

A photograph of two men in a meeting. The man on the left is wearing glasses, a dark suit, a white shirt, and a patterned tie. He is looking towards the man on the right. The man on the right is seen from the back, wearing a light-colored shirt. The background is a plain, light-colored wall.

Civil Bid Rounds for 2010 Contracts

A Consultation Response
June 2009

Community
Legal Service



CIVIL BID ROUNDS FOR 2010 CONTRACTS: **CONSULTATION RESPONSE**

Table of Contents

1. Foreword
2. Executive Summary
3. Types of service we want to buy
4. Where services will be delivered
5. How we will procure services
6. Changes to the scope of funding

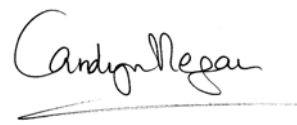
Annexes

- A. Minimum entry requirements by category
- B. Map of procurement areas and immigration access points
- C. List of consultation questions
- D. Impact Assessment

1. Foreword

- 1.1. Securing access to justice for legal aid clients remains our priority. The services we will procure under the new civil legal aid contract represent a significant step towards ensuring that we commission services where they are most needed.
- 1.2. The new contract builds on our strategies and aspirations for civil and family legal aid and are informed by research into the legal problems that clients experience. These include:
 - a. focusing funding on priority areas and cases, such as those involving domestic abuse or allegations of a significant breach of human rights;
 - b. a joined-up and more effective approach to tackling the causes of legal problems and also integrating services, recognising that people often have linked problems.
- 1.3. We believe that we have improved upon our original proposals by taking into account the feedback, insights and concerns provided by our stakeholders through formal consultation and informal discussions. Notably, we:
 - a. have adjusted minimum new matter start levels to respond to local conditions;
 - b. have more clearly defined our requirements around consortia arrangements; and
 - c. will award family contracts for children only services, recognising that this area often requires specialism and a distinct approach.
- 1.4. We now have to balance two priorities: ensuring that current legal aid services are not disrupted through the civil contracts bid round at a time when demand for civil legal services is high; while encouraging new entrants into the market. Opening up the market is not just a prerequisite of a fair and transparent procurement exercise but an important component of improving services where competition exists.
- 1.5. This document is supported by procurement plans. These outline the local conditions for each procurement area and what the legal aid market can support without making the pace of change a problem for practitioners. We hope that these plans will help law firms and advice agencies decide what services they may want to bid for before we launch the tender in September and provide more detailed information for applicants.
- 1.6. We would like to thank all those who participated in the consultation process. Input from legal aid practitioners, not-for-profit and community organisations, and those involved in the justice system and in protecting

the rights of individuals, has been critical to ensuring that we secure better access to quality, face-to-face services for legal aid clients.

A handwritten signature in cursive script that reads "Carolyn Regan". The signature is written in black ink and is positioned above a thin, horizontal line that serves as a separator.

Carolyn Regan
Chief Executive, Legal Services Commission

2. Executive Summary

- 2.1. This paper sets out the LSC's response to the consultation *Civil Bid Rounds for 2010 Contracts*. As such it encompasses our policy response on the face-to-face civil legal aid services we intend to commission from 2010 when the existing Unified Contract (Civil) ends, and offers an overview of how we plan to procure these services.
- 2.2. We received a total of 362 responses to the consultation, and additionally held 57 provider workshops across England and Wales to seek feedback on key proposals. A summary of consultation responses was published on our website in April and can be accessed via our consultation pages at: <https://consult.legalservices.gov.uk/inovem/consult.ti/2010Contracts/listdocuments>.
- 2.3. Key themes arising from the consultation focused around flexibility and the impact on services in certain local areas. A particularly large number of responses were received concerning the move towards more integrated services, consortia arrangements, the need for specific services for children and the timetable for implementation. In light of comments on proposals we have refined our approach in a number of areas. Set out at Annex C is a list of all the consultation questions asked.
- 2.4. As set out in consultation, they are two key considerations to the civil bid rounds. First, under EU procurement law we are required to let new contracts through an open and transparent process that enables both existing and new providers to compete for a contract. Second, we want to commission services that maintain service standards and ensure easier client access to advice in accordance with the CLS and Family Strategies. In a number of categories, this will entail further steps towards more integrated advice to reflect the multiple problems that clients are likely to experience and focusing our limited funding on priority areas. Therefore, the underlying principles of what we are trying to achieve remain the same but we have adapted some of our proposals to take account of responses received.
- 2.5. The combinations of services we are tendering for remain largely unchanged from consultation. However, we have noted concerns that family services for children and young people may require a distinct approach and as such, we will be tendering for these services separately. A significant number of responses were received to the proposal to no longer let single category contracts in debt, housing and welfare benefits. The key concern raised being the potential reduction in access to services in areas where providers were unable to deliver this combination of categories. We consider that this issue is minimised through our proposal to accept consortia arrangements for the delivery of these services and as such are continuing to ask for a combined debt, housing and welfare benefits service.

