

Staying in the Black *the bulletin no.30*

An outline of the final buffer position and how the LSC are likely to manage your account under the 2010 Unified Contract

This guidance is aimed at managers, trustee board members and other staff with financial responsibility in Not-for-Profit (NfP) organisations holding a Unified Contract with the Legal Services Commission (LSC).

It contains information on the final stages of the *NfP Transition Process*¹, from now until the end of March 2010. In addition, it outlines the likely manner in which the LSC will manage the accounts of contracted organisations under the 2010 Unified Contract, from April 2010 onwards.

The LSC has checked the contents of this bulletin for accuracy.

Current rules (financial year 2009/2010)

The NfP Transition Process concludes at the end of this financial year. By which point, NfP organisations must owe the LSC no more than one month's worth of their average claims over the preceding year.

One month's average claim is equivalent to 1/12th of the total claims you will have made over the year. As a percentage this is 8.3%, which when rounded down to 8%, means that your claims at year-end must be equivalent or greater than 92% of the monies paid to you by the LSC over the previous 12 months.

Example:

- Total payments = £210,000
- Total claims = £205,000
- Last 12 months claims = £95,000
- Balance of contract = £5,000 overpaid

Therefore, if we say that all claims outside of the previous 12 months (£110,000) have been paid, we are left with £95,000 of claims made in the last 12 months versus £100,000 payments, and the position is recorded as 95%, which is in excess of the 92% minimum.

This is the final buffer position under the NfP transitional protocol.

¹ Negotiated by the Advice Services Alliance at the commencement of the current Unified Contract and available at:

http://www.legalservices.gov.uk/docs/civil_contracting/070813_NfPTransition.pdf

April 2010 and onwards

Some organisations have contacted us, worried that they may then have to pay the remaining balance of the buffer back in the early part of the next financial year. We have spoken to the LSC about this and they have outlined their current thinking.

The way private practice accounts are currently managed is a result of the agreement that the LSC made with the Law Society, following the conclusion of legal action in 2008². That being the case, the LSC is very likely to manage NfP accounts in the same way. What this means is that NfP organisations would continue to benefit from a buffer of payments-versus-claims on and into the new contract term.

This new buffer would be equivalent to 10% of the value of your average claims over the preceding 12 months. This means that providing your average claims are in excess of 90% of the value of the payments made to you over the same period, no reconciliation action will be taken.

This buffer will be calculated on a rolling 12-month basis and will include payments and claims made under any previous contract. For example, in July 2010 your claims should be greater than 90% of the value of payments credited to your account over the period July 2009 to June 2010.

However, if you become overpaid by more than 10% (your claims drop below 90% of the monies paid to you over the same period), the LSC will automatically reset your Standard Monthly Payments (SMPs) to balance your contract to 100% over the following 6 months.

This would similarly be the case even where the 6 months overlapped with a subsequent Schedule period ie the LSC would not try and balance over a shorter period just because one Schedule was coming to an end and another about to start.

Once action has been taken, no further action is taken for a period of 3 months; at this point, the account is reviewed and if the change has had the desired effect on performance, no further action is taken. If the change has not had the desired effect, a further change to payments may be made.

Whilst you may continue to benefit from a buffer of payments versus claims within the term of the forthcoming contract, you should only operate to its maximum limit where it is absolutely necessary. One bad month would have the effect of reducing your average claims significantly and therefore the amount of buffer you were able to operate under for the remainder of the financial year.

Depending on the amount of overpayment, it may also trigger reconciliation action, as outlined above and demonstrated in the following example.

Example:

² The resulting Deed of Settlement can be found at www.legalservice.gov.uk.

Following the pathway: Community Legal

Service>The Unified Contract>Agreement with The Law Society (Annex 3)

- You were operating to the full extent of your 'buffer' post April 2010 and owed £10,000.
- You then had a bad month (significantly lower than usual claims) and the amount you were overpaid increased to £12,000.
- Assuming this meant that you now owed in excess of 10% of your annual average claims, this would then trigger a recoupment, by way of reducing the next 6 months SMPs by £2,000 per month until your account with the LSC was **balanced in full**.

If you are underpaid (your claims exceed the value of payments made)

At any point throughout the contract term, if your claims are in excess of 105% of the payments made to you over the same period – you have been underpaid – this will automatically trigger an increase in your SMP. Such underpayments are monitored and dealt with in exactly the same way as overpayments.

NfP organisations might find the current SMP Reconciliation Protocol of interest. Even though it currently applies to private practice contractors only, it contains worked examples and will give a sense of the thinking behind the process. You can download the Protocol here:

http://www.legalservices.gov.uk/docs/civil_contracting/Standard_Monthly_Payment_Reconciliation_Process_-_Jul_08.doc.pdf

IMPORTANT NOTE: Whilst the above outlines the current process for solicitor reconciliation, a new contract will be in operation from April 2010. This may bring changes to the reconciliation process. It is highly likely, however, that any new process will be very similar to the current solicitor one.

However, no agency entering April 2010 with a live contract and an overpayment from the previous schedule period that was within the 1x buffer requirement under the NfP Transition Protocol will be required to make an immediate repayment of that overpayment.

Further information and guidance

If you require further help or advice on any of the issues covered in this email bulletin, please contact the CLS Support consultancy service on 0845 241 2588 Monday to Friday 1pm–4pm or email cls.support@asauk.org.uk at any time.