



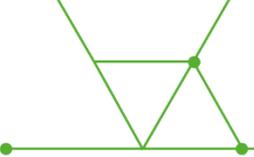
Legal Aid
Agency

2018 Standard Civil Contract Training

Part 1– Standard Terms and General Specification

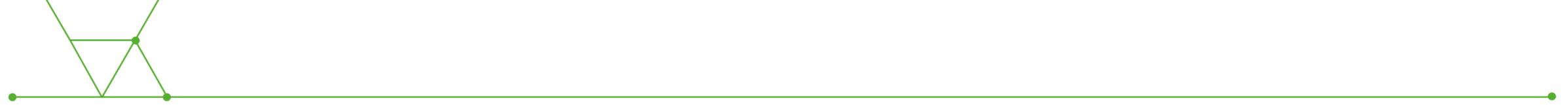
2018



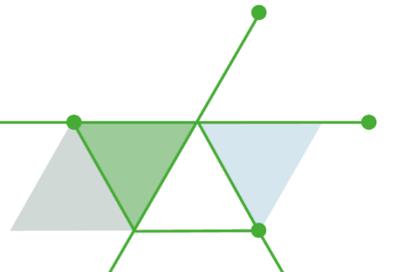


Objectives of training

- To highlight the key contractual terms and obligations under the 2018 Standard Civil Contract.
- For existing civil providers, to highlight in particular where the terms and obligations differ from the 2010, 2013, 2014 and 2015 Standard Civil Contracts and the 2013 and 2016 Standard Civil Contract (Welfare Benefits).



Standard Terms



What are Rejection criteria?

Rejection Criteria are the criteria in the tender/contract application documents that could lead to the entire tender being rejected. These can be found in the Information for Applicants (IFA) document.

Grounds for Mandatory Exclusion:
Result in automatic exclusion from the process unless there are mitigating circumstances satisfactory to the LAA

**IFA Annex A
(section B)**

Grounds for Discretionary Exclusion:
MAY lead to rejection but exceptional circumstances may be provided

**IFA Annex A
(section C)**

New provision - suitability to hold a contract

Responses to the Rejection Criteria in the Invitation to Tender Documents were used to determine the suitability of a provider to hold this Contract. If, during the Contract Period, a Qualifying Event occurs we will require a provider to submit revised responses to the Rejection Criteria.

Qualifying Event” means those matters specified in this Contract as being a Qualifying Event

Definitions

We will assess revised responses to the Rejection Criteria to determine whether you remain suitable to hold this Contract

Clause 2.1

Where we determine that you are no longer suitable to hold this Contract we shall terminate this Contract under the provisions in Clause 25.

Clause 2.1

Impact of Rejection Criteria reassessment

Where a Qualifying Event occurs, the LAA will re-assess the Rejection Criteria and the Provider's contract may be terminated if they fail the re-assessment

Where a Qualifying Event occurs the Provider must submit an up to date response to the Rejection Criteria within 14 days

Clause 22.11

Where a Provider now fails the Rejection Criteria the LAA may terminate the contract under Clause 25 powers

Clause 22.12

New provision - suitability to hold a contract

Providers must ensure that they/their Affiliates do not bring the legal aid scheme into disrepute by engaging in unprofessional or unlawful conduct which is likely to substantially diminish public trust in the legal aid scheme

Focuses on unprofessional or unlawful conduct regardless of whether or not such conduct is related to a Provider's obligations under the Contract

Clause 2.2

Lawful challenge, criticism or complaint of the legal aid scheme or any LAA decision, when acting in a professional capacity, is not captured by this Clause

Clause 2.2

Any operation of the Clause is subject to the LAA's obligation to act as a responsible public body and any sanction must be proportionate

Clause 2.2

Performing Contract work

Each Provider awarded a 2018 Standard Civil Contract is responsible for fulfilling their contractual obligations, including supervision

A Provider must not give, sell, or transfer the benefit of any Contract right, or sub-contract or delegate any Contract obligation without prior LAA consent

