

## SUMMARY OF DEED OF SETTLEMENT BETWEEN THE MINISTRY OF JUSTICE, THE LEGAL SERVICES COMMISSION AND THE LAW SOCIETY DATED 2<sup>ND</sup> APRIL 2008

Set out below is a summary of the main provisions of the settlement deed. For a full copy of the deed, visit the Law Society's website at:

<http://www.lawsociety.org.uk/documents/downloads/dynamic/finaldeedofsettlement020408.pdf>

### **1 No Termination of the Contract**

The LSC have withdrawn the threat to terminate all civil contracts. Therefore, the LSC will not be holding bid round in 2008 to re-tender for all contracts.

All other things being equal, the Unified Contract is now therefore planned to continue until 31 March 2010.

### **2 The Law Society and Funding Orders**

The Law Society has discontinued its claim for judicial review against LSC issued on 12 February 2008, and withdraws financial and other support for associated actions.

The civil, family, immigration and mental health fixed/graduated fee schemes remain in place.

### **3 Remainder Work**

For suppliers who have lost their LSC contract or have withdrawn from the contract, they have the right to perform remainder work for a period of up to two years following the date of contract termination. An exception to this is where the contract is terminated based on either risk to clients or the legal aid fund.

### **4 Standard Monthly Payments (SMPs)**

New arrangements have been agreed with regard to varying the payment of Standard Monthly Payments from July 2008, subject to any revisions agreed following discussion with the Advice Services Alliance (ASA). Once agreed, these arrangements will remain in being for the lifetime of the Contract. Further detail is contained in Appendix Six.

The settlement deed states that the LSC will ensure that the transitional arrangements for Not for Profit organisations ('NfPs') are working effectively to facilitate the adaptation of NfP agencies to fixed fee payment systems.

### **5 CLACs and CLANs**

Subject to agreement from the relevant local authorities, a list of planned CLANs & CLACs that are due to be established before 1 April 2010 will be made public. No other CLACs and CLANs will be implemented before this date although discussions with other prospective funders and tendering processes will take place in order to support further joint commissioning of social welfare law services.

The Legal Services Research Centre is undertaking a research project into CLACs and CLANs that covers process and outcomes. The Law Society will be involved in this evaluation and this will feed into the procurement process leading to new contracts for integrated social welfare law services in April 2010. ASA) will also be invited to contribute to the project.

The LSC will have the right to terminate contracts in respect of which such termination is consequent upon and required as a result of the introduction of a CLAC or CLAN.

## **6 Review of Quality Assurance Mechanisms**

There will be a joint review (between LSC, MoJ and the Law Society) of the Peer Review system and all other quality assurance processes and procedures affecting both civil and criminal practitioners.

Until that review has concluded, and any new quality mechanisms implemented, the LSC will continue to use existing mechanisms.

## **7 Contract Compliance Audit (CCA)**

Within 28 days of the deed, a joint working group involving the LSC, the Law Society and NAO will be established to look at ways to improve the way the CCA system operates for both civil and criminal practitioners.

The system will remain in place in the meantime but in respect of the current programme and any future programme, the LSC agrees that any financial recoupment made against firms will be based on a genuine assessment of loss in accordance with the relevant contract (Unified or General Criminal Contract).

## **8 Historic Unrecouped Payments**

From the 2<sup>nd</sup> of April, the LSC will not seek to recover any payments on account in respect of any case where:

- no payment has been made by the LSC to the provider (or former provider) since 31 March 2002;
- there has been no activity on the legal aid certificate since 31 March 2002;
- the total payments on account do not exceed £20,000 net of VAT; and
- no agreement has been made by the provider to repay or to allow the LSC to recoup payments on account made prior to 31 March 2002 or no debit note or debit to a BACs statement has been sent by the LSC before 1<sup>st</sup> April 2008 in the absence of agreement.

This is conditional upon the provider not making a claim against the LSC in respect of that historic case or any other historic case.

This will also not apply where the LSC has reasonable grounds to suspect fraud or other dishonesty or criminal conduct on the part of the provider.

## 9 Constructive Engagement and other matters

The LSC, MoJ and the Law Society have committed themselves in good faith to constructive engagement with each other. The terms of this engagement are set out in Appendix 1 to the deed.

### Civil

The LSC will publish a route map (as set out in Appendix 7) by no later than 30 April 2008. This route map makes clear that whilst further changes to fees may be introduced (through a new contract) from April 2010, Best Value tendering (BVT) will not be introduced for mainstream civil and family work before April 2013 (with the exception of a small number of pilot areas).

