

2015 Duty Provider Contracts - FAQ for 15 September 2014

On 2 September 2014, the Legal Aid Agency (LAA) published further information regarding the forthcoming Duty Provider tender process and invited questions relating to this information.

Some of the questions received do not relate specifically to the information published on 2 September. Instead, they are either questions of a more general nature or questions related to information published before 2 September; for example, the '2015 Duty Provider Contract: Additional Information' published alongside the first stage of the procurement process in April 2014. For ease of reference, we have therefore split this document into two main sections:

- Questions related to information published on 2 September
- Other queries

The responses contained in this document represent current thinking and are based on information published to date. We intend this document to act as a useful guide which can be amended or added to at any time. For the avoidance of doubt, all prospective bidders must rely on and comply with the information and requirements of the procurement documents referred to below that will be made available as part of the second stage of the procurement process:

- Duty Provider Contract Invitation to Tender and Information for Applicants
- Frequently Asked Question documents issued by the LAA as part of the procurement process.

Questions related to information published on 2 September

Financial Assessment

1. The published document states "For established business this [Financial Assessments] will be based on key ratios from their accounts"

Which ratios are these please?

It states "for new business will focus on a range of information including cash flow forecasts. "

What range of information, other than cash flow, will be included?

2. Your guidance on financial assessment of firms does not provide a set criterion other than the LAA identifying financial risk. What further assistance will be given by the LAA for organisations to prepare for these assessments and for the expansion plans?

Key ratios refer to formulae commonly used as a guide to the financial position of a business, these include gearing and debt and net worth and will provide an indication of an Applicant Organisation's profitability, liquidity and solvency.

For new businesses, in addition to cash flow forecasts, we intend to look at business plans and projected turnover.

When assessing finances, we will assess the level of financial risk posed. For established businesses this will be based on the key financial ratios provided and for new businesses this will be based on an

assessment by a team of qualified financial professionals. Full details on the financial assessment will be available in the Information for Applicants to be published in October.

Expansion Capacity Assessment – Current Turnover

3. How is “current turnover” calculated?

Does the “current turnover” figure include the Applicant Organisation only, or does it include the turnover of Delivery Partners?

Is the “turnover” figure that will be used just going to relate to police station duty fees or own client police station fees too, or legal aid fees as a whole, does the “turnover” definition include private fees?

Is “current turnover” inclusive of disbursements?

Is “current turnover” inclusive of VAT?

For the purposes of the Expansion Capacity Test, “Current Turnover” will include the entire turnover of the Applicant Organisation only, excluding Delivery Partners.

This will therefore cover turnover from all areas of work carried out by the Applicant Organisation, including all legal aid work (in whatever category of law), and all privately funded work.

Full details on the Expansion Capacity Assessment, including how we define turnover, will be available in the Information for Applicants to be published in October.

4. What period does “current turnover” cover? The recent published figures only go up to March 2013 so don’t take into account growth since then. The LAA will not hold the most up to date information about a firm’s turnover, since there is a delay in the billing and assessment of case costs.

“Current turnover” will cover turnover in the last two years. It will be for Applicant Organisations to provide the LAA with details of their turnover based on their accounts.

Numbers of contracts/proportion of work in a Procurement Area

5. We note that only 4 organisations can bid in a procurement area? Is the LAA satisfied that this will be sufficient in terms of capacity in each area and how has this been justified?

When bids are submitted and it appears that the 4 organisation do not have sufficient capacity to manage the procurement area. In that situation, what provisions are in place to ensure that this does not happen? Furthermore, will this create opportunities for other organisations to enter the market?

It is not correct that only 4 organisations can bid in a procurement area, it is possible that only 4 contracts will be awarded in a procurement area as a fixed number of equal sized contracts will be available in each procurement area. Details of intended numbers of contracts per procurement area were published in the Government response to consultation in Annex C at Table C2, which can be accessed via the following link:

<https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/results/transforming-legal-aid-next-steps-respons.pdf>

When considering working with Delivery Partners, an Applicant Organisation will need to ensure that no more than four organisations are involved in its bid – one Applicant Organisation and up to three Delivery Partners.

An Applicant Organisation will have to demonstrate as part of its bid that it (and any Delivery Partners) has the capacity to deliver their contract work in the procurement area.

Once the contract is operational, if a provider fails to deliver their contract work, the LAA will terminate the contract and consider options to ensure continued delivery of services in the procurement area, which may include running further tender processes.

