to be conducted by Designated Fee Earners; and: (b) 50% of instances of Advocacy Assistance or Representation at Magistrates' Court to be conducted by Designated Fee Earners	

The relevant KPI percentage for each CJS area is as follows:

CJS Area	KPI 3 PS No Further Action Limits	KPI 4 PS Client Charged	KPI 5 Mags Court and Discharge
Avon and Somerset	20% - 40%	<52%	5% - 29%
Bedfordshire	23% - 57%	<44%	5% - 25%
Cambridgeshire	22% - 50%	<54%	8% - 26%
Cheshire	14% - 52%	<58%	3% - 28%
Cleveland	20% - 56%	<56%	6% - 19%
Cumbria	7% - 35%	<59%	4% - 24%
Derbyshire	21% - 49%	<59%	6% - 28%
Devon and Cornwall	19% - 43%	<58%	5% - 29%
Dorset	14% - 54%	<42%	9% - 33%
Durham	13% - 49%	<62%	10% - 25%
Dyfed Powys	17% - 41%	<65%	6% - 22%
Essex	14% - 40%	<50%	4% - 25%
Gloucestershire	20% - 38%	<46%	8% - 32%
Greater Manchester	16% - 50%	<60%	5% - 24%
Gwent	20% - 58%	<57%	13% - 32%
Hampshire	12% - 38%	<54%	7% - 27%
Hertfordshire	17% - 43%	<48%	9% - 29%
Humberside	15% - 41%	<62%	3% - 17%
Kent	20% - 44%	<47%	8% - 27%
Lancashire	15% - 45%	<67%	7% - 27%
Leicestershire	19% - 57%	<53%	7% - 30%
Lincolnshire	21% - 47%	<55%	6% - 22%
London	15% - 53%	<58%	6% - 27%
Merseyside	17% - 45%	<65%	7% - 20%

Norfolk	21% - 35%	<53%	6% - 23%
North Wales	17% - 47%	<59%	5% - 27%
North Yorkshire	11% - 47%	<65%	3% - 31%
Northamptonshire	15% - 55%	<44%	9% - 36%
Northumbria	22% - 50%	<58%	10% - 34%
Nottinghamshire	19% - 53%	<61%	11% - 30%
South Wales	17% - 43%	<69%	9% - 31%
South Yorkshire	25% - 49%	<55%	7% - 29%
Staffordshire	22% - 46%	<51%	8% - 31%
Suffolk	14% - 44%	<52%	8% - 23%
Surrey	19% - 45%	<49%	7% - 33%
Sussex	16% - 38%	<57%	5% - 30%
Thames Valley	20% - 46%	<49%	8% - 31%
Warwickshire	20% - 42%	<47%	6% - 27%
West Mercia	18% - 48%	<57%	6% - 28%
West Midlands	27% - 57%	<49%	8% - 25%
West Yorkshire	24% - 62%	<52%	6% - 25%

Clause 11 – Schedules and Key Information Tables

Schedules contain the contract terms that apply to the supplier and contain the authority from the LSC for the supplier to perform contract work.

Key Information Tables specify information and terms that apply to a supplier as an entire organisation. Suppliers must notify the LSC as soon as they know that any information in the tables has changed.

Clause 13 – Amendments to Contract Documents

SUBJECT TO ONGOING DISCUSSION BETWEEN THE LSC AND THE LAW SOCIETY

Clause 19 – Instruction and payment of third parties

Third parties (i.e. experts) that perform contract work (under which fees payable by the supplier to them exceed £250) must time record their work and allow the LSC to audit those records on reasonable notice. If that third party is already working with a client at the time of the supplier's instruction, suppliers are only obliged to use their reasonable endeavours to require them to keep the required records.

Clause 21 - Confidentiality

There is a presumption under the contract that unless information is 'plainly confidential' it not confidential under the contract. Examples of information that may be disclosed and/or published are:

- (i) The terms and payments of your contract;
 - (ii) Details of payments made to you;
 - (iii) Numbers of matters started and completed;
 - (iv) Your performance as measured by the Performance Indicators
 - (v) Results of audits and contract sanctions
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The Contract Specification

The LSC has not made many changes to the Specification, it has been re-ordered and a number of provisions have been re-drafted.

The new order

The Specification has been divided 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.

Colour coding

The purpose of colour coding is to highlight either substantial changes or repetition.

Pale Blue = Rules applicable to Advice and Assistance which are repeated a number of times throughout the Specification

Light Green = Rules applicable to Advocacy Assistance which are repeated a number of times throughout the Specification.

Yellow = Rules applicable to Representation which are repeated a number of times throughout the Specification.

Pink = Rules on claiming which are repeated for all units of work within the Criminal Investigations section.

Brown = Rules on claiming which are repeated for all units of work within the Criminal Proceedings section.

Dark Blue = Rules on claiming which are repeated for all units of works within the Appeals and Review section.

Purple = Rules on claiming which are repeated for all units of work within the Prison Law section.

Dark Green = Rules on claiming which are repeated for all units of work within the associated CLS section.

Red = All provisions highlighted in red are either (i) new provisions which have been added for clarity or to explain the format of the specification; or (ii) clauses which have been altered substantially; or (iii) changes to actual content.

Other changes

Duty Solicitor re-accreditation

The Solicitor’s Regulation Authority intends to consult on options for re-accreditation during 2008. Re-accreditation will affect which fee earners can undertake which forms of work, as well as the ability to meet any potential entry requirements or allocation rules for slots in future contracts.

The LSC is intending to align the Criminal Contract with the SRA’s re-accreditation policy. Duty Solicitors must therefore be accredited against the timetable set by the SRA to continue to undertake duty solicitor work.

Duty Solicitor Slot Allocation

The LSC has out forward two options:

Option 1

To continue with the current system of allocating slots based on the number of Duty Solicitors employed. This would require rotas to be issued every 3-6 months which would reflect changes in the number of duty slots employed by providers.

Option 2

To allocate slots on the same basis as present at the start of the contract and maintaining the allocations throughout the life of the contract regardless of the movement of Duty Solicitors (provided at least one Duty Solicitor continues to be employed by the supplier).

Consultation Process

The consultation will run until 13 March 2008.

The consultation is with the Law Society, however individual solicitors and solicitor firms may respond, although the LSC state that this should preferably be through their representative bodies.