

Civil Legal Advice Specialist Telephone Contracts in Discrimination From 1 September 2019 – Summary of Amendments to the Civil Legal Advice (Discrimination) 2018 Contract Documentation (11 June 2019)

The tables below set out the substantive amendments that will be made to the Civil Legal Advice (Discrimination) 2018 Contract for providers who successfully bid to deliver publicly-funded specialist telephone services in Discrimination from 1 September 2019 under a Civil Legal Advice (Discrimination) 2018 Contract (as amended). The tables should be read in conjunction with the Civil Legal Advice (Discrimination) 2018 Contract, the terms of which will apply to the delivery of these services except as amended in the way indicated below. This document is intended to provide a working understanding of the contract terms applicable to the delivery of this service, and, therefore, the final contract documentation may contain slight variations to the content set out below and include any consequential or minor amendments that were deemed unnecessary for inclusion in the tables. Final contract documentation will be published in due course.

Contract for Signature

Paragraph Number	Current Provision	Amendment
Recital (A)	On [] May 2018 we published an invitation to tender for legal services in relation to the provision of a telephone based civil legal advice service.	This paragraph will be amended to refer to the procurement exercise to commission publicly-funded telephone advice services in Discrimination from 1 September 2019.
Clause 2.1	The Contract Start Date shall be [] 2018 and subject to the terms of this Clause 2 the contract period shall commence on the Contract Start Date and end after a period of two years from the Service Commencement Date (the "Contract Period").	This will be amended to refer to a Contract Start Date of "[] 2019" rather than "[] 2018" with the "Contract Period" amended to mean the period between Contract Start Date and 31 March 2021.
Clauses 2.3 – 2.5	2.3 Subject to Clause 2.4 below we may at our sole discretion exercise the right to extend the Contract Period on any number of occasions and for any period provided that:	This provisions will be amended to remove the ability for the Contract Period to be extended.

(a) the minimum period of any such extension is three months;	
and	
(b) the aggregate duration of all extensions to the Contract Period	
pursuant to this Clause 2.3 may not exceed two years.	
2.4 To extend the Contract Period pursuant to Clause 2.3, we must give	
you at least three months' (in the case of the first extension) or one	
months' (in the case of any subsequent extension) notice before the expiry	
of the current Contract Period.	
2.5 Subject to Clause 2.6 below, you may not terminate this Contract and	
you hereby agree to deliver the services (as defined in the Specification)	
at all times throughout the Contract Period, including any extension to	
the same in accordance with Clauses 2.3 and 2.4 above.	

Annex 1 – Specification

Paragraph Number	Current Provision	Amendment
Paragraph 1.1	Definition of various terms.	Defined terms that are not relevant to these contracts will be removed. For example, there may no longer be a need for the term "Emergency Representation" because Licensed Work will not be permitted under this contract.
Paragraphs 1.2 and 1.3	 1.2 The flow chart below in Paragraph 1.3 provides an overview of the process by which members of the public will access CLA services. You will provide legal advice to Clients referred to you from the Operator Service, and Exempted Clients who may be referred to you by the Operator Service or who may contact you direct, as shown in the flow chart. The Operator Service is the initial stage of CLA where individuals will have their problems diagnosed, financial eligibility assessed and a series of options presented to them about how the problem should be dealt with. Individuals who are deemed eligible by the Operator Service will be directly transferred from the Operator Service to you. The Flow Chart may be amended from time to time. 1.3 Flow Chart: 	The text in paragraph 1.2 and the flow chart under paragraph 1.3 will be amended to show the new process by which members of the public will access Civil Legal Advice services in this category from September 2019 and how these calls must be dealt with subsequently. In particular, it will reflect the fact that face-to-face advice cannot be provided under this contract and where such advice is required a referral to a face-to-face contract holder must be made (including self-referrals in certain circumstances).
Paragraphs 1.4 to 1.8	 1.4 Subject to Paragraphs 1.5 and 1.6, you will only provide Remote Advice under this Contract. 1.5 You may only provide Remote Advice in the: Discrimination 	These provisions will be amended to remove the ability of contract holders to undertake face-to-face advice under paragraph 1.6 and the requirement for them to have to deal with Exempted Clients under paragraphs 1.7 and 1.8. This is because face-to-face advice is not available under these contracts and Exempted Clients will now be able to contact face-to-face providers directly to obtain face-to-face advice if
	Categories of Law as are specified in your Contract for Signature. Remote Advice will include the supply and performance of all activities and services	they do not want to be assisted be a specialist telephone provider.