- 2.6. Our proposals for consortia also generated a large number of responses. Whilst many respondents were supportive, greater clarity on acceptable consortia arrangements was requested. In the consultation one model suggested was that of separate but linked contracts. This is our chosen approach and we have provided further details in this paper at Section 3. For a number of practical reasons outlined at paragraph 3.58, we do not consider more traditional consortia arrangements such as having lead bidders or sub-contractors feasible for our face-to-face contracts at this stage. Consortia arrangements will continue to only be permitted in social welfare law categories given that this is the only area where we are combining categories.
- 2.7. In response to calls for greater flexibility in setting minimum new matter start sizes we intend to vary the minimum thresholds in family and social welfare law by procurement area to take account of local conditions; lower the minimum number of certificates for public law family work, and lower the minimum matter starts required in immigration and asylum. We continue to believe that minimum new matter starts will act as a valuable tool in ensuring a meaningful level of access to services for clients, ensuring sufficient provider expertise of legal aid work and enabling the full breadth of services in a category to be delivered.
- 2.8. This paper additionally sets out our policy response to further consultation proposals around types of services we intend to commission. This includes, where viable, securing all levels of advice from Legal Help through to Legal Representation to ensure a seamless service for clients and to provide assurance that advisers are able to identify and use all appropriate legal channels on behalf of their clients. Further information on minimum quality standards for new contracts is also set out.
- 2.9. More closely defining the services we want to commission includes outlining where and how we expect services to be delivered. In response to concerns about maintaining client access to advice, we have adapted our approach to procurement areas in some categories: identifying key locations within larger social welfare law and family procurement areas to ensure access in these areas and reviewing proposed access points in immigration and asylum. We have also re-defined our presence requirements to offer providers greater clarity of our expectations.
- 2.10. Allowances around the amount of work that can be delivered to clients outside the geographical area from which is has been awarded have been increased in mental health to take account of issues raised by respondents on client transfers.
- 2.11. Devising a procurement process that secures the services we have specified will be crucial to the success of these reforms. We will shortly

be publishing procurement plans setting out how we will apply our service requirements in each procurement area. This will enable us to consider more local conditions, including what the market in each area is able to support, and subsequently procure a sufficient level of access to services, capable of delivery. The concept of Integrated Services A (an expanded service specification) and Integrated Services B (our minimum service specification) remains but we have incorporated more flexibility in some areas, such as varying minimum matter start sizes in family and social welfare law to take account of local circumstances.

- 2.12. In developing the framework for the procurement process outlined in this paper we have been mindful of balancing differing considerations including the scale of this tender exercise. Of particular concern is allowing new entrants into the market whilst recognising the value of those with a track record of delivering comparable services and who are in a position to provide a full service from the start date of the contract.
- 2.13. The bid rounds will be run through an e-tendering system and applications will only be accepted via our online portal. This system has recently been tested on an interim immigration and asylum tender exercise successfully. The benefits offered to applicants include the ability to save information for future applications; instant validation of data; instant submission of tenders, and a full audit trail and application history.
- 2.14. This paper along with soon to be published procurement plans, are intended to provide a clearer view of our requirements for services from 2010. A timeline for the bid process is set out in Section 5. The bid rounds are due to open in early September and more detail, such as specific questions and how selection criteria will be assessed, will be contained in tender documentation published nearer to this date. We will also seek to produce briefing material for potential applicants, including how to use the e-tendering system, over the summer so that they are fully equipped to bid.
- 2.15. The final impact assessment of our proposals is an Annex to this paper and can be found on our website at www.legalservices.gov.uk

3. Types of services we want to buy

Service combinations

3.1. In the consultation paper we outlined key changes to the types of services we intend to buy under 2010 contracts and questions 1 to 4 asked specifically about this. Following consultation these remain largely unchanged (the only additional area identified being children only services in family). They are summarised below:

Category	Minimum service combination	Service type(s)
Family	Domestic abuse, divorce and separation, and children and finance in private family law <u>and</u> public law children	Integrated Services A
	Domestic abuse, divorce and separation, and children and finance in private law family and/or public law children	Integrated Services B
	Services for children – public and private	N/A
	Child abduction	N/A
Family Mediation	Full breadth of services including children, finance and all issues mediation	N/A
Social welfare law	Debt, welfare benefits and housing	Integrated Services A & Integrated Services B
	Housing and family	
	Community care	
	Employment	
Mental health	Services for both detained and non-detained clients covering Mental Health Review Tribunal and non-Mental Health Review Tribunal work.	Integrated Services A & Integrated Services B
Immigration and asylum	Immigration and asylum, except in limited circumstances where we may ask for: Immigration and asylum with limited or no asylum starts	Integrated Services A & Integrated Services B
Low volume categories	Actions against the police etc.	N/A
	Clinical negligence	
	Consumer: Professional negligence and disability discrimination only	
	Education	
	Personal injury	
	Public law	

Family

3.2. In the consultation paper we proposed that there should be two service combinations for mainstream family work, Integrated Services A and B. The procurement plans drafted for each procurement area will identify which service combination will be tendered for in each area.

