

General Civil Contracting Review of Contracts

The Advice Services Alliance's response to the
Legal Services Commission's consultation Paper

Introduction

1. ASA's response to the Commission's consultation paper should be considered in conjunction with individual responses submitted by our member networks. The response seeks where possible to represent the consensus of opinion amongst the networks, but its comments on specific proposals should not be taken in every case as necessarily representing the views of all networks.
2. ASA broadly welcomes the proposals set out in the consultation paper. Our detailed comments are set out below.

Allowable work in tolerances

3. The analysis underlying the Commission's proposal mirrors that set out in ASA's response to the Legal Aid Board's 1998 consultation paper, *Reforming the Civil Advice and Assistance Scheme*. While recognising the continuing need for contracts to include tolerances, in order to address access and ensure coverage in emerging areas of law, ASA's view remains that wherever possible, the Commission should contract with suppliers specialising in particular categories of law and providing such services under their core contract. This approach will best ensure the delivery of high quality legal services.
4. We therefore agree in principle with the proposed narrowing of the rules concerning tolerances set out in paragraph 5 of the consultation paper, which is also consistent with the Government's aim of establishing Community Legal Service referral networks.
5. We do however have some concerns over paragraph (c) of proposed new Rule 20 (new Rule 13 in not-for-profit contracts) as presently worded. In particular, we do not believe that it is adequate to define "reasonably accessible" solely by reference to the "personal circumstances of the client". Although this is clearly a key factor, account should also be taken of the willingness or ability of other contractors to take a case on within a reasonable timescale.
6. This issue is only partly addressed by proposed new Rule 2.21 (additional matter starts where existing contract capacity is reached), which firstly, only applies to top priority categories and certain especially vulnerable clients, and secondly, assumes that contractors are willing to take on additional work. The present contracting regime is only a few months old, and at this stage it is not possible to assess its impact on access to publicly funded legal services. The Commission cannot therefore be confident that there are sufficient contractors in areas of law such as debt or housing to meet the real need for such services in a given geographical area. Where specialist capacity is insufficient, other contractors should be able to undertake such work within tolerances (excluding existing tolerance barred categories), and this should be expressly recognised by an amendment to proposed Rule 20.

7. We would also urge caution concerning any further development of the proposed new Rule, as implied in the final sentence of paragraph 6 of the consultation paper. We therefore agree that for the time being, no penalties should be imposed for wrongful exercise of a contractor's discretion under proposed new Rule 20. Any change in this approach, and any further tightening of the Rule, should be dependent on an analysis of the impact of contracting on access.
8. The proposed new Rule should not apply where an organisation is certificated to the CLS Quality Mark Specialist Help Standard in a particular category, even if it is not contracted to provide such a service. Such an organisation should be permitted to undertake work in that category under the existing tolerance arrangements (on the grounds that it is LAFQAS compliant).

Travelling time

9. We welcome the Commission's proposals to extend travelling time (proposed new Rule 2.9).
10. The specific extensions proposed in paragraphs 7 and 8 should however be kept under review. At face value they appear to be reasonable, but they may be insufficient for some clients, bearing in mind the spread of contractors in the categories of law concerned and geographical differences in accessibility by road or rail. Consideration might in future need to be given to further, regionally specific extensions of the time limits to take account of the needs of clients in more remote areas.
11. We agree with the proposal in paragraph 10 (proposed new Rule 2.9(c)).
12. A small number of not-for-profit agencies (and possibly some private firms) have contracts to provide peripatetic services, mainly in rural areas. This involves a service being provided from different offices on a sessional basis, and advisers travelling from their base office to provide the service. The issue of payment for travel in such instances is not covered under the current contract and does not appear to be addressed by proposed new Rule 2.9 - both relate to off-premises work for specified individual clients.
13. The lack of payment arrangements covering peripatetic services is causing serious difficulties for agencies providing such services, as they cannot count travel time (which may be extensive) between offices towards their contract hours. This undermines the purpose of such services, which is to increase access to specialist advice in more remote areas.
14. ASA recognises that this issue is being considered as part of the current Methods of Delivery pilot (which we understand is to be extended). However, we would urge the Commission to take immediate steps to address the issue in respect of suppliers with standard contracts. The Commission should allow payment for travel time between offices where it has expressly agreed that a peripatetic service is to be provided. The details of such payment should be subject to further consultation with ASA and the Law Society.

Travel by clients

15. We welcome the proposals set out in paragraphs 11 - 14 of the consultation paper (proposed new Rule 2.13 (2.12 in nfp contracts)).

Applications for controlled legal representation

16. We agree with the proposal in paragraph 15 of the consultation paper (proposed new Rule 5.6).

Contractual capacity

17. We agree with the proposal in paragraph 16 of the consultation paper (proposed new Rule 2.21 of solicitors contract). See however our comments in paragraphs 5 and 6 above.

Rules for the review of contracts

18. The proposals set out in paragraphs 20 - 25 are broadly welcome, in that they would appear to give suppliers with solicitor contracts greater certainty than hitherto. However, as stated earlier, we do not believe that it is yet possible to assess the overall impact of contracting on access and patterns of supply, and the Commission should therefore keep the situation under continuous review.
19. We note the reference to not-for-profit contractors in paragraph 21(c). We are of course anxious to see increased resources for the advice sector, but the term "availability or likely future availability" (of such contractors) is extremely vague. The circumstances in which resources within a Bid Zone might be allocated in favour of one supplier rather than another should depend on the relative capacity of suppliers to deliver a quality assured service rather than sectoral identity. As we have stated in previous submissions to the former Legal Aid Board, there is also a need to ensure adequate solicitor coverage, whether through private practice or Law Centres and other advice agencies employing solicitors. These points should be explicitly spelt out in paragraph 21(c).

New firms

20. We support the intention behind the proposals in paragraphs 28 - 31 of the consultation paper. The notion of a "bankable" guarantee will hopefully address some of the difficulties facing new firms, although we are not in a position to make an informed judgement concerning the effectiveness of the proposal.

21. The specific proposals in the consultation paper are designed to cover private solicitors' practices. The Commission should also consider the parallel case of new not-for-profit organisations. This is particularly important in the context of the development of Community Legal Service Partnerships (CLSPs). A CLSP might for example identify the need to establish a new Law Centre. It is unclear how such a proposal would be funded (or part funded) by the Commission under existing contracting arrangements, particularly given the present nfp LAFQAS requirements concerning financial stability, which largely assume that an organisation is well established. We would welcome the opportunity to discuss this issue with the Commission in more detail, in the context of considering future bidding arrangements for not-for-profit organisations.