	that form part of an end to end, non face-to-face legal advice service, including the services set out in this Specification.	
	 1.6 You may only provide Face-to-Face Advice under the Contract to the extent specified in your Contract for Signature and where Contract Work is in respect of the Discrimination Category of Law. Face-to-Face Advice will include the supply and performance of all activities and services that form part of an end to end face-to-face legal advice service, including the services set out in this Specification. 1.7 You will also provide legal advice in relation to Exempted Persons in 	
	the Discrimination Category of Law (provided you are authorised to undertake Contract Work in that Category of Law) who are referred to you from the Operator Service or who contact you directly, and who you have assessed and confirmed to qualify as Exempted Persons.	
	1.8 Contract Work will cover all work undertaken for the Client following your acceptance of a Case from the Operator Service or direct contact from an Exempted Person. Contract Work includes carrying out the necessary means testing and application of the Legal Aid Legislation and undertaking and/or considering the matters referred to in Paragraphs 2.12 to 2.22 and after which, subject to eligibility, the giving of Remote Advice and/or Face-to-Face Advice where applicable.	
Paragraph 1.9 to 1.11	 1.9 You must have an appropriate procedure in place to assess whether, taking into account all Service Adaptations and Reasonable Adjustments that are reasonably available to be implemented in respect of the relevant Client, the provision of the Remote Advice can reasonably be expected to enable: (a) you to understand and act on the Client's instructions; and 	This process will be amended in line with changes to the Lord Chancellor's Guidance on Civil Legal Aid. Providers will have to have an appropriate procedure in place to be able to determine whether a client should be provided services via a specialist telephone provider or a face- to-face provider under regulation 19 of the Civil Legal Aid (Procedure) Regulations 2012.
	(b) the Client to understand and act on your advice.	This assessment should be carried out in line with the Lord Chancellor's Guidance on Civil Legal Aid:

	 1.10 If following an assessment you consider that the provision of the Remote Advice referred to in Paragraph 1.9 cannot reasonably be expected to satisfy the requirements set out in Paragraphs 1.9(a) and 1.9(b), then: (a) in respect of Cases in the Discrimination Category of Law only, you must provide the Client with Face-to-Face Advice under the Contract to the extent specified in your Contract for Signature (subject to instances where a Discrimination Case forms part of a wider matter and is referred out to an alternative Face-to-Face Provider). 1.11 In respect of Controlled Work – if you determine that Remote Advice is suitable, you will not provide and the Client will not have the option under the Contract to receive Face-to-Face Advice on such matter (unless the Client is an Exempted Person and in which case Face-to-Face Advice must be provided if requested); and (b) in respect of Licensed Work - if you determine that Remote Advice is suitable, you will not provide advice or transfer such Client for the provision of Face-to-Face Advice on such matter unless specifically requested by a Client. 	 Providers will need to consider whether, taking into account any service adaptations or reasonable adjustments that are reasonably available to the client, the provision of remote advice would enable the provider to understand and act on the client's instructions and, whether the client is able to understand and act on any advice given Providers will also need to consider whether the client has expressed a wish for services to be provided by a face-to-face provider and the location of the face to face providers nearest to the client or the client's wish to be assisted by a specific face-to- face provider. This determination should only be carried out after the client has been given a chance to make their views known on matters relevant to the determination. In making the determination, particular emphasis should be placed on any wish expressed by the client for services to be provided by a face-to-face provider. If it is determined that the client should receive face-to-face advice then a referral will need to be made to a face-to-face provider in line with the referrals and signposting process set out in paragraphs 4.34 to 4.43 of this (amended) Specification, which will allow self-referrals in certain circumstances. While the mandatory telephone gateway is still in existence, providers will need to their case, which will constitute evidence that the client has applied for legal aid via the gateway.
Paragraph 1.13	CONTROLLED WORK – DISCRIMINATION CATEGORY OF LAW: FORM OF CIVIL LEGAL AID 1.13 Controlled Work is sub-divided into various Forms of Civil Legal Aid. In respect of Controlled Work, this Contract permits you to undertake the following in relation to the Discrimination Category of Law (provided that	This table will be amended to make it clear that it is not permitted to undertake Help at Court under the terms of this contract. This is consistent with the fact that face-to-face advice is not permitted under this contract.

