

community legal service

Support

Consultancy line: 0870 7700 447

Email: cls.support@asauk.org.uk

www.asauk.org.uk

Contracted Agencies' Experience of the Not-For-Profit Contract 2003

Written by Michael Eddowes

With additional commentary from Richard Jenner and Patrick Torsney

**advice
services
alliance**

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12th Floor New London Bridge House, 25 London Bridge Street, London SE1 9ST

☎ 020 7378 6428

www.asauk.org.uk

cls.support@asauk.org.uk

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Foreword

This paper reports on a survey carried out by Community Legal Service Support (CLS Support) in November and December 2003 into contracted agencies' experiences of the Not-for-Profit (NfP) Contract 2003.

Advice Services Alliance (ASA) will be referring to this report in forthcoming discussions with the Legal Services Commission (LSC) about the NfP Contract and in particular the contract compliance process. CLS Support has already been focusing on the more operational aspects of the survey by producing dedicated Email Bulletins and briefings on areas which we have identified agencies need most help with. The results have also informed the development of our 2004 training programme.

Readers may of course use the data and commentary contained within this document as they wish. We would appreciate it, however, that if used, CLS Support is clearly credited.

I would like to thank a number of people and organisations that have helped with this report:

- Thanks to the NfP agencies who took part in the survey. CLS Support recognises that agencies have substantial demands on their time, but we believe that by responding they have made a valuable contribution to the future of the NfP Contract.
- Thanks to the ASA Policy Team and Richard Jenner for their comments on the draft version of the questionnaire.
- Thanks to Kem Herbert and Richard Jenner for their help with the coding of general comments made by agencies in the survey.
- Thanks to Richard Jenner and Patrick Torsney for additional commentary on the data from the survey.
- Thanks to the ASA Policy Team for their comments on the final draft of this report.

Any mistakes in this report are, of course, frighteningly, my own.

Michael Eddowes (CLS Support Director)
Advice Services Alliance
14th May 2004

About CLS Support

CLS Support is an independent project run by ASA, the representative body for the major UK advice networks. CLS Support is funded by the LSC to provide guidance and support to advice agencies on issues relating to both the CLS Quality Mark (at all levels) and legal aid contracting.

Guidance

If you would like guidance on any of the issues covered in this report, please contact the CLS Support consultancy service (Monday 3pm-5pm, Tuesday, Wednesday and Thursday 10am-12noon) or email at any time cls.support@asauk.org.uk. *Please note that from 1st June 2004 the consultancy line opening times are 1pm to 4pm Monday to Friday.*

1 Introduction

- 1.1 The NfP Contract 2003 came into force on 1st April 2003. In the autumn of 2003 CLS Support decided to investigate contracted agencies' experience of the new contract. We were particularly interested in:
- Average case times (see section 2)
 - The educational audit (see section 3)
 - Upper Casework Limits (see section 4)
 - Agencies' concerns about the NfP Contract (see section 5)
- 1.2 We devised a questionnaire¹ so that we could assess the impact of the NfP Contract 2003 on agencies and their work. Please see appendix one for a copy of the questionnaire and appendix two for a copy of the covering letter explaining what the questionnaire was about.
- 1.3 We intended to use the information collected from the survey to:
- Help inform our future support work with NfP agencies
 - Identify issues that have policy implications that ASA might want to take up with the LSC
 - Encourage a better understanding of the impact of civil contracting on NfP agencies.
- 1.4 The survey also provided an opportunity for NfP agencies to be involved in and feed into the current debate on civil contracting within the NfP sector.
- 1.5 The questionnaire was sent as an Email Bulletin to all the NfP agencies on our Email Bulletin database. It was created by inserting a table into a Microsoft Word document for agencies to type their comments in the spaces provided and then email the completed questionnaire back to CLS Support at cls.support@asauk.org.uk. Alternatively, agencies could print off a hard copy and return the completed questionnaire to our postal address.
- 1.6 The questionnaire was also sent by post to ensure that all NfP agencies received a copy, including those who did not have an email facility.
- 1.7 The deadline for responses was Friday 12th December.
- 1.8 139 contracted agencies responded by the deadline (a response rate of 33%). Of these, 21 were members of advice^{UK}, 96 were Citizens Advice, 3 were DIAL UK, 12 were Law Centres Federation, 2 were local authorities and 7 were members of Shelter (2 agencies were members of more than one network).
- 1.9 In the following pages we provide the data from the survey. We also provide some preliminary commentary on these results.