3.3. The majority of respondents agreed with the types of service proposed in the consultation. Only a few responses suggested that where a provider was undertaking private law family work it was inappropriate to provide the full range of services including separation and divorce, domestic abuse, finance and Children Act work. A number of respondents said that public law work was particularly specialised and should be procured

separately. Some of these responses suggested that it was appropriate to procure this work together with other specialised children work such as Rule 9.5 cases¹, and wardship applications.

- 3.4. Having considered the responses, our view remains that in procurement areas where Integrated Services A are applied, providers will be required to deliver the full breadth of family advice across both private and public family law. Clients may require advice at different times across the whole breadth of family law including domestic abuse, private law proceedings and public law advice. As such, in those areas where the procurement plans identify that it is feasible for providers to deliver all these services to clients we intend to procure that service.
- 3.5. Many public law proceedings will involve other family issues such as domestic abuse and many private law children applications are quasi care proceedings where there is Local Authority involvement although they have not actually taken proceedings. The number of private law children applications has increased significantly in the last 6 months and it is thought that the focus within the Public Law Outline on looking within the family for a source of care (i.e. through special guardianship placements) is a significant factor in this increase, further strengthening the link between public and private family proceedings.
- 3.6. In procurement areas where the procurement plans indicate that Integrated Services B should be tendered for, providers will be required to deliver either the full range of private family law work and/or public law children work. We believe that in these areas the distinction between public and private law is the appropriate one to allow providers to deliver specialist advice whilst still allowing clients to access the range of family services that they will most often require.

Services for children

- 3.7. A number of respondents were of the view that services for children and young people need to be procured as a separate area of family work as they require specialist skills and a distinct approach to how a service is delivered whether it is a direct instruction from a child or representing a child through a guardian. In this context “child” means a minor up to the age of 18. There are some providers who currently deliver these services on a national basis and the proposals would have meant that these providers would be unable to continue to deliver these services from 2010.
- 3.8. In light of the concerns raised, and the importance of ensuring that children do have specialist legal representation where necessary, providers will have the opportunity to bid for contracts for the provision of services for children only. Under these contracts providers would be

¹ Rule 9.5 of the Family Proceedings Rules 1991 allows the court to appoint someone to be the child’s guardian if it appears to the judge that it is in the child’s best interests to be made a party to any family proceedings. They will have their interests represented separately.

expected to be able to deliver the full range of services when acting for children i.e. advice and representation in both public and private law work including acting in care and supervision proceedings and on Rule 9.5 appointments.

- 3.9. These are not exclusive contracts as they are in Child Abduction i.e. legal services for children are not only delivered through specialist children contracts. Providers may either bid for a general family contract and undertake children work as part of that contract or they may bid for a specialist children contract. Different criteria will apply in respect of each contract and providers may not bid for both. Any provider that meets the criteria for a specialist children contract will be granted a contract. This will include a requirement to be on the Solicitors Regulation Authority (SRA) Children Panel.
- 3.10. The key difference between a specialist children contract and a general family contract is that there is no requirement to offer the full range of services and a different approach to the allocation of new matter starts. Where work is undertaken under a national specialist contract the usual rules set out in cost assessment guidance on distance work apply.
- 3.11. Most specialist work on behalf of children is likely to start at certificated level. This is because in care proceedings we do not fund early advice for children's representatives and in private law cases the most common applications in relation to children are Rule 9.5 applications which are made within the context of existing proceedings. Where appropriate, providers must deliver initial legal advice to children. The usual rules in relation to scope apply i.e. this specialist advice must be legal advice on a legal dispute in the family category of law as defined in the Funding Code and the contract.
- 3.12. Given that most of the work is likely to start at certificated level, a minimal amount of Controlled Work matter starts will be allocated for this work. As such, no tolerance would be attached to these contracts as the volumes would be too low to provide 5% of the schedule allocation (see 6.2 for more details).

Child abduction

- 3.13. A number of responses to the consultation disagreed that child abduction work should be procured separately. Whilst acknowledging the specialist nature of this work, they did not agree that a small number of firms should be allowed to deliver a very narrow range of well-remunerated work at the expense of others able to demonstrate the necessary level of knowledge and expertise. Equally, some respondents considered that child abduction should be procured separately, as it requires specialist knowledge and skills and is unlikely to relate to other issues.

- 3.14. We have considered looking at a different approach in child abduction cases where the provider is acting for the applicant in the proceedings. However, providers undertaking this work must be on the International Child Abduction and Contact Unit (ICACU) referral list of specialist solicitors and incoming child abduction applications will only be referred by the ICACU to solicitors on that panel. The ICACU has taken steps to ensure the quality of solicitors on that list and firms wishing to be included on this list need to apply directly to the ICACU. We have received confirmation from the ICACU that the panel remains open and that since the criteria for the panel were established in 2006, there have been a number of successful applications from firms of solicitors to join. The ICACU has also confirmed that it welcomes applications from organisations that meet the criteria.
- 3.15. The nature of the referrals of this work differs in that clients do not seek advice from practitioners within the procurement area in which they live as they will usually reside overseas. A place on the referral list will therefore be our criterion for awarding contracts for representing applicants in child abduction cases i.e. the party requesting the return of the child. Providers wishing to undertake this work will need to pass the pre-qualification questionnaire (see Section 5) and meet our minimum requirements (e.g. meet the family supervisor standard). If they are also on the ICACU panel they will be awarded a contract to undertake this work.
- 3.16. Any provider acting for the respondent in such proceedings will continue to provide services under a private family law contract. This work will not be procured separately as referrals are not made exclusively through the ICACU.
- 3.17. Any provider who applies and is accepted onto the ICACU panel may apply for a contract for this work at any time. If they have an existing family contract then they may apply for a separate schedule for this work. If they do not have a contract, they will be awarded a contract exclusively to undertake child abduction work.