	you are entitled Law pursuant to		ract Work in the relevant Category of	
	Form of Civil Legal Aid	Discrimination		
	Legal Help	Yes		
	Help with Family Mediation	No		
	Help at Court	Yes		
	Family Help (Lower)	No		
Paragraphs 1.14	LICENSED WORK	- DISCRIMINATIO	N CATEGORY OF LAW	These provisions will be amended to remove the references to Licensed
and 1.15			ovide Contract Work in Discrimination	Work. This is because this type of work will not be permitted under this contract.
			ovide Licensed Work in this Category of tions 7 and 8 to this Specification apply	contract.
			rovide Licensed Work in respect of Legal	
			he flow chart above and in accordance	
	with Sections 7 a	ind 8 below.		
	STRUCTURE OF T	THE SPECIFICATION	J	
	1.15 Sections 1 to 4 of this Specification are of general application to all			
	-		5 apply only to Contract Work which is	
			apply only to Contract Work which is	
			o the specific Category of Law is any conflict between the general	
			ovisions, the Licensed Work provisions	

	and the Category Specific Rules, the Category Specific Rules shall have precedence over the other provisions.	
Subparagraph 2.15(b)	 2.15 If your Advisers determine that a new Case does not satisfy all of the criteria detailed in Paragraph 2.14, the individual must be signposted to an appropriate and suitable, alternative source of help. If your Advisers determine that the criteria detailed in Paragraph 2.14 are satisfied, they must undertake the following further steps as part of the Determination: (b) assess in accordance with Paragraphs 1.9(a) and 1.9(b) above whether the new Case is suitable for delivery of Remote Advice, and if not take appropriate action in accordance with Paragraphs 1.10 to 1.13. If Remote Advice is not considered suitable then full reasons for this decision must be recorded on the Case file and Case Handling 	This provision will be amended to reflect the new assessment and referral process for ensuring clients access face-to-face advice in line with the Lord Chancellor's Guidance.
Paragraph 2.30	System; If you are permitted to provide Contract Work in the Education and/or Discrimination Category, your Backdoor Telephone Number may be publicised for the sole purpose of enabling Exempted Persons to contact you direct on your Backdoor Telephone Number, as follows:	These provisions will be removed. There will be no requirement for CLA providers to assist Exempted Clients. Exempted Clients will be free to choose telephone advice from CLA or go directly to a face-to-face provider.
	(a) we may promote your Backdoor Telephone Number at our sole discretion; or	
	(b) we may require, at our sole discretion, that you promote your Backdoor Telephone Number, at your cost and as directed by us; or	
	(c) you may promote, at your cost, your Backdoor Telephone Number, provided that you notify us prior to any such promotion.	
	3.2 Where you are permitted to undertake Contract Work in Discrimination Category of Law pursuant to this Contract, without limiting the other requirements under this Contract, you will be required to provide Face-to-Face Advice in those Categories of Law (including through Agents, where applicable, as provided by Paragraphs 4.4 to 4.7) in each of the following Procurement Areas:	Paragraph 3.2 and 3.3 will be removed from the new contract. This is because there will be no provision of face-to-face advice under this contract.
	• London • North East	