6. The current guidance appears to suggest that firms must specify as part of their bid the percentage of work they will conduct under the contract. We will be relying on historic figures to calculate that percentage of work when submitting our applications. Will this be acceptable bearing in mind that the figures fluctuate on a yearly basis hence raising my concerns in the previous question?

Are the percentages of work calculated by reference to number of cases or by reference to fees earned?

What happens if the Lead Provider over shoots (whatever the criteria) by say 10% ? i.e. what is the sanction?

Applicant Organisations will not need to specify percentages as part of their bids.

Maximum/minimum percentages of work which the Applicant Organisation/Delivery Partner can conduct will be set as contract requirements currently referred to in clauses 3.18 and 3.19 of the draft 2015 Duty Provider Crime Contract Standard Terms:

<https://www.gov.uk/government/publications/draft-documents-for-the-duty-provider-crime-contract-2015>

Details of the actual percentages that will be applied and incorporated in those clauses can be found under 'Key bidding rules' in the '2015 Duty Provider Crime Contracts Update' published on 2 September.

The percentages, based on the value of work as set out in the Contract Standard Terms, will be different in urban and rural areas, but will be the same for all contracts within a particular procurement area. Compliance with these contract requirements will be managed as part of the management of the contract, and Applicant Organisations will not be asked to give their own specific percentages as part of their bids.

Other queries

Timetable

7. How will the Judicial Review proceedings heard on 8th-9th September affect the tender timetable for Duty Provider Contracts?

Under the current timetable, we will open the second stage of the Duty Provider Contract tender process in October.

Should the timetable change, including if it is affected by the Judicial Review proceedings, we will notify all interested Applicant Organisations.

Indicative Contract Value

8. How is contract value calculated? Is this police station and magistrates court duty revenue only, does this include work that follows up until the Crown court or does it include all work done under both duty and own client contracts?

“Indicative Contract Value” is referred to in relation to many criteria, including financial assessment, capacity test and proportion of work carried out by an Applicant Organisation. Is the same value used in all these instances?

We have previously published information on the amount of duty work undertaken by individual police station scheme. This is available here <https://www.gov.uk/government/publications/data-pack-tables-for-crime-tender-2015>. The information does not split out duty work in the Magistrates and Crown Courts as the data was not recorded in this way during that period.

Anticipated Contract Values for each Procurement Area will be published in an annex to the Information for Applicants in October. This figure will be used for all instances where it is required in the Invitations to Tender. The same value will be used in all instances.

Capacity requirements

9. Will there be a minimum number of duty solicitors required before an organisation can apply for a Duty Provider Contract?

It is not a requirement of the tender that organisations need a minimum number of duty solicitors. However, there will be requirements around the minimum number of Supervisors and a Supervisor to Caseworker ratio. For more detail, please see sections 2.1 and 2.16 of the draft 2015 Duty Provider Crime Contract Specification, available on our website at:

<https://www.gov.uk/government/publications/draft-documents-for-the-duty-provider-crime-contract-2015>

There will also be a basic capacity test, that bidding organisations (including their Delivery Partners) employ at least one full time equivalent fee earner/caseworker for every £83k of the indicative contract value.

10. In Duty Provider Contract Additional Information (published in April) at page 6, you state that one full time fee earner with the relevant experience of crime work for every £83k of the indicative contract value is necessary.

Is the relevant experience to be taken into account more than simply the supervisor minimum standard?

To meet this capacity requirement, a caseworker would be expected to meet the definition of "Caseworker" set out in section 1.2 of the draft 2015 Duty Provide Crime Contract Specification, available on our website at:

<https://www.gov.uk/government/publications/draft-documents-for-the-duty-provider-crime-contract-2015>

Work covered by the Contract

11. Can you confirm whether or not VHCC work will play any part in the Duty Provider Contract? If not, how will it be dealt with outside this Contract?

The Duty Provider Contract does not cover VHCC work.

For information about carrying out VHCC work, please see our website at:

<https://www.gov.uk/government/publications/high-cost-case-arrangements-and-contract-documents>

12. Can work started as duty work be converted to Own Solicitor work?

The current rules allow Police Station Duty work to be converted to Own Solicitor work.

It is also not clear as a police station case ends on the client being charged. Can the case in the Magistrates' Court then be considered own solicitor?