Family mediation

- 3.18. Following consideration of the responses to the consultation the LSC will maintain the requirement for family mediation contracts to deliver the full range of mediations (children, finance and all issues). This supports our Family Mediation Strategy, which seeks to increase the number of family disputes resolved via mediation and to improve access to mediation for clients.
- 3.19. To support the proposals around child abduction, we intend to procure delivery of mediation in child abduction cases under different arrangements although we anticipate that there would be very limited amounts of this work.

- 3.20. We will shortly be trialling the use of court mediation as part of the trial of the President's Private Law Programme. The findings from the trial will be evaluated and dependent on the findings, the revised Programme, including in-court mediation, will be rolled out nationally. This will likely happen after the tenders for the 2010 contracts have begun. Therefore, once in-court mediation is rolled out nationally, all organisations awarded a new mediation contract will be invited to express an interest in providing mediation at court.

Social welfare law

- 3.21. On consultation we proposed that we would no longer procure debt, housing and welfare benefits as individual categories but would seek to let these three categories together to promote the move towards more integrated services.
- 3.22. On consultation there were split views on the proposal to remove single category contracts in debt, housing and welfare benefits. The key concern raised was the potential reduction in access to services in areas where providers were unable to deliver this combination of categories. This was considered a particular issue in rural areas where the provider base may be limited.
- 3.23. We intend to continue with our proposal to procure debt, housing and welfare benefits together. This corresponds with the LSC's aim, since the publication of the CLS Strategy in 2006, to move towards more joined-up services in response to the way in which clients experience legal problems. Some respondents suggested a more flexible approach to the combination of categories we would allow. However, we consider these three categories are most often interlinked and as such represent the most appropriate starting point from which to procure more integrated social welfare law services. In order to address concerns around the ability of providers to be able to deliver this combination of categories, particularly in rural areas, we will accept consortia arrangements for the delivery of these services (see paragraph 3.55 for further information). We consider that this achieves a workable solution to increasing client access to integrated services whilst easing the transition for providers.
- 3.24. On consultation we proposed offering an alternative route to obtaining a housing contract through procuring housing and family advice together. Respondents were largely silent on this, with only two comments received specifically on this proposal. As the proposal seems not to have been an area of contention for respondents, we intend to procure housing and family as a combination. This is to reflect the fact that housing and family issues often present together. A proportion of housing matters in each area will be made available to be delivered alongside family. As this is a response to existing arrangements and does not represent a significant shift from what a

number of providers are already delivering, we will not allow consortia arrangements for the delivery of these services.

- 3.25. We proposed that community care and employment should continue to be delivered as single categories of advice. This was to reflect the way these categories are most commonly delivered at present. We acknowledged that for 2010 it would be too big a challenge for many providers to integrate these services with other social welfare law categories and that the aims of the CLS Strategy needed to be balanced with ensuring access to services in the shorter term. There was broad support for this approach on consultation. As such, we will maintain the proposal to procure community care and employment as single categories although this does not preclude providers from delivering these with other social welfare law categories.

Mental health

- 3.26. To ensure access to the breadth of mental health services for clients, we proposed that all providers should be able to advise both those in the community and those detained, and deal with both Mental Health Review Tribunal (MHRT) and non-MHRT matters.
- 3.27. Whilst there was strong overall support for this proposal on consultation (67% agreed to some degree), there were mixed views on whether it was right to discontinue delivery of specific types of mental health services. Of particular concern was Mental Capacity Act work, which was perceived as being very different from mainstream mental health advice. It was suggested that current specialists in this area would not be prepared to recruit an MHRT supervisor to satisfy the requirement to undertake the full range of mental health work.
- 3.28. The overall support for this proposal substantiates our view that clients do not separate their issues on the basis of their position as detained or non-detained, or on the type of case. Clients with severe mental health problems are likely to experience all combinations of matter type and client status, and as such would benefit from the same provider being able to deal with all mental health advice issues they experience. We will therefore continue to ask for mental health providers to deliver the full breadth of services.
- 3.29. In order to accommodate Mental Capacity Act and Deprivation of Liberty Safeguards specialists and retain their valuable expertise we will allow these specialist types of services to be delivered under the community care category. The work sits equally as comfortably in community care and enables us to maintain the principle that all mental health providers should be able to do the full breadth of mental health work. Mainstream mental health providers will be expected to develop knowledge in this new area of work and advise on cases where instructed.

