

# Amendment to the Not-for-Profit Contract (Contracting Email Bulletin no. 77)

## 1 Introduction

- 1.1 The General Civil Contract (Not-for-Profit) has been amended to bring in a peer review performance indicator. The amendment will come into force on 17<sup>th</sup> May 2006.
- 1.2 All advice organisations holding an NfP Contract should have received a letter from the Legal Services Commission dated 31<sup>st</sup> March 2006 about the amendment.
- 1.3 ASA said in its response to the consultation on proposed amendments to the General Criminal Contract and General Civil Contracts:

“In our opinion, it is essential that the key points of the peer review process should be included within the contract” (see paragraphs 3.4–3.5 below).

The Commission’s response to this was:

“The Commission does not consider that it is appropriate to set out, or summarise, the independent peer review process managed by the Institute of Advance Legal Studies, in the contract. It is possible that the process will be further developed e.g. in response to comments by representative bodies or individual contractors”.

The [outcome of the consultation](#) document is available on the LSC website.

## 2 The Amendment

- 2.1 The amendment specifies that:
  - The quality of your Contract Work as determined by independent peer review is a performance indicator.
  - The quality of your Contract Work must be rating 1 (excellence), 2 (competent plus) or 3 (threshold competence).
  - If the quality of your Contract Work is rating 4 (below competence), this is a breach of contract.
  - If the quality of your Contract Work is 5 (failure in performance), this is a fundamental breach.
- 2.2 The Commission says that the amendment is necessary in order to bring the NfP Contract into line with the peer review process set out in a document entitled “[Independent Peer Review](#)” published by the Commission in November 2005 following consultation.

### 3 Peer Review

3.1 At present the Commission uses [peer review](#) in the following circumstances:

(a) **Targeted assessments**

“When there are concerns about the quality of an supplier’s work, peer review is used to identify whether the supplier is meeting the standard required by Clause 3.2 of the Contract Standards Terms”;

(b) **Access reasons**

“When a supplier, which operates in a high priority area of need, cannot meet the supervisor’s casework volume requirements, peer review is used as an assessment of ‘Supervisors’ Legal Competence” (Specialist Quality Mark requirement D3.2);

(c) **Random assessments**

“Random samples of suppliers are also selected for peer review to:

- Support the development of other auditing tools and screening data;
- Assess the quality across the supplier base. This is on a continuing basis across all the main categories of law.

This exposes peer reviewers to a range of quality supplier work and also provides a controlled sample against which the LSC can gauge normal performance”.

3.2 Peer review will also be used as a gateway assessment in the move towards [Preferred Supplier](#) in 2009.

3.3 So far as we are aware the Commission is not planning any programme of peer reviews in order to ‘police’ the new contract requirement.

3.4 Advice organisations can therefore expect to be peer reviewed in the circumstances in paragraph 3.1 or as part of the assessment of legal competence at the application stage to become a Preferred Supplier.

3.5 The Commission published the [Preferred Supplier consultation paper](#) on 20<sup>th</sup> March 2006. The consultation will run for 12 weeks.

#### **The peer review process**

3.6 The key points of the peer review process are set out sections 6 and 7 of the “Independent Peer Review” document.

3.7 The key points of this process are that:

- The findings of the peer review will be set out in a detailed report under 8 main sub-headings.

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\* Legal Services Commission, *Independent Peer Review*, page 22.

- Suppliers have the right to make representations where the peer review rating is 3 or below. In these circumstances the peer review result will only be confirmed following the completion of the representations phase. This will include consideration by a senior panel member.
- A second peer review will be scheduled:
  - Immediately where the peer review rating is at level 5;
  - Normally after six months where the peer review rating is at level 4;
  - Where requested by IALS following consideration of representations;
  - In specified circumstances concerning an application for preferred supplier status.
- An initial peer review rating at level 4 will result in the issue of a contract notice, followed by a second peer review, which will normally take place after six months.
- A rating of 5 following two separate peer reviews will normally result in termination, depending on the supplier's individual circumstances.
- If a contract is terminated as a result of peer review, suppliers have the rights of review set out in clause 23 of the Standard Terms.

3.8 The Commission says in its letter of 31<sup>st</sup> March 2006:

"Although a final peer review rating of 5 (fundamental breach) is likely to mean that either the category of work or the entire contract will be terminated, termination is not automatic. The Commission still has to decide what is an appropriate response to the breach of contract and, of course, there is a right to apply for a review by the Contract Review Body".

## 4 Further support and guidance

4.1 If you need further guidance on the amendments to the NfP Contract or any other aspect of the General Civil Contract, please contact the CLS Support consultancy service on **0870 7700 447** from **1pm – 4pm, Monday to Friday** or email us at [cls.support@asauk.org.uk](mailto:cls.support@asauk.org.uk).