In summary, the route map sets out an outline timeline for Reform 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
April 2009	Announcement of decisions on terms of new contract, stage 2 family fees and bid round process
April -December 2009	Bid round process for the award of the new civil Unified Contract in April 2010
February 2010	Consultation paper on BVT in civil legal aid
April 2010	Current civil Unified Contract expires and new contract awards come into effect along with stage two family fees
2010-11	Trials of BVT begin in a small number of geographical areas
From April 2013	Possible roll out of civil BVT

The route map also sets out that:

1. The current Unified Contract will expire on 31 March 2010.
2. The LSC will continue to run interim bid rounds before April 2010 to award additional New Matter Starts.

3. The LSC will issue a consultation in April 2008 in respect of proposed delivery transformation changes to be incorporated into the new Unified Contract (Civil) from April 2010.
4. In September 2008, the LSC will begin consultation on the terms of the new 2010 Unified contract, the criteria and process for awarding new contracts and remuneration changes from April 2010. In respect of remuneration changes, the LSC will consult on the following:
  - o bringing both solicitors advocacy (currently on hourly rates) and counsels' fees (currently paid via Family Graduated Fees) into a graduated fee regime;
  - o bringing representation in private family law finance and children cases within the graduated fee scheme;
  - o other family remuneration changes which are likely to include the incorporation of a proportion of exceptional care proceedings cases, currently paid on hourly rates, into the fixed fees and fixed fees for domestic violence applications and financial provision proceedings under the Trusts of Land and Appointment of Trustees Act 1996;
  - o the operation of the first stage of graduated and fixed fees to see if any changes should be made to the existing schemes from April 2010.
4. The LSC will run a bid round to award new contracts during 2009. The initial view is that the new Contract will run for three years until April 2013.

## Crime

The LSC will also publish a route map in respect of further criminal legal aid reform. This will not be published until after the results of the current BVT consultation are known. However, the first phase of BVT for crime will not commence before July 2009 (although pre-qualification work may commence before then).

## **10 Consultative Group**

Within 4 weeks, a new consultative group will be established for civil, family and immigration suppliers and shall involve the Law Society, LAPG, ASA, Resolution, the Association of Lawyers for Children, the Mental Health Lawyers Association, the Immigration Law Practitioners' Association and the Housing Law Practitioners Association with other with specific expertise.

This group will undertake the following:

- a review of the current fee schemes
- recommendations in respect of changes to the fee schemes having effect from April 2010;
- the operation of the Mental Health Scheme (as a priority)
- act as a forum in which the LSC will engage constructively with practitioners;

## **11 Increase in Rates and Payments**

The following increases in rates shall apply to all matters commencing on or after 1 July 2008:

1. Increase in Level 1 Legal Help fixed fees and underlying hourly rates for civil, family, mental health and immigration by 2% above the levels implemented in October 2007 and January 2008.
2. Increase in Level 2 Care Proceedings Graduated Fee Scheme fee from £347 to £405 (equivalent to an hour's work). The underlying hourly rate will also increase by 2%;
3. Increase in Level 2 and 3 fees and hourly rates for Controlled Legal Representation in mental health cases by 5%. The 2% increase in help rates would apply to Level 1 fees and rates for mental health cases;
4. Increase in Level 2 fees and hourly rates for Controlled Legal Representation in asylum and immigration case by 5%. The 2% increase in help rates would apply to Level 1 legal help fees and rates for immigration and asylum. These increases will not apply to those types of work excluded from the immigration and asylum graduated fee scheme such as advice and representation for those held in detention;

## **12 Family Fee Schemes**

The implementation of fixed and graduated fees for those elements of family work that remain under hourly rate payment schemes will be delayed to April 2010 (Levels 3 and 4 in the private family schemes and advocacy for public law cases).

## **13 Terms of the existing agreement will continue to apply**

The LSC will not introduce any other changes to the Unified Contract and family and asylum contracts for solicitors and NfP providers before April 2010 other than:

1. To make amendments to Clause 13.2;
2. In regard to proposals for asylum contracts and fees relating to detained fast track and immigration Removal centre surgeries, and police stations, and in response to changes introduced by the Borders and Immigration Agency concerning unaccompanied asylum seeking children;
3. Where the setting up of new CLACs and CLANs necessitates amendment;
4. To pilot new arrangements for procuring services of expert witnesses;
5. In relation to clauses 11.4, 11.9, 11.10 and 11A2-6 (key Information Tables and Schedules).