Clause 3.1

The Provider must ensure that the work of any sub-contractor or Agents is properly supervised, as if they were an employee of the Provider

Clause 3.3(a)

NEW - Providers must pay Agents, Counsel and Third Parties within 30 days of a valid invoice from them

Clause 3.3(b)

Agents, Approved Third Parties, Counsel and in-house advocates hold any accreditation requirements, including any which come into force during the Contract Period

Clause 3.5

Indemnities and Guarantees

Providers must immediately inform the LAA of any change or addition to:

your owners (including without limitation partners, Members of LLPs, Shareholders and directors) or controllers...

Clause 4.6

And ensure that these individuals provide indemnities and guarantees by the date and in the form as reasonably requested by the LAA

Clause 4.6

Use of advocates

Providers must consult the Client about the use and the selection of Counsel or in-house advocate holding higher rights of audience to conduct advocacy services.

A Provider must advise the Client of the name, status, experience and suitability of the selected Counsel or in-house advocate

Clause 7.3

The Client must be informed where a Provider has reasonably determined that no alternative Counsel or in-house advocate is available

Clause 7.3

Where Counsel or in-house advocate becomes unavailable, a Provider must take reasonable steps to instruct a replacement of equivalent standing

Clause 7.4

Indemnity Insurance

Providers must have as a minimum

(Unless a registered charity) professional indemnity insurance which provides at least the cover specified by a Relevant Professional Body from time to time.

Clause 7.8

Registered charities must have professional indemnity insurance which is compliant with the requirements of any Relevant Professional Body and ...

Clause 7.8

...which must as a minimum be reasonably equivalent to that required under the Solicitors Regulation Authority's indemnity insurance rules taking into account the nature and extent of the risks associated with the work you undertake.

Clause 7.8

Provider Obligations to Family/Civil Justice Systems

The LAA will contract with Providers who comply with their professional obligations and who use digital technology to effectively interface with other Family and Civil Justice System partners.

Providers must comply with relevant legislation and relevant Professional Body rules. The contract must be accessible in Welsh, where required.

Clauses 7.14 & 7.15

Providers must have an IT system that can work with the over the Government Secure Intranet. The LAA will give no less than 3 months notice for when this needs to come into effect.

Clauses 7.19, 7.20 & 7.21

Providers must have an Online Account with the LAA for the electronic transmission of information including the reporting of Contract Work

Clause 7.22 & 7.23

Working with the LAA

The LAA may require access to records, premises or personnel in the course of checking a Provider's compliance with its obligations under the Contract

The LAA may at any point during the Contract Period conduct an audit

Clause 9.2

Providers must give access to records and personnel including those of any sub-contractors

Clause 9.4

Records may be produced in paper or electronic form

Clause 9.6

Claiming for legal aid work

A Provider will be entitled to submit claims for Contract Work undertaken

Providers must submit each claim within the time period specified in the Contract Specification

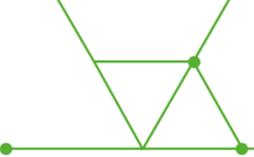
Clause 14.5

All payments falling due under the contract are exclusive of VAT unless expressly stated otherwise

Clause 14.9

Providers must notify the LAA within 5 business days of an occasion of tax non-compliance and provide details of the steps being taken to address it

Clause 14.23



Data Protection

- Amendments have been made to the Data Protection clauses.
- These changes reflect the requirements stipulated in the General Data Protection Regulations (GDPR) and the Law Enforcement Directive (Directive (EU) 2016/680) (LED).

Data Protection cont.