 Midlands and East of England South East North West South West Wales (a) from either an Office or alternative, 'local' arrangement (as required by Paragraphs 4.28 to 4.31, as applicable); (b) in exceptional circumstances, by travelling to see the Client (acting in accordance with the provisions of clause [4.32]); (c) by making a referral to another CLA Provider with a Discrimination Contract, where they are located closer to the Client; (d) by making a referral to a suitable Agent (e) by video conferencing or Skype in accordance with the conditions of this Contract and/or (f) by making a Referral to another Face-to-Face Advice Provider with a contract in an appropriate Category of Law. 3.3 Where Face-to-Face Advice is required in accordance with this Contract, Clients must be offered a face-to-face appointment in their own Procurement Area, or another Procurement Area if more convenient to the Client. These appointments must be within 2 Business Days of a request where there is an urgent need for an appointment or within 5 Business Days of a request where there is no urgent need.	
Use of Agents, Counsel and Approved Third Parties 4.4. You may instruct Agents, Counsel or Approved Third Parties from time to time to carry out or assist with your delivery of Contract Work where you are satisfied that it is in the interests of your Client to do so and, subject to your compliance with the rules on working with third parties in Clause 3 of the Standard Terms. Provided always that you retain ownership and responsibility for all Cases worked on by Counsel, Approved Third	These provisions will be amended to prohibit the use of agents to deliver contract work. At the moment, agents can only be used to deliver face- to-face advice. However, the provider will not be permitted to conduct face-to-face advice. It will continue to be possible to use Approved Third Parties (e.g. experts) in the provision of telephone advice.

	Parties and/or Agents, and specifically in relation to Approved Third Parties and Agents:	
	(a) you may only instruct an Approved Third Party or Agent if the Case relates to Discrimination Category of Law and for the delivery of Face- to-Face Advice; and	
	(b) the Approved Third Party or Agent satisfies all the conditions set out in Paragraph 4.5.	
	4.5. The conditions referred to in Paragraph 4.4 are that:	
	(a) the Approved Third Party or Agent's work is subject to your supervision;	
	(b) the Approved Third Party or Agent's work is covered by your insurance;	
	(c) work entrusted to an Approved Third Party or Agent is undertaken in accordance with the terms of the Contract;	
	(d) you retain responsibility for each Case undertaken by the Approved Third Party or Agent; and	
	(e) Cases undertaken by the Approved Third Party or Agent are not referred to a separate organisation.	
	4.6. Where you instruct an Approved Third Party or Agent you must claim payment for the work as if you had carried it out directly.	
	4.7. Unless we have specified otherwise, you may not rely on the use of any Agent or Counsel as evidence of satisfying any of the Service Standards in this part of the Specification.	
Paragraph 4.31	4.31. For the purposes of carrying out Face-to-Face Advice, an Office or premises as referred to in 4.32 must:	This paragraph will be removed because face-to-face advice is not permitted under this contract.
	(a) be a building which is suitable to cater for the needs of your Clients, personnel, Authorised Third Parties and Agents, enabling you to satisfy all relevant Health and Safety and equality legislation, the Quality Standards and Service Standards of this Contract and to	

	 protect Client confidentiality and comply with the requirements of Good Industry Practice; (b) be open and accessible to Clients at the arranged meeting time, and it must be clear to the Client at all times which organisation is providing the Face-to-Face Advice; (c) have waiting facilities and at least one private interview room which allow Client confidentiality to be protected. 	
Paragraphs 4.32 and 4.33	Local arrangements	These provisions will be removed because face-to-face advice is not permitted under this contract.
	4.32. For the purpose of Face-to-Face Advice in respect of the Discrimination Category of Law, you do not need to maintain an Office in the Procurement Area and you may deliver Face-to-Face Advice through an alternative arrangement, which includes the following premises, provided they satisfy the requirements detailed in Paragraph 4.31:	
	(a) another Provider's Office;	
	(b) the offices of any other supplier of legal services;	
	(c) offices of a third-sector organisation;	
	(d) Primary Care premises (for example a General Practitioner's surgery);	
	(e) commercially rented office space;	
	(f) a Government/Court building.	
	4.33. To support these local arrangements, Clients must be able to contact you by telephone and speak to a person in your organisation during Core Hours to arrange appointments and, where appropriate, receive advice in emergency cases. This telephone number may be for an Office outside the Procurement Area but must not be a mobile number, unless the Client's appointment is outside the Business Hours and in which case the mobile number of the individual who is to carry-out the Face-to-Face Advice may be provided. Out of Business Hours, Clients who telephone must be able to access information about opening hours and who to contact in an emergency.	