¹ The questionnaire was developed by Patrick Torsney, a project consultant to CLS Support

2 Average case times

2.1 We asked agencies to note for each category of law their average time per case on closed matters for the periods specified.

Subject category	Average time per case on closed matters		
	April 2002 to March 2003 average	April to November 2003 average	Change
Debt	364 mins = 6.1 hrs	322 mins = 5.4 hrs	Down 12%
Employment	413 mins = 6.9 hrs	388 mins = 6.5 hrs	Down 6%
Housing	235 mins = 3.9 hrs	185 mins = 3.1 hrs	Down 21%
Immigration	331 mins = 5.5 hrs	286 mins = 4.8 hrs	Down 14%
Welfare Benefits	398 mins = 6.6 hrs	322 mins = 5.4 hrs	Down 19%

2.2 There is a strong indication from the responses that average time spent per case on closed matters is coming down in each subject category when the current contract period is compared against the previous year. Overall, agencies have reduced average case times by about 45 minutes per case between the relevant periods, which is clearly significant.

2.3 We are in the process of profiling the spread of average case times across agencies and between categories of law. If any agency would like a copy of these figures, please contact us at cls.support@asauk.org.uk.

Reasons for any significant difference (down or up) in average case times

2.4 We asked agencies if there was any significant difference in their average case times for the periods to note why they think this might be.

Reason	No of responses	
	Down	Up
We gained a clearer understanding of what activities can or cannot be claimed	15	4
Deliberately cutting back on the time claimed	15	0
Familiarising staff new to contracting with time recording ²	4	1
Profile of cases changed	3	6
Change in complexity of cases	2	4
Experienced staff deal with the case quicker	2	0
Other	2	1
No response ³	91	0
Total	134	16

2.5 A main reason for both reductions and increases in average times noted by respondents was that they believed they **gained a clearer understanding of what activities can or cannot be claimed**. This is a positive reflection of the large amounts of work and effort that agencies have put into adopting the new contract specification (including attending training such as that provided by CLS Support) whilst still continuing to provide a valuable service to clients.

² In practice the difference between the first, second and third reason is very little

³ This includes those who did not answer the question at all; those who started their contract in 2003/4 and could not make a comparison and those who did not answer the question specifically.

- 2.6 With respect to average case times increasing, it also indicates that it is possible that a number of agencies were under-claiming prior to the introduction of the current contract specification.
- 2.7 The other main reason respondents noted for decreasing average case times was that they were **deliberately cutting back on the time claimed**. It appears that a number of respondents are adopting a "better safe than sorry" attitude, with the times they are recording not necessarily reflecting the true time they have spent.
- 2.8 This survey was not designed to identify the extent and sources from which these agencies might be subsidising those casework costs beyond the costs of work that they claim under contract.
- 2.9 It is interesting to note that the two other reasons why organisations have seen a significant increase in average case times was because **the profile of cases changed** or there was **a change in complexity of cases**. This illustrates the varying effects of external factors not within the direct control of agencies or the LSC (and which this survey was not designed to identify).

3 Educational Audits

- 3.1 The NfP Contract 2003 introduced a costs assessment and contract compliance process for the NfP sector for the first time. The LSC is accountable to the Government and the taxpayer for money paid out under contracts. The audit process is aimed at providing assurance that contract work is directed towards the purpose for which funds have been provided and is being undertaken in accordance with the contract rules.
- 3.2 To support the introduction of the new audit process, the LSC has offered every supplier holding an NfP contract an "educational audit" to provide informal feedback on their performance against the new requirements before they undergo a full compliance audit.
- 3.3 61 agencies that responded to the survey had had an educational audit.