The contract and the Data Security requirements set out the roles of the LAA and providers as controllers and processors of data. There is no change in the data processes

(a) in respect of Personal Data comprised within the Shared Data, LAA and you are Joint Controllers. A description of the Joint Controller relationship and related Processing activity is set out in the Data Security Guidance;

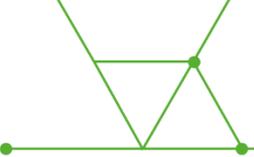
Clause 16.1 (a)

(b) in respect of Personal Data comprised within the LAA Data, LAA is a Data Controller and you are a Processor. The only Processing that you are authorised to do in respect of the LAA Data is listed in the Data Security Guidance by us and may not be determined by you;

Clause 16.1 (a)

(c) you may be a Data Controller or Processor on behalf of Clients and Former Clients in respect of other Personal Data.

Clause 16.1 (c)



Data Protection cont.

You will not transfer the LAA Data or Shared Data outside of the European Union unless you have obtained our express prior written approval and meet the following conditions.

You will supply originals or copies of the LAA Data and Shared Data to us in accordance with Clause 9.1. You will not assert proprietary or other rights in law or in equity as a reason for not supplying LAA Data and Shared Data in Accordance with this Contract.

Clause 16.8

At our written direction, you will delete or return the LAA Data (and any copies of it) to us on expiry or termination of this Contract unless you are required by law to retain the LAA Data.

Clause 16.8

Data Protection cont.

Without prejudice to Clause 16.3(a) in respect of the Shared Data and LAA Data Processed by you or on your behalf:

(c) you must ensure that Protective Measures (including but not limited to compliance with the Data Security Requirements) are in place to protect against a Data Loss Event,

Clause 16.9

(d) you will have regard to the Data Security Guidance and any guidance issued by the Information Commissioner's Office;

Clause 16.9

(e) you will ensure that any system on which you hold any LAA Data and Shared Data, including backup information, is a secure system that complies with your obligations under Clause 16.9(c)

Clause 16.9

Data Protection cont

Providers are required to notify the LAA (within 5 working) if they receive:

a request from a Data Subject to have access to that person's Personal Data within the LAA Data or Shared Data; or
(b) a request to rectify, block or erase any Ppersonal Data contained within the LAA Data or Shared Data; or

Clause 16.12 (a) & (b)

a complaint, request or any other communication relating to our obligations or yours under the Data Protection Legislation in connection with the LAA Data or Shared Data; or

Clause 16.12 (c)

any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract.

Clause 16.9 (d)

Notification of Voluntary Arrangements, Insolvencies

Providers must notify the LAA immediately when

They intend to make any composition with their creditors, seek a voluntary arrangement under insolvency, or other legislation, or if any of their partners, members of LLPs or Directors intend to do so.

Clause 21.8(c)

This includes but not limited to any Individual Voluntary Arrangements, Company Voluntary Arrangements or Debt Relief Orders

Clause 21.8(c)

Novation – Non-Automatic

The LAA must give its signed express consent to a non-automatic novation and the “new” Provider must meet the relevant contract requirements

The LAA has no obligation to enter into such a novation agreement

Clause 22.6(a)

The novation agreement with the new organisation will be on such terms as the LAA may reasonably specify and within such period as it may specify

Clause 22.6

The LAA will not agree to enter into a novation agreement where the new organisation fails the Rejection Criteria

Clause 22.8

What constitutes a Non-Automatic Novation?

- The creation of a partnership where the Provider was a sole principal (sole trader);
- Any change in, or any changes which in aggregate result in, the identify of more than one third of the number of the persons comprising the Provider’s Partnership (since the Contract started);
- Any change in the Provider’s legal status, or any intended sale, merger, acquisition, or transfer of, or by, the Provider. The LAA will apply its published novation's guidance in making decisions.

