



Headline intentions for civil legal aid contracts from April 2018

20 January 2017

In November 2015 we published a document setting out our intention to align the end date for civil legal aid contracts. Current legal aid contracts for face to face civil legal advice and specialist legal advice delivered via the Civil Legal Advice telephone helpline ('specialist telephone advice') are due to end on 31 March 2018.

Family mediation contracts will also end on 31 March 2018. We are currently considering our options for future family mediation services and will publish further information on this in due course.

This document outlines our plans to procure:

- 1) the new 2018 Standard Civil Contract for delivery of face to face civil legal advice; and
- 2) the new 2018 Civil Legal Aid Contract for delivery of specialist telephone advice.

Our intention is for delivery of the services under the new contracts to commence from 1 April 2018.

Outline of services

The delivery of civil legal aid services will be broadly consistent with the way they are delivered under the current civil contracts. We are not proposing any significant amendment to specialist telephone advice contracts, with the exception of making amendments to the Special Educational Needs supervisor standard to reflect changes to social and health care matters arising from the Children and Families Act 2014.

However we do intend to make a small number of changes to our approach to commissioning face to face services. The key changes are outlined below.

Access

Across all categories we intend to introduce greater flexibility by allowing remote working arrangements within the face to face contract, such as the delivery of advice via telephone, email and/ or video conferencing where appropriate.

We intend to continue to award contracts for licensed work only in the family category of law.

We are also reviewing all procurement areas to ensure they remain appropriate and relevant. There will be minor amendments to existing procurement areas at most. However, in the family category, we intend to reduce the number of procurement areas in London to 3 to align with changes to the court estate introduced by HM Courts & Tribunals Service. We are considering additional amendments to procurement areas for the immigration & asylum category and Housing Possession Court Duty Schemes (HPCDS) which are outlined below.

Housing, Debt & Welfare Benefits

We do not intend to separately procure welfare benefits services. Welfare benefits will be procured jointly with the categories of housing and debt. Organisations tendering to deliver housing and debt work will also be able to apply for a fixed allocation of welfare benefits matters, subject to meeting additional welfare benefits supervisor requirements. Organisations will be able to meet this by having a housing & debt supervisor and a separate welfare benefits supervisor or by having a supervisor who can supervise all three categories. The housing and debt and the welfare benefits supervisor declaration forms will therefore be merged into a single form. All welfare benefits work under the 2018 face to face contract will be paid at the rates set out in the Civil Legal Aid (Remuneration) Regulations which is currently a fixed fee of £208 excluding VAT.

Ministers are currently considering plans to revise the approach for the delivery of HPCDS contracts. It is proposed that HPCDS contracts would be procured via a competition which includes an element of both price and quality and providers would be required to deliver services across all courts in larger scheme areas, thus increasing the size of most contracts. The approach will be informed by the policy consultation. We additionally propose to amend the rules for claiming for HPCDS work so that organisations can claim an HPCDS fee even where the case progresses to a full legal help matter.

Immigration & Asylum

We intend to require those organisations tendering to deliver larger volumes of work to conduct the full range of controlled and licensed work. Currently providers must be able to conduct controlled work only.

We also intend to reflect all changes the Law Society makes to the professional standards through their Immigration and Asylum Accreditation Scheme (IAAS) into the contract and make any consequential changes. In particular:

- limiting the length of time caseworkers are permitted to hold the Trainee Casework Assistant level of accreditation; and
- Trainee Casework Assistants and Casework Assistants will no longer be able to have conduct of files, with any work done by these individuals needing to be supervised directly by the Supervising Senior Caseworker.

We intend to introduce the City of Kingston upon Hull as an area where we commission immigration & asylum advice. We have not commissioned specific services in this area under the current contract.

Work at Immigration Removal Centres (IRCs) will no longer be procured separately and competed to secure a fixed maximum number of contractors. All organisations bidding in the higher lot will be able to bid for IRC work although organisations will need to employ an IAAS Advanced Accredited Caseworker based at the relevant office to be eligible to apply for Detained Fast Track (DFT) work. Organisations that bid for IRC work will be additionally committing to deliver IRC work at any site across the whole procurement area if necessary (e.g. where a new detention location is established) during the contract period.