- 3.30. It is too early to develop separate quality standards for Mental Capacity Act and Deprivation of Liberty Safeguards work because the legislation has only recently been introduced, and has not yet been legally interpreted through the development of case law. We consider it necessary for at least 12 months' operation of the new legislation to have passed before the LSC or any other body investigates the need for specific quality standards in this area. We therefore commit to reviewing the position in conjunction with regulatory bodies, including the Solicitors Regulation Authority and the Law Society.
- 3.31. A small number of responses suggested that the LSC should more closely link community care and mental health contracts. We recognise that there is a degree of crossover between the two categories and, for example, providers from either category may advise on S117 aftercare arrangements. However, other areas covered in the categories such as tribunal work and health and social care for non-mental health service users are significantly divergent. For that reason, we will for now rely upon referral links to community care providers (amongst the other social welfare law categories) as the means of linking advice.

Immigration and asylum

- 3.32. Our priority will remain to let contracts in the vast majority of access points only to those applicants committing to undertake both asylum and immigration matters. The responses to consultation broadly agreed that it is beneficial to clients if providers offer both asylum and immigration advice as an integrated service.
- 3.33. Some responses to consultation did argue that some flexibility should be exercised to allow exceptions to this requirement. In particular, to reflect where providers have historically delivered immigration advice but not asylum and in recognition that smaller firms may not be able to expand sufficiently to deliver the minimum levels of asylum and immigration matter starts proposed.
- 3.34. However, we consider that in areas where there is sufficient demand for both asylum and immigration services, both should be delivered together to ease clients' access to advice. The majority of the existing provider base is awarded and delivers a volume of both asylum and immigration matter starts each year. The LSC does not contract separately for immigration and asylum: the contract specification covers both areas. Furthermore, the Law Society's Immigration and Asylum Accreditation Scheme, to which all caseworkers undertaking publicly funded work must be members, assesses knowledge of both asylum and immigration law and procedure. This was made an underpinning feature of the Scheme due to the interrelation between asylum and immigration.
- 3.35. To address concerns raised in the consultation of the need for more flexibility in some areas, in areas which have been identified in the

procurement plans as having high demand for immigration services specifically, we will seek to let, as appropriate, immigration contracts with limited or no asylum starts. We had also proposed on consultation letting asylum services with limited or no immigration starts. However, as our analysis of demand has not flagged up a need for this, we do not intend to let such services as part of this bid round.

- 3.36. Some consultation responses believed that immigration should form part of an integrated social welfare law service. However, asylum with immigration will remain the primary service that we will purchase. Access to the breadth of immigration and asylum advice is desirable and we would not want clients approaching an immigration provider being unable to obtain asylum advice there. We hope to encourage providers who may currently be undertaking immigration matters as well as social welfare law work to deliver asylum work also.

Low volume categories

- 3.37. The service combinations we will procure in low volume categories will largely remain as consulted on. We no longer propose to hold a separate bid round for abuse in care work as we do not want to create an entirely new sub-category within actions against the police. This work covers claims for damages against public authorities of abuse whilst in their care and is an area we want providers to be able to continue to undertake. To deal with the issue that a number of specialist abuse in care providers may not have the breadth of experience to meet the actions against the police supervisor standard and be awarded a contract, we are introducing an additional route to obtaining the supervisor standard in the actions against the policy category. This will be a specific abuse in care standard which will allow practitioners only undertaking such work to meet the contract requirements. Further information on the new standards have been included in the draft of the civil contract specification and we will look to publish information on these more widely following the Quality Working Group meeting in June.
- 3.38. On consultation we asked whether there were any other areas of low volume categories that were distinct enough to be procured for separately. Most of the responses to this question referred to categories of law outside the remit of the low volume categories. Of the relevant responses, no consistent or strongly supported views could be identified. As such, we do not intend to separate out these categories of advice further.
- 3.39. We also consulted on not letting specific contracts at Controlled Work level for mainstream consumer services but instead letting new matter starts for professional negligence specifically. There were mixed responses to this proposal with 52% of substantive responses expressing some level of agreement. We will not let specific contracts for mainstream consumer services. As previously set out, we recognise

that there are a range of other publicly funded services available to deal with consumer advice and as such do not consider it necessary to let contracts for consumer. It will remain possible to carry out mainstream consumer work under tolerance.

- 3.40. As indicated, we will continue to let contracts to cover professional negligence work as we appreciate that this is a distinct area of the consumer category where we need to continue to offer a dedicated service to eligible clients. Additionally, we propose to let matters in the consumer category to cover claims under Part III of the Disability Discrimination Act 1995, which covers discrimination by providers of goods, services and facilities. This is to ensure that we continue to fund this area of work in light of joint commissioning proposals not being taken forward (see 3.43).
- 3.41. In the consultation document it was recognised that there may be a number of high profile, good quality organisations that, owing to the small amount of legal aid work they undertake, would not otherwise qualify for a contract. We have subsequently met with a number of these organisations and their views have been taken into account. It has been decided, in view of the issues involved, that from 2010 the current system of granting exceptional case contracts in these cases will be sufficient to continue to allow such quality providers to undertake specialised and limited licensed work without the need for a contract.
- 3.42. The criteria used to determine whether an Exceptional Case Contract should be granted in a particular case will remain as set out in the Funding Code and will continue to be administered by the Special Cases Unit. Wherever possible, it is preferable and desirable that an organisation should seek to apply for a contract in their particular area of law rather than rely on these provisions. In particular, Legal Help cannot be carried out under an Exceptional Case Contract, and the award of such a contract would be dependent on the LSC's assessment.
- 3.43. We set out in the consultation paper that we would explore letting specialist contracts for disability discrimination claims through joint commissioning with relevant organisations. At this stage, there are no firm proposals to jointly commission such cases and this work will continue to be done under the relevant category of law. e.g. discrimination at work cases will be covered by the employment category.