Novation – General Principles

For a non-Qualifying Event novation, the terms of the novation includes the following specific terms:

The new firm undertakes to comply with the Contract in substitution for the old firm and undertakes to be bound by it in every way as if it had been an original party to it

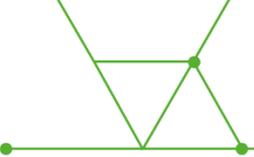
Clause 22.4(a)

The new firm is liable for any debt or obligation which arose under the Contract before the novation and the old firm remains liable for any debt or obligation not met by the new firm

Clause 22.4(e)

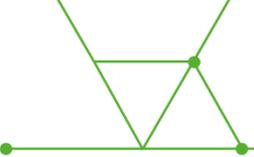
Any notice, direction, Assessment, decision, Audit, status or finding relating to the old firm is treated as having been in relation to the new firm

Clause 22.4(h)



Contract sanctions

- The LAA may apply sanctions to a Provider in the event of a material or persistent breach of the 2018 Standard Civil Contract or any other LAA contract/agreement.
- We may also apply sanctions where a Provider is under Official Investigation, where their financial situation poses a significant risk to clients or to public funds, or where a Provider's personnel no longer meet required professional standards.
- There are no changes to the sanctions in the existing contract.

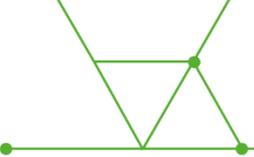


Ending the contract

- A Provider may at any time serve a minimum of 3 months' notice on the LAA terminating the Contract.
- The LAA may issue notice of a no fault termination, giving a Provider not less than 6 months' written notice.
- Under Clause 25.4 the LAA may terminate a Provider's contract at any time for breach of contract in specific circumstances



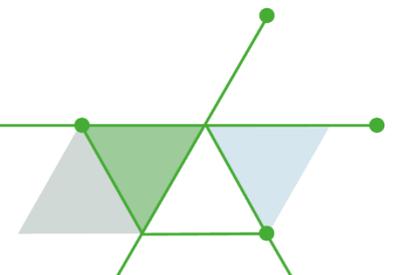
Specification – General Provisions (Sections 1-6)

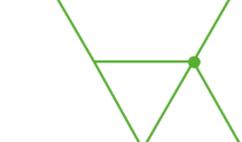


Re-allocation of matter starts

1.19 During each year of your Schedule you may reallocate up to 50% of your Matter Start allocation in a Category to one or more of your other Offices as applicable. You will need to notify your Contract Manager of your intention to reallocate your Matter Start allocation.

- This can be to any office, even an office in another procurement area;
- The provider must have a Schedule in the relevant category of law in the Office that the NMS are being allocated to.
- Providers need to advise their contract manager who will check if an office now has a higher lot size





Supplementary matter starts

1.21 Subject to Paragraphs 1.22 to 1.24 below you may self-grant Supplementary Matter Starts in a Category of Law in respect of which you have a Schedule and already hold Matter Starts, save that the total number of Supplementary Matter Starts you may self-grant in any year of the Contract Period may not exceed an amount which is equal to 50% of your existing allocation of Matter Starts in the applicable Category for that year. **For the avoidance of doubt, the right to self-grant Supplementary Matter Starts does not apply to Miscellaneous Work.**

Supervision

2.10 (a) – You must have a full time supervisor (or full time equivalent) in that category who works 5 days a week and 7 hours on each day

Unless otherwise set out in the Category Specific Rules e.g. Public Law, you must have at least one full-time (or full-time equivalent) Supervisor in each Category

Para 2.10

A single individual working on a full-time basis as a Supervisor of a single Category can only satisfy this requirement in relation to that Category.

Para 2.10

An individual working on a full-time basis could be a Supervisor in more than one Category, but they cannot on their own meet the requirement at paragraph 2.10 in more than one Category

Para 2.10

Minimum supervisor ratios

Supervisor must not supervise more than four Caseworkers across a maximum of two Offices or across two Providers with one Office each

A Supervisor may only be employed on a full time basis by one Provider

Para 2.26

You must have at least one full time equivalent Supervisor for every four full time equivalent Caseworkers at each Office from which you are carrying out work in that Category.