Overall percentage reduction

- 3.4 We asked agencies to note what overall percentage reduction the LSC said they would have made if this were not an educational audit.

	No of agencies	% of agencies
Agencies with an overall reduction of between 1% and 10%	9	15
Agencies with an overall reduction of between 11% and 20%	14	23
Agencies with an overall reduction of between 21% and 40%	26	43
Agencies with an overall reduction of between 41% and 70%	11	19
Reduction not known	1	2

- 3.5 These findings are obviously worrying. If these audits were a full contract compliance audit 85% of agencies would have lost some money from their contract (however, see paragraphs 4.7 to 4.12 below).

- 3.6 Inevitably, contracted agencies' experiences of the educational audit will affect the perceptions of both agencies and the LSC in terms of whether Contract Compliance Audits for the NfP sector are the most appropriate way of validating work done under contract.

The link between average reductions and when the files audited were opened

- 3.7 We asked agencies to note if files audited were opened before April 1st 2003 when the new NfP Contract came into effect or after.

	No of agencies	Average reduction
All agencies	61	27%
All files audited were opened before 1 st April 2003	32	28%
Files audited were a mixture of files opened before and after 1 st April 2003	15	30%
All files audited were opened after 1 st April 2003	10	17%
Not known	4	N/A

- 3.8 The average reduction is 27%. However, the file samples audited at educational audits were a mixture of files opened before and after 1st April 2003; some LSC regional offices audited a mixture of files whilst others took the whole of their audit sample from before April or, after April 2003.
- 3.9 The results of educational audits were considerably better where all the files audited in each sample were opened after 1st April 2003. Where the files audited were opened after 1st April 2003 the average reduction was 11% lower than where files audited were opened before 1st April 2003.
- 3.10 From the results of this survey, there is some evidence to suggest that the average would not have been as significant as 27% if auditors had simply concentrated on files opened under the NfP Contract 2003.
- 3.11 The LSC's own guidance on educational audits⁴ indicates that auditors would select a representative sample of files; from this it would appear that the decision on whether files audited should be from before or after April 2003, or a mixture, was left up to regional offices. However, we believe that a more accurate picture could have been gained from the educational audits had the LSC audit methodology addressed this point specifically with regional offices prior to conducting the audits.
- 3.12 There does not appear from the data to be any significant regional variation when examining the correlation between the average reductions and when the file was opened.

Reasons given by the LSC for reducing time

- 3.13 We asked agencies to note what reasons were given by the LSC for reducing time from a list, including 'other'. The only significant 'other' reasons specified were **we were spending too long doing an activity** or **we were doing too much** and **a separate matter should have been started**.

⁴ NfP Cost Assessment Auditing from April 2003: The Educational Audit

Reason for reducing time	No	% of agencies
Insufficient evidence on the file that work claimed for was undertaken	48	79
Claiming for administrative work	40	66
Eligibility	23	38
No or inadequate proof of income on file	20	33
We were spending too long doing an activity or we were doing too much	19	31
The work was not within the scope of Legal Aid	15	25
Misapplication or no application of the Sufficient Benefit Test	12	20
A separate matter should have been started	2	3

3.14 By far the most common reasons given by the LSC for reducing time were **insufficient evidence on the file that work claimed for was undertaken** and **claiming for administrative work**. These ought to be easier problems for an agency to remedy, rather than, for example, misapplication of the Sufficient Benefit Test (one of the hardest parts of the civil legal aid scheme to get to grips with).

Regional variations in the overall percentage reduction

3.15 We asked agencies to note their LSC regional office and cross-referenced these with overall percentage reductions.

3.16 We have deliberately anonymised LSC regional offices (in a way that it should not be possible to identify them).

3.17 In some areas the number of responses was far too small for commentary, but there were four regions (A, B, C and D below) where there were a significant number of responses and where some cautious comments can be made.

