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“This novation policy is no longer relevant as it relates to contracts which have been superseded. If you have a query regarding the novation of your contract, you should contact your contract manager”



Legal Aid
Agency

Standard Contracts 2010/2013: Policy on novation of contract(s) in relation to Provider reorganisations

Background

This policy covers the following contracts:

- 2010 Standard Civil Contract (which covers Mental Health, Public Law, Actions Against Police etc, Clinical Negligence, Community Care and Family Mediation);
- 2010 Standard Crime Contract; and
- 2013 Standard Civil Contract (which covers Family, Housing and Debt and Immigration and Asylum),

(referred to in this document as ("Standard Contract(s)"))

During the course of their Standard Contract(s) Providers may wish to reorganise their businesses for various reasons. For example, a traditional partnership may wish to convert to an LLP or two separate organisations may wish to pool resources and benefit from economies of scale.

The award of a Standard Contract was made on the basis that you have passed a Pre-Qualification Questionnaire, and, where necessary, met the Essential Criteria and agreed to maintain the standards warranted in your response to the Selection Criteria.

All Standard Contracts include obligations on you to notify the Legal Aid Agency ("LAA") about certain events and what happens subsequently if your organisation anticipates a material constitutional change occurring (Standard Terms: Clauses 21 and 22).

Clause 21 provides as follows:

21 Things you must tell us about

Material constitutional changes

21.1 You must notify us soon as reasonably practicable if you become a Licensed Body and/or become aware of any anticipated material constitutional change which will or might affect you. At a minimum, you must notify us on, or within 14 days of, any material constitutional change that affects or might affect you. Without limitation, examples of material constitutional change are:

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- (a) where you are an unincorporated Not for Profit Organisation, any change (including any change of chairman or treasurer or any change of 75% or more of the membership since this Contract came into force) in the composition of your management committee;*
- (b) if you are a sole principle (sole trader), any creation of a partnership;*
- (c) any changes in the identity of more than one third in number of (i) the persons comprising your partnership, or (ii) the individual Members (LLP) of your limited liability partnership, or (iii) the individual directors of your company;*
- (d). any change in your legal status; or*
- (e) any safe, merger, acquisition, or transfer of, or by, you.*

Automatic novation

Clauses 22.1 and 22.2 make provision for automatic novation in some limited circumstances and Clause 22.4 details the terms on which novations under those Clauses will take place.

Circumstances requiring signed, express consent to novate

Clause 22.3 requires LAA signed, express consent to novate a Standard Contract in other circumstances.

Constitutional change in Clause 21.1 (b), (c)(i), (d), or (e)

22.3 If any of the events specified in Clause 21.1 (b), (c){i}, (d), or (e) has occurred, this Contract will not be novated under Clauses 22.1 and 22.2 and is incapable being novated without our signed, express consent

Policy on approval of novations where signed, express consent is required

Whether or not to approve a novation of a Standard Contract is entirely at the discretion of the LAA having regard to the individual circumstances of the request.

Where a material constitutional change is to take place, in considering whether or not to agree to novate that Provider's Standard Contract to the reorganised business, the LAA must comply with procurement law principles. This means that the LAA may only agree to a novation where:

- (a) its effect is to transfer the Contract Work in its entirety to the newly reorganised business on the basis that there are no operational changes to the way the Contract Work is provided; or*
- (b) the new arrangement continues to involve the same people delivering the same work in the same procurement area or, in relation to crime, the applicable Duty Solicitor Scheme.*

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If a Provider's proposals for reorganising its business would require the splitting of its Standard Contract, the LAA will not agree to a novation as this would involve the creation of additional contracts outside the formal procurement exercises. This does not prevent consideration of the position where it is proposed that one of the new entities being created will take the Standard Contract in its entirety.

The LAA will not ordinarily agree a novation where a debt is owed to another government agency and the "new" organisation does not fully accept that debt unless the government agency specifically agrees to the change in constitution and a repayment programme for the outstanding debt is in place with the newly created novated business that is evidenced in writing.

Where the LAA approves a novation of your Standard Contract, following your business reorganisation you must continue to comply with all the obligations under your applicable Standard Contract.

Any novation of a Standard Contract will be on the terms set out in Clause 22.4 of the Standard Terms. The LAA reserves the right to omit or add terms as considered necessary to any novation agreement.

Specific examples:

a) **Traditional partnership converts to LLP or Limited Liability Company**

The LAA would normally agree to novate the Standard Contract provided all the terms of the applicable contract would still be met. The LAA would require a Form of Indemnity and Guarantee as a condition of agreeing to novate the Contract. Clause 4.5 of the Standard Terms provides as follows:

"If you are a limited company or an organisation with limited liability or if you are a partnership and any of your partners is an organisation with limited liability, then, unless you are a registered charity, we may at any time while this Contract is in force, require from you, and you must provide to us, guarantees and indemnities by such date and in such form as we may reasonably request from the ultimate owners of your organisation and/or such persons as we might reasonably regard as being controllers and/or senior managers of your organisation and/or where you are a limited company, from any company which is your holding company."

b) **Two or more Providers merge**

The LAA would ordinarily agree to novate the Standard Contracts to the new entity provided all the terms of the applicable contract would still be met. If, for example, the merged organisation was to be an LLP, the Form of Indemnity and Guarantee would be required as a condition of agreeing to novate the contract.

c) **A two Office Provider with a Schedule at each Office wishes to split so that each Office becomes a separate entity**

The LAA could consider novating the Standard Contracts to one of the new entities provided all the terms of the applicable contracts would still be met. The LAA would

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not split the Standard Contract to create two separate Contracts - one for each new entity.

- d) **The Family Department and the Social Welfare Law Department wish to form separate entities and take their elements of the Standard Contract with them**

LAA would not split the Standard Contract to create two separate Contracts - one for each new entity.

- e) **The Crime department of a Provider wishes to split from that Provider and form a new entity perhaps on the basis that the Provider no longer wishes to undertake Crime work**

The LAA would ordinarily agree to novate the Standard Contract provided all the terms of the applicable contract would still be met. There is no splitting of the Standard Contract in this scenario.

Procedure

Business reorganisations are not accommodated automatically under the Standard Contracts. If you wish to continue to receive payments under your Standard Contract following a constitutional change you must come to us first, giving us at least one month's notice. You must put your request in writing to your Contract Manager.

The LAA will aim to make a decision on your request within one month of receiving it.