Para 2.26

The Category Specific Rules vary this requirement for public law, actions against public authorities and clinical negligence and provide instead for the appointment of a single part time Supervisor

Para 2. 26



Miscellaneous work

The IFA set out that providers could bid for a larger amount of matter starts for victims of trafficking. (VoTs) They could bid for 25 matter starts (of which 20 had to be for VoTs) or a higher amount (which would require a business case)

Each provider will be given 5 matter starts to use for Miscellaneous work. They cannot self-grant additional matter starts

Para 2.30

The definition of Miscellaneous work is set out in the Category definitions document

Office Requirements – permanent presence

A Provider must have one Office located somewhere in England or Wales

Must have waiting facilities and at least one private interview room

Para 2.33

Must be open and accessible to Clients, for at least 7 hours between 8am and 8pm every day Monday to Friday (excluding bank holidays and religious holidays)

Para 2.34

Must be able to contact the Office by telephone to make an appointment or get emergency advice

Para 2.35

Office Requirements – part-time presence

A Provider must have one Office located somewhere in England or Wales

Office does not need to continuously occupied. Where an Office is shared must be clear to clients which organisation they are dealing with

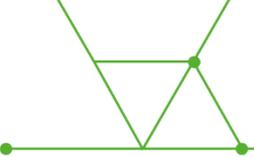
Para 2.36

Must be open and accessible to Clients, for at least one full day or 2 half days per week

Para 2.36

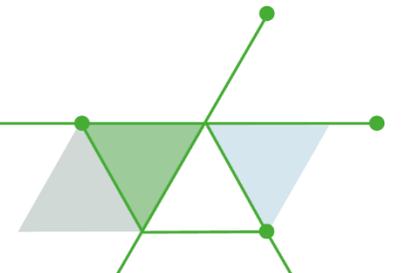
Clients must be able to contact you by telephone every working day Monday to Friday in normal business hours.

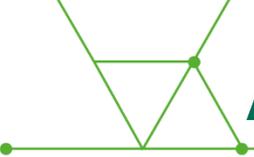
Para 2.37



Interpreters and translators

- 2.47 We may require you to use only our nominated translation framework agreement when instructing interpreters and will provide you with not less than three months' notice before activating such requirement and will provide appropriate guidance on how to purchase interpretation and translation services and how transitional arrangements will operate under the framework agreement
- 2.48 – Sets out the required standards for interpreters and translators
- 2.50 – Sets out a non-exhaustive list of “exceptional circumstances” when it may not be appropriate or reasonably possible to instruct someone meeting the requirements
- **This applies to cases started after 1 September 2018**



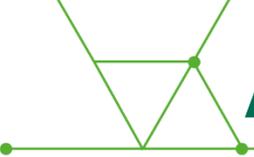


Associated criminal work

The following matters are carried out under criminal Legal Aid but are authorised under this Contract.

- Debt: debt proceedings in the magistrates' court
- Family cases under criminal Legal Aid
- Representation for an order for committal to prison for contempt of court (“Committal Proceedings”) provided that the Committal Proceedings arise out of civil legal services described LASPO and arise from civil legal services that fall within a specific Category of Law that the provider holds a Schedule Authorisation for.

Representation under paragraph 4.3 above is part of criminal Legal Aid and payment shall be made as appropriate in accordance with the relevant Standard Fee applicable to such cases under the applicable crime contract and/or associated legal aid legislation.



Associated criminal work- continued

- To apply for criminal legal aid for legal representation in the courts, your client must complete [form CRM14](#) and where applicable [form CRM15](#).
- They'll need to pass a means test (financial) and a merits test, Interests of Justice (IoJ), to ensure they're [eligible for criminal legal aid](#).
- Contact of the details of Criminal Applications team is available on the following Web Page: <https://www.gov.uk/guidance/apply-for-legal-aid>

Escape fee cases

You must not disregard any Contract Work or do any such work on a pro-bono where the reason for doing so is to escape the fee which would otherwise be payable.