Housing possession court duty scheme

- 3.44. As we proposed on consultation, from 2010 only providers or consortia with LSC housing contracts will be able to deliver the housing possession court duty schemes (HPCDS). This will ensure that desks are run by providers with sufficient expertise in housing to identify and

take forward all options available for avoiding possession of the property.

- 3.45. We will procure schemes in courts where we have previously funded a duty scheme. Whilst recognising that many of the schemes in operation work well, we cannot continue with the current contracting arrangements as we are required to give all interested parties the opportunity to bid for this work.
- 3.46. We intend to hold bid rounds for HPCDS separately in April 2010 following the award of mainstream civil contracts. We intend that it will remain a requirement for HPCDS providers to hold a housing contract but preference may be given to those delivering this work in combination with debt and welfare benefits. Therefore, we would encourage those interested in running the schemes to bid for a housing contract as part of the forthcoming bid round.
- 3.47. As there will be a gap between the award of new civil contracts and the award of new HPCDS work we intend to extend arrangements for existing schemes by 6 months, until the end of September 2010. Should any existing provider choose to withdraw from delivering a scheme between April and September we would look to run a bid round relatively quickly in that procurement area in order to ensure minimal disruption to service delivery. We are aware that we currently have a number of informal schemes running in Wales and are looking at how we can ensure access to these going forward.

Immigration Removal Centres

- 3.48. The specification for services in Immigration Removal Centres (IRCs) is contained within the immigration contract specification and the award of a mainstream immigration and asylum contract is a pre-requisite for the award of work for these services. There was broad agreement with the requirement to hold a mainstream contract in order to work in IRCs.
- 3.49. The award of a mainstream immigration and asylum contract does not however guarantee the award of an IRC contract, which will be subject to an additional tender exercise. Applications to join IRC rotas should be submitted at the same time as the mainstream contract bid. This will allow us to ensure that we can measure the capacity of applicants to undertake all the work being bid for in the immigration and asylum category at the same time. Work undertaken in IRCs, particularly fast track work, is resource intensive and we need to ensure that applicants have capacity to deliver these services along with the mainstream contract work they tender for.

Unaccompanied Asylum Seeking Children

- 3.50. There is insufficient certainty about the development and timing of the United Kingdom Border Agency's (UKBA's) proposed Unaccompanied

Asylum Seeking Children (UASC) reform programme to allow us to tender for exclusive contracts for legal services to this client group for 2010.

- 3.51. Therefore, all holders of a mainstream immigration and asylum contract will be eligible to provide advice to UASCs during the life of that contract. However, consultation responses to questions 30 to 34 were supportive of many of the additional quality and service requirements that we suggested should be adopted for providers delivering these services. Therefore, we have included specific additional quality requirements within the immigration contract specification (and Immigration and Asylum Accreditation Scheme Work Restrictions) that will apply to any provider advising UASC clients.
- 3.52. A significant majority of responses agreed that only caseworkers accredited to at least Level Two of the Immigration and Asylum Accreditation Scheme should be permitted to advise this particularly vulnerable client group. Therefore, the immigration contract specification will permit only caseworkers accredited at Level Two or above to perform any contract work for UASC clients.
- 3.53. There was also considerable support for the proposal that a single adviser must own the whole case from start to finish for UASC clients. However, many issues around its workability in practice were also raised. In light of this we have decided that this will not be included as a contract requirement but we will recommend that it be considered as best practice.
- 3.54. Most consultation responses agreed that the advisers of UASC clients should be subject to Criminal Bureau police checks and that this should be at the enhanced level. Therefore, enhanced checks for all caseworkers that have direct contact with UASC clients will become a contract requirement. This requirement will not be extended to requiring practitioners to ensure non-employees that they instruct to deliver service (e.g. experts and interpreters) have also been CRB checked. This is because of issues of practicality that were raised on consultation.

Consortia

- 3.55. In order to help the market as we move towards the further consolidation of social welfare services, we proposed new forms of contracting arrangements in the consultation. We proposed to allow providers to group together to apply for, and hold, contracts in housing, debt and welfare benefits as consortia without having to undergo a formal merger or formation of a single legal entity.
- 3.56. 62% of respondents to question 43 of the consultation agreed to some extent with the proposal to allow consortia. However, some concerns were expressed about timelines and resource to put arrangements in

place, and reporting requirements. In light of the responses received, we will continue with the proposals to accept consortia bids for the delivery of combined debt, housing and welfare benefits contracts. The benefits of allowing these arrangements are seen as two fold. First, the transition for suppliers will be made easier by allowing consortia arrangements rather than requiring individual suppliers to expand their services or formally merge with other practitioners to deliver the range of category combinations by the start date of the 2010 contract. Second, these arrangements will ensure that the new contract is able to provide clients with a wider range of services from the outset.