LSC Regional office	Reduction of between 1% and 20%		Reduction of between 21% and 70%		Total	
	No	%	No	%	No	%
A	4	50	4	50	8	13
B	6	67	3	33	9	15
C	7	41	10	59	17	28
D	3	27	8	73	11	18

3.18 Agencies in the region B came out of the educational audit best, where 67% of agencies had a reduction of less than 21% and 33% of agencies had had a reduction of over 20%. In region C by contrast 41% of agencies had a reduction of less than 21%. 59% had a reduction of over 20%. Region A is 50% and 50% respectively and Region D fared the worst: only 27% of agencies had a reduction of less than 21% with the remaining 73% over 20%.

3.19 Notably, agencies from region B also gave far more positive feedback throughout the questionnaire on the educational audit process than from any other region (see paragraphs 3.23 and 3.26 below).

3.20 We do not believe that it is appropriate to place too much reliance on these variations in terms of regional performance. The numbers are too

small to enable any firm conclusions to be drawn. It is possible that the results reflect the real performance of agencies, but it may equally reflect the variation in how the audits were conducted.

Aspects that agencies found most useful

3.21 We asked agencies to note which particular aspects of the educational audit they found most useful.

Code	No of responses
A better understanding or clarification of the rules	25
An opportunity to talk with auditors	14
Better case recording	11
None	6
The audit made us realise we were not administering the contract tightly enough	4
Recognising key words that would lead to a deduction	1
All aspects	1
No response	6
Total	68

3.22 It is clear that the most useful aspect of the educational audit noted by respondents was **a better understanding or clarification of the rules**.

3.23 Agencies' responses were influenced by which LSC regional office conducted the audit. For example:

Positive feedback from region B	Negative feedback from region C
<p><i>Auditors asked for information about the organisation etc and if they were unsure about notes (a refreshing change!).</i></p> <p><i>Confirmed that changes we have made more recently will ensure no reductions. Also pointed out some guidance changes we had not noticed.</i></p> <p><i>Talking to auditors about their perception of the audit. Being given first hand information.</i></p>	<p><i>None of it. It was all profoundly depressing.</i></p> <p><i>None – it was a very traumatic exercise for the caseworker. She was made to feel that she had dishonestly recorded time.</i></p> <p><i>Insight gained into the fact that the LSC are concerned only with figures and not with the needs of clients.</i></p>

Concerns that agencies had

3.24 We asked agencies to note any concerns that they might have about the educational audit or the way in which it was conducted.

Reason	No of responses
The auditors failed to take into account NfP approach or the needs of NfP client	10
The auditors were too quick to find fault and make reductions	10
The agency didn't agree with the decision of the auditor	7
None	7
The auditors did not have expertise in the category of law and therefore they cannot judge whether work is appropriate or not	7
There was disagreement between the auditors who attended	6
Reasons for deductions were not given or were inadequate	5
The auditors chose an unrepresentative sample of files	4
There was no opportunity to talk with the auditors before a decision was made	4
The auditors looked at pre 1 st April 2003 files	3
Under claiming was not applied across the board	2
Auditors are not following head office instructions	2
There was not enough time to familiarise ourselves with the new contract	1
No response	13
Total	81

3.25 The fact that a number of agencies commented that **there was disagreement between the auditors who attended** over individual assessments highlights the relatively subjective nature of the contract compliance audit process. It may also indicate further training needs on the part of those auditors, particularly in respect of consistency.