Quality Requirements

Across all categories of law we intend to amend our definition of 'employ' in relation to supervisors and authorised litigators to be clearer than in previous civil contracts and exclude self-employment and consultancy style arrangements.

Mental Health

We intend to change the case requirements under the current mental health supervisor standard to increase the number of tribunal cases to be evidenced from 5 to 10. We also intend to introduce a secondary route for supervisors that supervise a mixture of tribunal work and mental capacity work. Supervisors following this route will need to evidence 5 tribunal cases and 5 mental capacity cases. All supervisors following either route will additionally need to evidence 2 non-tribunal mental health cases.

We also intend to limit the number of hearings where representation can be conducted either by counsel or an agent who do not carry out contract work for the provider for at least 14 hours per week.

The Law Society is currently developing and implementing specialist panel accreditation for Mental Capacity (Welfare) Cases. Once introduced we wish to use this panel accreditation as the basis to restrict authorisation for Court of Protection work to offices with at least one accredited individual who is actively involved in delivering this work. We intend to implement this at the earliest practical opportunity and further information will be published once details of the accreditation scheme and implementation timescale are clearer.

Community Care

As referred to above, at the earliest practical opportunity we wish to use specialist panel accreditation for Mental Capacity (Welfare) Cases as the basis to restrict authorisation for Court of Protection work to offices with at least one accredited individual who is actively involved in delivering this work.

We also intend to revise the community care supervisor standard to reflect new care legislation.

Miscellaneous

All organisations will receive an allocation of 5 miscellaneous matters to undertake miscellaneous work in addition to their category-specific matter starts.

We also wish to ensure adequate provision specifically for compensation claims for victims of human trafficking and modern slavery, under paragraphs 32(2) and (3) and 32A (2) and (3) of Part 1 of Schedule 1 of the Legal Aid Sentencing and Punishment of Offenders Act 2012.

Organisations bidding for a contract in any category will be able to request miscellaneous matter starts specifically to act on behalf of victims of human trafficking and modern slavery for work within scope of paragraphs 32(2) and (3) and 32A(2) and (3) of Part 1 of Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. They will then be awarded a total of 20 matter starts for miscellaneous work which will be addition to their category specific matter starts. This allocation will be ring fenced for this type of work. Providers that consider they will undertake more than 20 miscellaneous matter starts for such work will be given the opportunity to present a business case for how they will deliver this which will be considered on a case by case basis.

All providers will be able to self-grant up to an additional 50% of their miscellaneous matter start allocation in line with supplementary matter start rules for other face to face categories of law.

Tender Timetable

We currently anticipate the procurement process for 2018 contracts is likely to start in April 2017 with services commencing on 1 April 2018.

We intend to run a two stage process for both face to face and specialist telephone advice contracts. The first stage will be the completion of a Selection Questionnaire ('SQ stage') (formerly known as a pre qualification questionnaire). The second stage will be Invitations to Tender ('ITT stage') for the available contract work. Further detail is outlined below.

For both face to face and specialist telephone advice contracts we will continue to require that all providers hold either Lexcel or the Specialist Quality Mark (as audited by the LAA's licensed SQM Accreditor) which is valid at the contract start date. Organisations wishing to submit a tender may wish to consider applying for these standards now if they do not currently hold them to ensure they meet our requirements by April 2018.

Face to face services

The SQ stage for face to face services is likely to follow a similar approach to that used in previous procurement processes and will test an organisation's suitability to contract with us in addition to meeting the standard SQ requirements. Organisations that are assessed as suitable to hold a legal aid contract will be invited to respond to the subsequent ITTs. The ITTs will focus on the specific services for which we are inviting tenders. There is likely to be a separate ITT for each category of law and organisations will be able to choose which ITT(s) they wish to respond to.