- 3.57. Whilst we did consult on whether consortia arrangements should be permissible for other categories, and received varying comments on the value of this, we are not persuaded that they are necessary in other categories. This is because we are not seeking to tender for new combinations of work in any other areas, apart from family and housing (see 3.24). Where we are asking for a full breadth of services we will make concessions on this in areas where we do not think this service can be supported (for example, in the case of immigration and asylum by letting an immigration only contract).
- 3.58. We are aware that the use of the term consortia has caused some confusion with some potential providers referring to the Cabinet Office guidance on Working in a Consortium, which itself recognises that “there are several methods of consortium working”. We have sought to clarify our approach by publishing an update statement on our website. Whilst following discussions with representative bodies, some of our thinking has developed - for example, although as a minimum we would expect consortia to cover debt, housing and welfare benefits they may also bid for the full range of social welfare law services - our preferred model remains one of separate but linked contracts. This has been informed by a number of considerations. First, neither the LSC nor many of its providers have significant amounts of experience of working with consortia arrangements; as such we have opted for a simple model. Second, we are conscious that professional conduct rules impact on solicitors’ freedom to join up with non-solicitor providers to deliver services, our model more easily allows for this. Whilst we have considered various models for consortia in response to consultation suggestions, including subcontracting and multiple providers joining together to sign a single contract with the LSC, the regulatory and contract management implications of these are problematic. In particular, they may create issues around fee sharing and VAT charges for providers.
- 3.59. We intend that each consortium member will have to comply with all the category specific requirements for 2010 (e.g. each consortium member would have to deliver the minimum number of new matter starts and employ a supervisor) and only the requirement to provide debt, housing and welfare benefits together will not apply. Where there is more than one consortium member delivering a category of law, it

will not be sufficient for there to be only one supervisor within the consortium. We have finalised acceptable arrangements for consortia in discussion with representative bodies and contract requirements will be reflected in a revised contract specification. We intend to publish a separate paper on the detail of consortia arrangements but provide an overview here.

- 3.60. In principle we will expect a client to be able to access the full range of services being provided by the consortium at whatever point they access the consortium. For example, if a consortium is made up of three providers in three different locations each delivering a single category of law, we would expect the client to be able to receive services in all three categories of law whichever location they went to. Whilst we would not necessarily expect the full range of services to be available in each location during all of the opening hours of each location, it would not be sufficient for providers to continue to deliver a single category of law and then require the client to travel to another location to get the additional services they require.
- 3.61. We plan to introduce a number of consortium specific terms to address possible breaches of the Solicitors' Conduct Rules prompted by acting in consortia. We propose to introduce these for all providers working in consortia. Both in the interests of fairness and because they are based on 'best practice' in terms of client care.
- 3.62. If consortium members are contracted to supply other categories on their own (where we are not seeking joined up services) these would still be covered by the same contract, but the provider would have applied for them separately. The consortium rules would only apply to them when they are delivering consortium services. These separate categories would be unaffected by any disintegration of the consortium.

Minimum new matter starts

- 3.63. We consulted on setting minimum new matter start sizes for most categories of civil legal aid work, which applicants would need to bid for and complete in each contract year. The main comments coming back from respondents to questions 5 and 6 relating to this proposal was the need to maintain flexibility to take account of local issues. Whilst there were differing views on the level that the minimums should be set at, a number of smaller legal aid providers expressed concern that the proposed levels were too high. In response to these concerns we intend to introduce the following amendments:
- In family and social welfare law varying the minimum matter start size thresholds to take account of local conditions linked to access
 - Lowering the minimum number of certificates public law family providers are required to undertake

- Lowering the minimum matter starts required in immigration and asylum
- Implementing lower minimum new matter start requirements in Integrated Services B areas in immigration and asylum.

3.64. There were some queries on consultation of the value in setting minimum new matter start sizes. However, we continue to believe that they will be a valuable tool in ensuring a meaningful level of access to services for clients, ensuring sufficient provider expertise of legal aid work, enabling the full breadth of services in a category to be delivered and giving providers the capacity to promote legal aid services. They are particularly important in categories where there is little or no private market to ensure specialist knowledge is maintained in the frequently changing environment. This policy is driven by a desire to improve services for clients rather than to remove small contracts to reduce the LSC's administrative processes, although we want to be able to manage providers' work efficiently and effectively.