Daragraphs 4.24	4.24. You must have appropriate arrangements in approximation of that you	These provisions will be amonded to reflect the new assessment that CLA
Paragraphs 4.34 - 4.39	4.34. You must have appropriate arrangements in operation so that you can refer or signpost a Client or potential Client to another Provider where:	These provisions will be amended to reflect the new assessment that CLA providers must carry out to determine whether a client should be
	(a) you do not provide the services the Client requires;	assisted via a specialist telephone provider or a face-to-face provider (see
	(b) there is a conflict of interest between two or more Clients or potential Clients wishing to access your services;	above). Where a provider determines that face-to-face advice should be provided they will be required to refer the case to a face-to-face provider in line with the provisions in these paragraphs. Self-referrals will be
	(c) you are required to make a referral under the professional conduct rules of your Relevant Professional Body; or	permitted in the circumstances below.
	(d) you have made an assessment that Remote Advice is not appropriate for the Client, or the Client is an Exempted Person and has requested face-to-face advice or the Client has requested face- to-face advice in a category which is not covered by this Contract;	
	4.35. Where there is any conflict of interest between Clients or potential Client, or where you are required to make a referral under the professional conduct rules of your Relevant Professional Body we would expect that such a referral should be made to one of the other CLA Providers before signposting or referring externally. You must always make a Referral (as opposed to Signposting) where:	
	(a) the Case relates to a mandatory Category of Law (as identified on the flow chart above in Paragraph 1.3) and you have assessed that the Client requires Face-to-Face Advice or where an Exempted Person would prefer not to receive Remote Advice;	
	(b) the Client requires Legal Representation and this is not authorised under your Contract You must work on the principle that where representation is necessary Referral is made as early on as possible;	
	(c) you already have an established relationship with the Client and have undertaken work on a current Case or hold relevant Case information or documents and you can no longer help them under this Contract; or	
	(d) a Referral is needed as a Reasonable Adjustment to meet the needs of a Client or potential Client (as applicable) and you cannot meet such needs.	

New Provision		The rules on when a case that requires face-to-face advice can be self- referred to the provider's own face-to-face contract that are in the Civil
	4.39. When identifying a suitable provider for a Referral wherever possible you must use the LAA approved search facility detailed in the signposting and referral guidance issued by us from time to time. Where there is no suitable provider within the approved search facility you may use your own list of legal service providers that you have produced by area of law, or provide your own recommendation (as long as, in both cases, preference is given to, legal services providers that hold an SQM or LEXCEL and offer a free or low-cost service). Where there is more than one suitable provider any selection between them must be based first on the Client's choice and failing that, on the closest provider to the Client. Your preference for a particular provider should not be taken into consideration.	
	4.38. Where you refer a Client, such referral should be undertaken in a manner which does not prejudice the Client. You must also keep the Client informed in respect of the progress of such referral. If you are unable (or cease to be able) to perform Contract Work for Clients and you are unable to make any referral to another CLA Provider or Provider, your procedures must ensure that you make reasonable endeavours to ensure that your Clients' rights are protected, that they suffer no damage and they are provided with all relevant information.	
	4.37. Where you make a referral to another CLA Provider or other Provider (as applicable) you must ensure, so far as practicable, that such provider is authorised by us to provide services in the Category of Law most relevant to the Client's problem.	
	4.36. If you need to refer a Client after you already have an established Client relationship, have undertaken work on a current Case or hold Case information or documents, you must inform the Client of the cost implications of referral (if any). Information about advice and assistance already given and any relevant documentation and details of any Reasonable Adjustments required by the Client must be forwarded to the new CLA Provider or new Provider (as applicable).	