3.26 Again, feedback was divided on this question. For example:

Positive feedback from region B	Negative feedback from region C
<p><i>No concerns. [Our] Regional office has a consistent approach, which was again adopted.</i></p> <p><i>Conducted clearly, helpfully and efficiently.</i></p> <p><i>Everything said was very fair and has enabled us to change our recording / record keeping practices.</i></p>	<p><i>We found that it was conducted in a very confrontational and almost 'bullying' way.</i></p> <p><i>There was no attempt to communicate with either caseworker. The auditors seemed young and inexperienced box tickers. The presentation of the written report was appalling, untidy and illegible.</i></p> <p><i>We all found it really, really depressing. We did not come into this work to have some bureaucrat to tell us to do it faster.</i></p>

Appeals

3.27 We asked agencies if they would have objected to any reductions through an appeals process (or otherwise) had this audit not been educational.

- 3.28 46 NfP agencies (75% of those who had had an educational audit) would have objected to any reductions through an appeals process or otherwise if the audit had not been educational. Given that a number of those who would not object to reductions through any appeals process were inevitably those who performed well, it is a significant rate of response.
- 3.29 Assuming that yearly contract compliance audits become the norm then it would be possible to say, even at a conservative estimate, that the number of NfP appeals following audit may pose significant challenges for even the most developed appeals infrastructure.

The length of contract and NfP performance

- 3.30 We asked agencies to note the date at which their first contract with the LSC began and cross-referenced this with overall percentage reductions.

Date at which Contract began	1995 to 1999		2000 to 2003		Total
	No.	%	No.	%	No.
Agencies with an overall reduction of between 1% and 20%	6	27	16	73	22
Agencies with an overall reduction of between 21% and 70%	18	49	19	51	37

- 3.31 These figures suggest that there is no positive link between the length of contract and NfP performance. If anything they suggest that the new agencies (those whose contract with the LSC began after 2000) are actually doing better than the pilot agencies (those whose contract with the LSC began between 1995 and 1999). Of better performers (that is agencies with an overall reduction of between 1% and 20%), 27% are pilot agencies and 73% are new agencies, whereas of poorer performers (that is agencies with an overall reduction of between 21% and 70%), 49% are pilot agencies and 51% are new agencies.
- 3.32 It is not immediately apparent why this is the case as the general assumption has been that those involved in any pilot exercise inevitably perform better in the longer term due simply to the greater length of time exposed to the scheme.

Employing a solicitor and NfP performance

- 3.33 We asked agencies to note if they currently had a solicitor working with them and cross-referenced this with overall percentage reductions.

Reduction	Solicitor working with agency		Solicitor not working with agency		Total
	No	%	No	%	No
Agencies with an overall reduction of between 1% and 20%	2	9	21	91	23
Agencies with an overall reduction of between 21% and 70%	5	14	31	86	36

- 3.34 These figures suggest that there is no link between employing a solicitor and NfP performance. The number of solicitor agencies is so small as to

not be reliable to comment on, but to the extent that we do have figures they do not bear out the view that solicitor agencies perform better.

4 The Upper Casework Limit

- 4.1 The NfP Contract 2003 enables a regional office to impose an Upper Casework Limit (UCL) on an agency's Controlled Work. This is a limit to the amount of time that can be claimed on a case without obtaining prior authority from the regional office.
- 4.2 A regional office will set a UCL where it has reasonable concerns (whether through audit or other contract management information) about average case times.
- 4.3 Where a limit has been imposed, an agency may not exceed this without prior authority, or additional work cannot be claimed for. Applications to extend the UCL must be made on a specified form.
- 4.4 18 agencies that responded to the survey had had a UCL imposed.

Applications to extend the UCL

- 4.5 We asked agencies to note if they had made an application to extend the UCL on individual cases. 9 agencies said they had made applications that were successful and 1 agency said that had made applications that were turned down.

Reasons why agencies had not yet made any applications to extend the UCL

- 4.6 We asked agencies if they had not yet made any applications to extend the UCL on any individual cases to note why not.

Reason	No of responses
Because of the efficiency of the caseworker	1
There has been no need so far	4
No response	10
We complete cases as non-contracted work	1
There is too much bureaucracy in making an application	2
Total	18

- 4.7 The number of responses (8 out of 18) was far too small for any commentary.

