

The UK Border Agency of the Home Office and the Treasury Solicitor's Department Agreement for provision of litigation services

1. This Agreement (hereafter "the Agreement") is made between the Treasury Solicitor's Department ("TSol") and UK Border Agency ("the Department") ("the Parties"). The Agreement sets out the basis on which the Department will provide instructions to TSol and TSol will provide litigation services to the Department. The Agreement covers all litigation services provided by TSol to the Department except in relation to employment litigation which is subject to separate arrangements. The Agreement is not intended to be legally binding and no legal obligations or legal rights shall arise between the Parties from the provisions of the Agreement. The Parties include any bodies that carry out the same functions after any reorganisation. The Parties enter into the Agreement intending to honour all their obligations.

2. Format of the Agreement

The Agreement is organised as follows:-

1. The main Agreement
2. Schedule 1 – TSol's standard terms and conditions
3. Schedule 2 – Overarching agreement in relation to costs and finance issues
4. Schedule 3 – Specific agreement in relation to public law litigation
5. Schedule 4 – Specific agreement in relation to litigation involving CDG

The aims and general handling arrangements are set out in the main Agreement. Schedules 2-4 set out more detailed handling arrangements for each area of work specifying what each of TSol and the Department will do.

3. Aims of the Agreement

3(1) The Agreement is intended to provide guidance on appropriate timelines for litigation services which will enable the Parties to meet deadlines imposed by the Court or Tribunals (Key Dates). The Agreement is also intended to govern the way in which the Department and TSol work with each other in order to provide an efficient, professional and courteous service by both parties.

Deadlines

3(2) The main aim of the Parties is to meet the Key Dates in Schedules 2 and 3 and to deal with cases promptly in any event. The Parties recognise that it may not always be possible to meet Key Dates but will seek to do so as far as is possible.

The Parties also recognise that there may need to be some flexibility applied to the suggested timelines where resources, the nature of the case or volumes of work dictate but will seek in such circumstances to keep each other informed of the reasons for any deviations and extent of any delays so caused.

3(3) Where further deadlines are given, the reasons for them will be explained and, so far as it is within the control of the Parties, the deadlines will be realistic. If the Parties are unable to meet the deadline specified, they will explain the reasons for that failure. In particular, in relation to Court imposed deadlines, where the Department requires additional time, TSol will endeavour to obtain an extension to the deadline but the Department will provide TSol with full and adequate reasons for the extension request in order that a proper application can be made. The Department will also keep TSol updated in relation to action being taken in order to meet any deadline e.g. the progress of a submission in relation to settlement.

Decision Making

3(4) The Department recognises that its decisions must be made lawfully and in line with published policies. The Department is committed to ensuring compliance with the law on the following principles: -

- Making fair and realistic assessments of the legal risks in proposals for new policies or processes;
- Making contingency plans for adverse decisions when challenged in the Courts;
- Cooperating fully with the Court when such challenges are brought;
- Asking the Court to stay a decision where appropriate when immediate compliance cannot be delivered;
- Learning lessons from adverse decisions in specific areas and taking corrective action across the Department

Case Handling

3(5) The Department will provide TSol with the name and contact details of the person from whom instructions are to be taken, and the name(s) and contact details of the person who can authorise costs and damages (if different). TSol will inform the Department of the name and contact details of the person handling the case and the team leader of that person. In advance of any planned absence of the Department or TSol caseworker, the Department or TSol caseworker will ensure that details are provided of an alternative caseworker who is authorised to provide instructions or who will be covering the case. In the event of unanticipated absences, the Department or TSol as the case may be will endeavour to provide alternative contact details at the earliest opportunity. The parties will also inform

each other promptly of any change of caseworker with contact details of the new caseworker.

3(6) TSol will provide services on the basis of TSol's standard terms and conditions except where those are amended or dis-applied in the preambles to Schedules 2-4.

3(7) TSol will provide services with reasonable care and skill and to an appropriate professional standard. TSol will also have regard when providing services to the needs (operational or otherwise) of the Department's business. TSol will have particular regard to the cost of services and the need to provide services in an efficient manner and at a cost proportionate to what is at stake.