Legal Advice Contract 2018 will be extended to Discrimination cases. These rules are as follows:

4.40. If a Case in the Housing, Family and/or Debt Categories of Law is required to be referred to a face-to-face provider, you may refer such Case to yourself provided that:

(a) if the Contract Work is provided in respect of a Controlled Work Case, you hold a 2018 Standard Civil Contract which authorises you to perform such Case in the relevant Category of Law; or

(b) if the Contract Work is provided in respect of a Licensed Work Case, you hold a 2018 Standard Civil Contract which authorises you to carry out Licensed Work in the relevant Category of Law; and

(c) you have the Client's written consent to act; and

(d) you:

(i) have the closest Office to the Client from which Face-to-Face Advice will be delivered; or

(ii) your Office from which Face-to-Face Advice will be delivered is within 45 minutes travel time from the Client, and you have informed the Client of any other CLA Providers or Providers (as applicable) with a 2018 Standard Civil Contract in the relevant Category of Law with offices that are closer to the Client than your Office and they have confirmed that they do not want to go to one of the closer Providers

4.41. For the avoidance of doubt, if your Office from which Face-to-Face Advice will be delivered is more than 45 minutes travel time from a Client, and there are other CLA Providers or Provider (as applicable) with a 2018 Standard Civil Contract in the relevant Category of Law with offices that are closer to the Client than your Office, the Client must be referred to the closer adviser(s) in accordance with Paragraphs 4.34 to 4.39 unless 4.42 applies.

		4.42. In the Housing, Family and/or Debt Categories you may only refer a Case to yourself if you are more than 45 minutes travel time from the Client where all of the following exceptional circumstances apply:
		(a) substantive Remote Advice has been provided to the Client (i.e. extensive negotiations with the other side or detailed investigative work) and a relationship has developed; and
		(b) it can be demonstrated that it is clearly in the Client's best interests for them to receive continuity of advice due to their specific circumstances; and
		(c) the Client has been offered closer Face-to-Face Advice and has declined such advice.
		4.43 We may monitor the number of Cases that fall into this category. If we consider it appropriate we may carry out further investigations. If, as a result of such further investigation, it appears that you have breached the requirements of this Paragraph we may take such further action as we deem appropriate, including Assessing a sample of your Claims or applying a Sanction under Clause 24 of the Standard Terms
Section 7	CARRYING OUT LICENSED WORK	This section will be removed because it is not permitted to undertake Licensed Work as part of this contract.
Section 8	PAYMENT FOR LICENSED WORK	This section will be removed because it is not permitted to undertake Licensed Work as part of this contract. Provisions on assessment and appeals that apply equally to Controlled Work shall be moved to section 6 of the contract.
Paragraph 9.4	Exceptional Cases in the Discrimination Category 9.4 Note that any applications for an Exceptional Case in the Discrimination Category can only be made by CLA Providers whose Contract for Signature permits them to provide Contract Work in the Discrimination Category unless the Case satisfies the effective administration of justice test as set out in the Procedure Regulations. In the Discrimination Category, payment	This paragraph will be amended to reflect the fact that it not permitted to carry out Licensed Work under this contract (whether in scope or ECF).

accordance with the provisions at Paragraph 6.13 (Controlled Work) and	
Paragraph 8.68 (Licensed Work).	

Annex 3 – Payment and Disbursements

Paragraph Number	Current Provision	Amendment
Paragraph 21	For the purpose of this Contract, currently a "Disbursement" includes, subject to paragraph 25, time spent by your Advisers, Agents and Counsel travelling to and waiting at a Client location for good reason prior to providing Contract Work in the Discrimination and Education Categories ("Travel Disbursement").	This provision will be removed. Providers will not be permitted to deliver face-to-face advice under this contract so there will be no needed to travel to a client.
Paragraph 25	25. You may only claim a Travel Disbursement of up to the amount per hour specified in the Remuneration Regulations (on a pro rata basis) subject to a maximum of 2 hours.	This provision will be removed for the reasons given in the box immediately above.