Changes to the way in which agencies conduct casework because they have had a UCL imposed

- 4.8 We asked agencies to note if they had made any changes to the way in which they conduct casework because they had or were about to have a UCL imposed.

Change	No of responses
More careful time / file recording	4
We close cases sooner (and then re-open them)	2
Changes have been made to our procedures	4
No response	4
No changes have been made	4
Total	18

4.9 Of the 18 agencies which had a UCL imposed over half said they had made changes to the way in which they conduct casework to deal with the issue.

5 Agencies' concerns about the NfP Contract 2003

5.1 We asked agencies to note any concerns about their work under the NfP Contract 2003 or make any additional comments not covered elsewhere on the questionnaire.

Reason	No of responses
Uncertainty and anxiety was caused by the educational audit	10
We don't like the constraints on how much time we can spend on case activities	9
No account is made for the holistic advice that CABx offer	8
There is too much bureaucracy	5
Subjectivity of auditors is a problem	3
I have to work unpaid overtime to achieve contract targets	3
Without funding from other sources it is impossible to meet contract hours	3
Writing more detailed file notes means less time is spent with the client	3
We didn't like the April 2004 pay freeze	2
Rather than auditing outputs the LSC should be looking at the outcome for clients	2
No response	31
Total	79

5.2 The greatest concern over working under an NfP contract raised by respondents was that **uncertainty and anxiety was caused by the educational audit**.

5.3 It is worrying that a process designed to be educational can actually leave agencies more uncertain of their work under contract than before. If this continues then it might encourage bad practice in agencies (particularly in respect of systematically under-claiming for work done for fear of reductions in future audits). In these agencies this would have an acute knock-on effect when measuring overall agency contract performance.

5.4 A number of respondents said **we don't like the constraints on how much time we can spend on case activities**. This is likely in part to be a response to the changes in casework practice and service delivery that NfP contract caseworkers have had to adapt to since the new contract came into force. We believe, however, that there must be a balancing point in respect of best use of resources and providing a viable and effective legal advice service under contract where the quality of work is assured. The contract is essentially a funding arrangement with specific performance indicators that those obtaining funds must meet; perhaps then, the issue is not with the contract itself but with the performance indicators and mechanisms currently used to measure and evaluate the extent to which contract objectives are being met.

5.5 From the responses it is fair to say that a large number of respondents have found the whole contract compliance process fairly challenging.

6 Conclusions

6.1 This survey of contracted agencies' experience of the NfP Contract 2003 was a useful exercise. We cannot be sure that the 33% response rate was a representative sample of the 417 NfP agencies, but nevertheless, a lot of the issues that have come out of the results from the survey fit in with anecdotal evidence from enquiries to the CLS Support consultancy line and at CLS Support training from agencies as well as feedback gained by the ASA Policy Team from the advice networks.

6.2 Clearly agencies are still facing difficulties with contract compliance and therefore there is still a need for consultancy, briefings, training and electronic services such as those provided by CLS Support.

6.3 It is worth repeating that where the files audited were opened after 1st April 2003 the average reduction was 11% lower than where files audited were opened before 1st April 2003 (see paragraphs 2.6 to 2.11 above).

6.4 For agencies, there are a number of issues that may need to be looked at, such as the reasons for reducing time set out in the table at paragraph 3.13 above (especially **insufficient evidence on the file that work claimed for was undertaken** and **claiming for administrative work**).

6.5 For the LSC, issues that may need to be looked at are:

- The link between average reductions and when the files audited were opened (see paragraphs 3.7 to 3.12 above).
- The inconsistent approach to the educational audit between regions. This is illustrated by the regional variations in overall percentage reductions (paragraphs 3.15 to 3.20) and how feedback from agencies was divided (paragraphs 3.23 and 3.26 above).
- The fact that so many agencies (75% of those who had had an educational audit) would have appealed suggests a high level of disagreement with audit findings made by auditors (see paragraphs 3.27 to 3.29 above). This may indicate a training need also for auditors (see paragraph 3.25 above).