

**legal services**

COMMISSION

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Our Ref: RW/SC/LAW/129999/LIT  
Your Ref: PTJ/Y052757  
21st December 2007

**By fax in the first instance: 020 7222 3480**

Dear Sirs,

**R (the Law Society) v Legal Services Commission and Others**

As promised at our meeting last Friday I am writing in response to your letter dated 10<sup>th</sup> December.

As we explained at that meeting, our desire was to engage with your clients to discuss the steps necessary to give effect to the judgment of the Court of Appeal and to do so in a way that took account of the consequences for all of the Commission's civil legal aid providers – both solicitors firms and not for profit agencies. Unfortunately that approach was not accepted.

Given the very clear risk of further litigation by your clients and the risk and uncertainty that this presents to both the Commission and providers it is our current intention to terminate the civil Unified Contract. We will be communicating further with providers, your clients and other representative bodies about this in January. It is the Commission's and the Government's intention that any new contracts will contain the new fixed fee schemes.

As your client is aware, it had not been our intention to proceed in this way but, rather, to allow providers a period of stability under the Unified Contract, with the new fixed fee schemes in place, in order to allow a period of transition before the next stage of the implementation of the Commission's and the Government's announced policies to reform the legal aid system.

Given the applicability of the EU Procurement Regulations, confirmed by the courts in the recent litigation, the procurement process leading to the award of new contracts will be open to new and to existing contract holders and will include processes for bidding for the allocation of New Matter Starts which are already a feature of the controlled budget for Legal Help. Given the levels of response evidenced by the recent Civil Bid Round, this is likely to lead to competition for contracts and work.

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That leaves the question of the remuneration regime governing work commenced between 1 October 2007 and the commencement of the new contract. The 2007 Funding Order remains in force but clearly there remain important legal differences between us as to its effect. In your letter of 10<sup>th</sup> December, you have raised a large number of new legal points, on which the judgment handed down gives no guidance. For the avoidance of doubt nothing in this letter implies agreement with any of the arguments you have raised in your letter of 10<sup>th</sup> December. We are considering these further, but whatever their merits, our preferred way forward is to engage your clients, and other bodies representing our providers, to identify the most appropriate way forward.

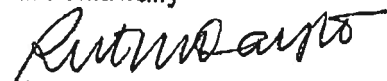
As your client is aware, many of our providers are better off under the new fee schemes, and all providers have adapted their systems and practices for these schemes. Furthermore, many providers have recently bid for more business under the terms of these schemes, which should allow the Commission to improve provision of legally aided services in some parts of the country where it is less full than in others. We naturally want this progress to continue and not be interrupted. Given this, there are clearly a range of practical considerations, alongside the legal issues, to have regard to in deciding the most appropriate route forward – not least the practical impact on different groups of providers.

We therefore would like to meet with your client to discuss these issues. It is in neither side's interests for there to be further expensive litigation which would no doubt take several months to resolve, and any outcome of which could only take effect for a limited period pending the new contract.

We promised at the meeting specifically to consider the new Mental Health scheme that takes effect on 1 January 2008. In our view the legal position and the practical options for Mental Health are no different to any of the other schemes and, therefore, the new fees will come into effect as planned. The process described above should apply to Mental Health pending the new contracts.

We firmly believe that dialogue rather than litigation has the best chance of resolving all outstanding issues in the new context described above and look forward to hearing from you with a view as soon as practicable in the New Year.

Yours faithfully

  
Ruth Wayte  
**Legal Director**