ITTs for the following categories will be published in summer 2017:

- Family
- Housing, Debt and Welfare Benefits
- Immigration & Asylum (including IRCs)
- Claims against Public Authorities (currently known as 'Actions Against the Police etc')
- Community Care
- Clinical Negligence
- Mental Health
- Public Law

For all categories the ITT stage will test organisations' ability to meet our minimum service requirements. **All organisations that are assessed as being suitable and as meeting the minimum service requirements will be awarded a Contract.**

Organisations will be required to employ a supervisor that meets the relevant category supervisor standard and in each category of law organisations will be required to maintain a supervisor to caseworker ratio of at least 1:4 at each office. We will restrict the number of organisations and offices at which supervisors may supervise.

Consistent with our previous approach to awarding contract work, we again intend to award work based on 'lots' in most categories of law. Where lots are used we will not ask tender applicants to

bid for a number of individual matter start allocations. Instead, each lot will have a defined volume of matter starts which successful organisations will be guaranteed. Successful organisations that bid in any lot will be able to self grant up to an additional 50% of their allocated matter starts in each contract year.

Those bidding in the highest lot may need to meet additional requirements, such as relevant advanced panel accreditation.

In addition to processes for awarding supplementary matter starts we are also considering giving greater flexibility within contracts to allow organisations to re-allocate up to 50% of matter starts between their offices. With the agreement of their Contract Manager organisations could re-allocate matter starts between their offices provided they hold schedule authorisation for relevant category of law and any relevant office-level requirements are met (e.g. higher lot quality requirements).

HPCDS Services

As now, we will contract with a single organisation to deliver each scheme.

The government is currently consulting on whether to introduce price competition for the award of HPCDS contracts and to increase the size of most scheme areas. If price competition is introduced, contracts would be awarded based on both quality and price and our assessment process would include an assessment of financial capacity.

To apply for a HPCDS contract organisations will need to successfully tender for and retain a mainstream housing and debt contract. In light of the government's plans to increase the size of many schemes, subject to the outcome of consultation we are considering options as part of the procurement process for ensuring bidding organisations capacity to deliver these larger contracts. The Government is also considering whether sub contracting and/or agency arrangements should be permitted to deliver services across a scheme area and the tender process will reflect the Government's final policy approach.

Proposed timeline

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| SQ opens | April 2017 |
| Notification of SQ outcome | June 2017 |
| ITTs open (except HPCDS) | August 2017 |
| Notification of ITT outcome NB, we expect notification of the outcome of the Housing, Debt & Welfare Benefits ITT will happen sooner, prior to the HPCDS ITTs opening | December 2017 |
| HPCDS ITTs open | October 2017 |
| HPCDS ITT outcome notification | January 2018 |
| Verification process | January-March 2018 |
| Contracts issued | March 2018 |
| Contract start and service commencement | 1 April 2018 |

Specialist telephone advice contracts

We intend to award contracts for specialist telephone advice contracts in the following categories of law:

- Family
- Housing & Debt
- Discrimination
- Special Educational Needs

The procurement process for specialist telephone advice is likely to follow a similar format to that used in previous tenders and include an element of price competition. Through this procurement process we will seek to secure a minimum of 2 providers in each category and a maximum of 3 providers.

We anticipate the SQ will test organisations' suitability to contract with us, including a financial assessment. In addition, we will place a limit on the number of organisations that will be invited to tender in each category and the SQ will also be used to shortlist the organisations that will proceed to the ITT stage.

During the ITT stage we plan to consider quality (in further detail) and price. The quality criteria will be focused on telephone advice as well as subject matter expertise.

We intend to largely replicate the current model for provision of specialist telephone advice services. This includes continuing to require face-to-face provision for Special Educational Needs and Discrimination to be included as part of the tender process for specialist telephone advice services in these categories.

In recognition of the longer mobilisation period required for specialist telephone advice services, we will aim to give successful applicants at least 12 weeks' notice of contract offers in advance of contracts starting on 1 April 2018.

Proposed timeline

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| SQ opens | April 2017 |
| Notification of SQ outcome | June 2017 |
| ITTs open | July 2017 |
| Notification of preferred bidders | September 2017 |
| Contract award and contract execution | October 2017 |
| Mobilisation | November 2017 - March 2018 |
| Service commencement | 1 April 2018 |