3(8) In considering the course of action to be taken, the Department will also have regard to the need for efficient handling of the litigation and to ensure that the cost of the litigation is proportionate to what is at stake.

3 (9) TSol will provide advice in layman's terms and plain English. Counsel's advice provided through TSol will be provided in full and interpreted, explained and summarised in an appropriate manner. It is recognised though that there may be occasions due to urgency where this might not be possible.

3(10) TSol will make requests for instructions promptly. The Department will provide full and accurate instructions in a timely manner to TSol to enable TSol to provide services to the required standard and to meet the Key Dates. In the event of any difficulties in providing the necessary instructions within the timescale given, the Department will ensure that TSol is made aware of those difficulties promptly in order that, if appropriate, an extension of time may be sought.

Requests for instructions and information will be;

- courteous and professional
- clear and digestible
- made as early as possible
- reiterated appropriately, reasonably, and calmly

Requests will be responded to

- courteously and professionally
- promptly
- as fully as possible

Any difficulties in relation to the request for or provision of instructions should be escalated to the appropriate line manager within TSol and the Department.

3(11) In providing instructions, the Department will have particular regard to the need to ensure that information provided is accurate and complete and that all documents within the custody and control which are relevant to the case are provided to TSol. TSol will be responsible for advising the Department on the obligations for disclosure in a particular case and which documents are relevant in order for the Department to comply with its obligations in that regard. More detailed provisions in relation to disclosure are set out in schedule 4 to the Agreement.

3(12) The Department official providing instructions will also be responsible for ensuring that other persons within the Department potentially interested in the litigation or other potential stakeholders are notified of the litigation and kept informed of progress. The Department will keep TSol informed, as appropriate, of any relevant significant issues in its dealings with the Office of the Solicitor to the Advocate General in relation to cases in Scotland.

4. Review and monitoring of working of Agreement

4.(1) Unless otherwise agreed, the Litigation Strategy Board will, at its regular meetings, not less than once per year review the overall working of this Agreement and the detailed specifications in the Schedules and any alterations to the Schedules which may be required.

(2) On an interim basis and pending the next formal review meeting, the detailed specifications in Schedules 3-4 may be amended by agreement between the relevant liaison officers (see 6(2) below) of the Department and TSol. For the avoidance of doubt, however, no amendments may be made to the main Agreement or to schedules 1 and 2 without reference to the Litigation Strategy Board.

(3) The Department and TSol will notify each other at the time of each review meeting whether they are satisfied or not satisfied with the quality of the service received from TSol and the quality of the instructions received from the Department under this Agreement in the period since the last review meeting.

(4) Alterations to this Agreement arising out of such meetings will not take effect unless agreed in writing between an appropriate officer for TSol and for the Department.

(5) A record of the review meeting will be taken as part of the minutes of the Litigation Strategy Board meeting and will be agreed by an appropriate officer for TSol and for the Department.

5. Monitoring agreement, disputes and complaints

Where a difference or dispute arises between the Department and TSol concerning any matter dealt with in the Agreement (including any difference as to the application

or interpretation of the Agreement) which is not resolved between the individuals concerned and their respective line manager, issues should initially be discussed between the individual units and if these cannot be resolved will be referred for discussion and resolution to the next review meeting at the Litigation and Strategy Board.

6. Organisational management

6.(1) TSol and the Department will keep such records and information as to the services which are being and have been provided as will enable them to meet the requirements for the supply of cost information specified in [Schedule 1] to this Agreement.

(2) TSol and the Department will each appoint a liaison officer at an appropriate level for the general purposes of ensuring smooth running of this Agreement and, in particular –

- (a) sending each other updates regarding any organisational changes; and
- (b) acting as a channel of communication whenever the particular lawyer concerned cannot be contacted.

(3) TSol shall notify the Department the identity of the person who will have overall responsibility for the management of this Agreement (Client Relationship Manager). The Department shall notify TSol of the identity of the person who will have overall responsibility for the management of the Agreement.

7. Duration

This Agreement will come into effect on 19th December 2011 and will run until determined by either party by the giving of three months notice in writing.

For the Department: Daniel Hobbs, Appeals and Litigation Directorate Director

For TSol: Lee John-Charles, Client Relationship Manager

Dated 19th day of December 2011