What about Court Duty sessions? Can Magistrate Court cases that arise from Court Duty sessions be converted to own solicitor cases?

Are Crown Court cases also duty cases if we originally got the client as a Police Station Duty?

The central principle is that once a case is allocated via the duty mechanism (at police station or court) then the provider will be required to follow it through to completion. Therefore this 'follow-on' work will be considered as contract work which must be carried out under terms of the Duty Provider Contract. It would not be possible to convert this to own client work.

Supervisor Requirements

13. Is there only one supervisor form? Is there an up to date guide to this form? The October 2011 guide states that there are five supervisor forms, is this no longer correct?

Requirements for Supervisors under the 2015 Crime Contracts are different from the requirements of the current contract.

For detail of the requirements, please see:

- Sections 2.9 to 2.14 of the draft Own Client Contract specification at: <https://www.gov.uk/government/publications/own-client-crime-contract-2015>; and
- Sections 2.8 to 2.13 of the draft 2015 Duty Provide Crime Contract specification at:

<https://www.gov.uk/government/publications/draft-documents-for-the-duty-provider-crime-contract-2015>

14. Supervisors are required to have undertaken in the last 12 months “a minimum of 5 Crown Court Representations and Advocacy”. One interpretation of this is that supervisors are required to be Crown Court advocates (ie have Higher Rights). I assume that what is meant is that a supervisor must have undertaken/conducted at least 5 Crown Court cases as solicitor or advocate (ie if they have higher rights they can use cases in which they have been an advocate towards that total). Is that right?

The criteria for becoming a crime supervisor are set out in sections 2.9 to 2.14 of the draft Own Client Contract specification at <https://www.gov.uk/government/publications/own-client-crime-contract-2015>; and Sections 2.8 to 2.13 of the draft 2015 Duty Provide Crime Contract specification at <https://www.gov.uk/government/publications/draft-documents-for-the-duty-provider-crime-contract-2015>.

Four criteria are listed for Supervisors to meet. One of these criteria requires Supervisors to have experience of Magistrates Court work. There are two routes to meeting this. In the previous 12 months, the Supervisor must have undertaken either (i) a minimum of 20 magistrates’ court Representations and advocacy under a Representation Order; or (ii) undertaken a minimum of 10 magistrates court Representations and advocacy and five Crown Court Representations and advocacy.

If a Supervisor is relying on limb (ii) of this criterion, then we would expect to have seen evidence of the Supervisor having undertaken the Advocacy themselves. As an alternative, Supervisors could also apply through route (i).

Procurement Area Requirements

15. Is the Camberwell Green procurement area the same as the Camberwell Green police station scheme area?

No, a procurement area is a geographical area within which the LAA will procure services. Holders of a Duty Provider Contract will be responsible for delivering Duty Provider work across the whole of a procurement area.

As outlined in *Transforming Legal Aid – Next Steps: Government Response, Procurement of Criminal Legal Aid Services* published on 27 February 2014, the new procurement areas will differ from the areas covered by current arrangements. This means that organisations may no longer be eligible for police station schemes they are currently on under the existing contract.

There will be 85 Procurement Areas across England and Wales for Duty Provider Contracts. A list of amended Procurement Areas and the number of Duty Provider Contracts we intend to procure in each area is provided at Table C2 Annex C to the consultation response available at:

<https://consult.justice.gov.uk/digitalcommunications/transforming-legal-aid-next-steps>.

16. Are bids in each procurement area restricted to providers located in that procurement area? If the larger firms submit a bid in each procurement area, will these firms be required to allocate offices in each area and show that resources have been put in place prior to submitting their bids?

Bids in each procurement area will not be restricted to providers currently located in that procurement area. However, the tender requirements will need to be met within the procurement area in which an organisation is bidding and it must have capacity to deliver all of the services bid for concurrently.

Information on the office requirements is set out in sections 2.27 to 2.29 of the draft 2015 Duty Provider Crime Contract Specification available on our website:

<https://www.gov.uk/government/publications/draft-documents-for-the-duty-provider-crime-contract-2015>

17. Can the Duty Provider Contract be in a different location to the Own Client Contract?

The Own Client Contract does not restrict providers to carrying work out in a particular location, provided that they have an Office which meets the contract requirements.

The Duty Provider Contract will authorise a provider to carry out work in specific procurement areas (see above).