



## The Law Society

### General Criminal Contract: January 2008 – Law Society comment: potential legal concerns / drafting issues

#### 1. Key concerns

The Law Society believes that the following issues require addressing as a matter of urgency.

Reference:	Issue:
Page 26: Para. 11 (bottom of page)	This clause gives the Commission the right to amend the contract by introducing new forms. We would argue that the forms required of firms are part of the technical specification, and this clause should therefore be removed.
Page 31: 'How do the Performance indicators affect you?' (para. 1)	'You must achieve.....such level of performance as we may require'. Performance indicators are clearly part of the technical specification, and therefore reserving the right to specify the level of performance is not compliant with the JR judgment. The level that must be achieved throughout the term of this contract must be specified. If it is not, and particularly if the Commission proposes to amend the level then it will be non compliant with the JR judgement.
Page 32: 'may we amend...' (Para's 2/3)	We would argue that Devolved Powers are part of the technical specification, so this provision is not compliant with the JR judgement.
Page 33: Paragraphs 4 and 5	We do not take it for granted that only provisions in Part D of the Specification amount to "technical specifications". Therefore this clause is arguably not in compliance with the JR judgment.
Page 46: para 20	This paragraph gives the Commission the complete discretion to amend / delete forms (cf page 26). This is not compliant with the JR judgement and should be removed.
Page 57: Para. 20	A 3 month termination clause is neither logical nor practical within a 6 month contract.
Page 104: deleted paragraph 7 starting ' <i>where the original attendance...</i> '	We are unclear as to the reason for this deletion, since this paragraph made it clear that if the case is passed to the Duty Solicitor by the DSCC, even where there has been previous advice, the case may be accepted.
Page 106: para. 3	We remain concerned that the requirement to 'telephone' the DSCC prior to attending or telephoning the client remains. This is highly impractical and could give rise to

	unnecessary delays in clients accessing advice. What of a situation where the solicitor cannot get through to the DSCC? Should they then delay providing advice to the client? The LSC confirmed at a meeting with the Law Society that consideration would be given to allowing other forms of contact than only telephone; such as e-mail or text. This should have been reflected in the contract.
Page 148: Para. 7.12.9	This contains provisions that are dependent upon changes to the CDS Funding Order that are still under consultation until 18/10/07 by the MoJ. This contract clause prejudices the outcome of that consultation.  The LSC has also itself issued a letter (from Cris Scotter to Timothy Dutton, sent on 26/09/07 but undated) that indicates clearly that exceptions will be made to panel exclusivity for certain cases, but this is not reflected here.
Pages 150-151: para. 6	This clause appears to create obligations on the Duty Solicitor once s/he has accepted a case from the Duty Solicitor Call Centre. However, on page 103, there is a provision that the Solicitor must first establish whether the client has had previous advice from another solicitor, & if so must decline to act. There is therefore a direct conflict between these clauses that needs to be resolved; and it did not exist in the draft on which the LSC consulted, thanks to note 7 on page 104, which has now been deleted.
Page 188: Para's 4.2.3 & 4.2.4	Refers to non-compliance with Performance Indicators; future changes to these, etc. There needs to be precise indications of what the Performance Standards are in the contract. If not, then paragraph 4.2.3 is non compliant, and paragraph 4.2.4 appears to be non compliant. A clause permitting changes to Performance Indicators is not compliant with the JR judgment. We also note that this clause relates to what the LSC proposes to do in 2001.

## 2. Additional concerns

Reference:	Issue:
Page 10: Para. 3D	Reference to 'Preferred Supplier status'; it is unclear what is happening with Preferred Supplier, nor whether or not it is in fact continuing?
Page 11: Paragraph 6	This refers to publishing the final process in 'October 2005', and is therefore inappropriate in a contract for 2008. Moreover, as this clause relates to potential changes in peer review, it is not compliant with the JR judgment, since it induces uncertainty in how a part of the contract will operate. Clear references should be included to the paper containing the final peer review process, and this process cannot be departed from for the six-month term of the contract.
Page 91-92: deletion of transitional provisions	For clarification: is the LSC satisfied that the continuity clause on page 23 is sufficient to dispense with the need

	for these transitional provisions?
Page 107: para. 6	'If the DSCC is unable to contact you, or you do not accept the matter within two hours...' Drafting point: this makes it seem as if the 2 hour limit will only apply once the solicitor has been contacted and is then deciding whether to accept or not. 'Unable to contact you' makes it appear that the DSCC does not have a two hour limit to contact the solicitor but only needs to try once & can then re-deploy the matter immediately. It needs to be made clear that there must be several attempts to contact the solicitor within a two hour time-limit; that all contact numbers held for that solicitor must be used, and that other methods of contact must be tried, such as e-mail etc. What records will be kept that can be inspected of all attempts made at contact with the solicitor?
Page 110: Para. 3.7.1: re. VHCC Panel members being able to attend the police station.	This does not make it clear that unless they also have a police station qualification, VHCC Panel members can only attend the police station <i>in VHCC cases identified as such at the police station</i> . Current drafting makes it appear they can attend in any case.
Page 147: Para. 7.12.5 (b)	The word 'OR' needs to be inserted between (a) & (b); otherwise it appears that the case must be both a terrorism case <i>and</i> prosecuted by the serious fraud office.
Page 148: para. 7.12.9	See point made above. The exclusivity to VHCC panel members of all VHCC cases is not compatible with the recent statement by the LSC that certain cases will be contracted to non-VHCC panel members (see letter from Cris Scotter to Tim Dutton).
Page 157-158: CDS Direct; para. 9.1.1 (b)	This makes a contractual provision which is dependent upon changes to PACE which are under consultation by the Home Office. The changes may not be made / may be different to what the LSC requires.