Para 4.14

We may assess the costs of each Escape Fee Case Claim or a sample of them

Para 4.17

Claims for Escape Fee Cases must be submitted within three months of the Matter being reported

Para 4.20

If we refuse a request to pay a Claim as an Escape Fee Case you may appeal against that decision to an Independent Costs Assessor

Disbursements

You can incur disbursements where in your client's best interests and reasonable to do so

Para 4.24

Where no remuneration set out in the Remuneration Regs and multiple providers you must get 3 written quotes and select that which offers best value for money

Para 4.27 and 4.28

List of non-allowable disbursements includes payment for intermediaries or reports in relation to the need for an intermediary

Para 4.29

You may not use the Legal Help scheme where the main purpose is to incur the disbursement on behalf of the Client rather than to provide substantive legal advice or assistance to the Client

Monthly Payments & Assessments of Claims

Monthly Payments in accordance with the SMP Reconciliation Protocol or the Variable Monthly Payments Guidance

Para 4.33

Within 6 months of the conclusion of a Controlled Work Matter you must make a Claim for payment for that Matter

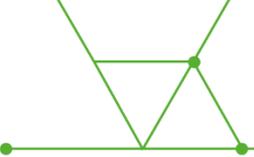
Para 4.41

Controlled work cost audits – sample of no fewer than 20 claims

Para 4.48

When we Assess a Sample may apply, reasonable and proportionate to apply any Findings to your other Claims for payment for Controlled Work

Para 4.48



Delegated functions

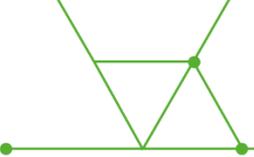
Delegated functions to grant licensed work no longer sits within the contract. Authorisations made by the Director of Legal Aid Casework (DLAC) confirm that providers are able to exercise these powers to grant emergency representation except in the following circumstances:

1. Judicial review cases, unless:
 - a.). The application is for full representation (and it is necessary to bypass the pre-action protocol)
 - b.). The application is required to secure accommodation for a client or their family who is/are homeless or will otherwise become homeless in 48 hours in reliance on one or more of the following provisions:
 - i. Part VII Housing Act 1996;
 - ii. Section 21 of the National Assistance Act 1948;
 - iii. Section 17 or 20 of the Children Act 1989;
 - iv. Section 47(5) National Health Service and Community Care Act 1990;
 - v. Sections 18 or 19 of the Care Act 2014; or,
 - vi. Section 36 of the Social Services and Well-Being (Wales) Act 2014
2. Exceptional Case Funding
3. Cases where funding is only available if the case has significant wider public interest



Urgent applications

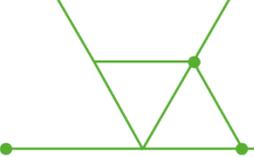
5.21 – You must act reasonably and proportionately in the course of making any representation to us that an application for Legal Aid is urgent and must take reasonable steps to ensure that you do not cause or contribute to any such urgency due to unnecessary delay in the submission of applications to us.



Transfer of work

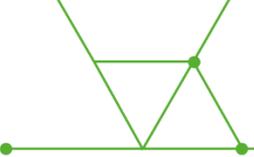
5.22 – In the event that you cease to be instructed or are required to withdraw from acting in relation to a case and such case is subsequently transferred to a new Provider, you must provide all relevant information about the case to the other Provider in good time and in such manner as the new Provider may reasonably request. You may not charge for this.

5.24 The new provider is required to make reasonable enquiries regarding whether the client has had legal aid for the same matter.



Schedule

- The majority of civil categories of law will feature on the same Schedule except for Mediation and HPCDS.
- The schedule is where you will find your:
 - NMS allocation;
 - Any extra provisions; and
 - Details of what you can do.
- You can view this on your own CWA portal.
- Your Schedules will be renewed annually.
- Additional information on the IRC rotas for surgeries and standby slots is sent to providers in a separate letter.



Contract for signature

- The Contract for Signature documents will be on CWA as the 'Click to Accept' functionality for all civil categories except HPCDS.
- If there are any conditions that have been imposed on a provider they will be listed on the Contract.