3.65. Revised minimum new matter start levels are set out in the table below:

Category Group	Sub Category	Minimum new matter start size
Family	Private	100, 75, 50 or 25 Informed by recommendation of procurement plan
	Public	5*
	Services for Children	N/A**
	Child abduction	N/A
Family mediation	Family mediation	N/A
Social welfare law	Debt	100, 75 or 50 Informed by recommendation of procurement plan
	Housing	100, 75 or 50 Informed by recommendation of procurement plan
	Welfare benefits	100, 75 or 50 Informed by recommendation of procurement plan
	Community care	20
	Employment	30
Mental health	Mental health	30
Immigration and asylum	Asylum (where provided with immigration)	70 (Integrated Services A areas)
		35 (Integrated Services B areas)

	Immigration (where provided with asylum)	30 (Integrated Services A areas) 15 (Integrated Services B areas)
	Immigration only service	30 (Services A areas) 15 (Services B areas)
Low volume categories	Actions against the police etc. (police claim)	20***
	Clinical negligence	N/A
	Consumer (professional negligence)	15***
	Education	30***
	Personal injury	10***
	Public law	15***

* Providers bidding for public law children work who represent children only within this category of work will not be required to meet this minimum new matter start, as they will be instructed upon the issue of proceedings. All public law children providers will be required to open at least 5 certificates in each contract year.

**Providers bidding for children only services will be given a notional allocation of new matter starts but there will be no minimum new matter start contract requirement. They will, however, be required to open 5 family certificates each contract year.

***Whilst providers will be required to bid for the minimum matter start sizes, it will not be a contract requirement.

3.66. We propose to introduce the minimum new matter start size requirement under the new contract. It is proposed that there will also be a KPI to undertake at least 85% of the total matter start allocation for each schedule year. The KPIs that will apply under the new contract are being discussed separately with representative bodies as part of the consultation on the contract. Any action taken as a result of breach of these requirements will be in accordance with the terms of the contract.

Family

3.67. In private family law there will be four different minimum new matter start thresholds depending on the recommendations of individual procurement plans. These will be set at 100, 75, 50 or 25 new matter starts. The procurement plans will set out particular minimum matter start sizes for each procurement area based on a consideration of local issues and levels of need in the procurement area. It is unlikely that a minimum contract size of 25 new matter starts will be used in many areas other than very rural areas.

3.68. Where representing children in public law children cases, we will not implement a minimum matter start size for Controlled Work as we recognise that many providers will not be instructed until the issue of proceedings. We will retain a minimum number of certificated cases to be opened by public law children providers to reflect that much of the

work starts at certificated level and to provide some assurance that providers have capacity to undertake this. However, in response to concerns raised on consultation around the difficulty of meeting a minimum of 10 cases, we have decided to lower the requirement to opening a minimum of five certificated cases per contract year.

- 3.69. As part of the budget allocation section, we consulted on whether we should set certificated starts in family cases. Most respondents to question 25 were not in favour of this suggestion. We therefore do not propose to allocate providers certificated starts at this stage. However, as at present, the power to set certificated matter starts will remain in the contract. We would only seek to limit a provider's certificated work in exceptional circumstances, for example where we have concerns about the misuse of devolved powers or where we need to limit expenditure to ensure funding for the priority areas set out in the Lord Chancellor's Direction on the CLS Funding Priorities.

Social welfare law

- 3.70. In debt, housing and welfare benefits minimum new matter start sizes will be set at 100, 75 or 50 matter starts dependent on consideration of local needs and access issues in each procurement area. The procurement plans will detail the minimum matter start size for each category and area.
- 3.71. There was broad support on consultation for the proposed minimum matter start levels for community care and employment. As such, we will retain the levels consulted on: a minimum of 20 matter starts for community care and a minimum of 30 matter stars for employment.
- 3.72. One particular concern on consultation was the proposal that where contracts are let on the basis of delivering multiple categories (e.g. debt, housing and welfare benefits) where minimum new matter starts for one category are not met, work in all linked categories would be at risk. Whilst respondents recognised the LSC's need to manage those providers not delivering the requisite services, there were calls for flexibility. Whilst we need to ensure that the terms of the tender are met (as such, delivery of debt, housing and welfare benefits would be required), any action we would take for failure to deliver this would be proportionate and in accordance with the contract terms, which we are discussing with representative bodies.

Mental health

- 3.73. In mental health we plan to retain 30 new matter starts as the minimum threshold per contract year. Whilst some concerns were raised on consultation, the majority of respondents agreed to some extent with the level proposed and we consider 30 matter starts to be an achievable minimum. Some respondents suggested the minimum mater start size should be set lower in high security hospitals to reflect

the lower volume of work available. However, a minimum matter start size of 30 does not seem disproportionate to the volume of work available in these hospitals. For example, based on 2007/08 data, the high security hospital with the lowest volume of closed cases, Ashworth, could support 6 contracts at this minimum matter start size and Broadmoor could support 11.

- 3.74. Some respondents also raised concerns about the ability of rural providers to meet this minimum. However, we do not think it appropriate to tailor the minimum bid size to rural areas in mental health. Whilst there are good arguments relating to access issues in other categories, these arguments are not as strong in mental health because the vast majority of cases deal with detained clients. In addition, research shows that the most common mental health problems have a higher incidence in deprived industrial areas than in sub-urban areas². Furthermore, lowering the minimum new matter start level would undermine the objective of providing consistent levels of meaningful access, expertise across the category and capacity to promote legal aid services.

Immigration and asylum

- 3.75. In light of concerns raised around minimum matter start sizes being set too high in immigration and asylum, we have reduced the levels for both. We have also responded to calls for greater recognition of geographical issues by setting the minimum matter start size at 70 for asylum and 30 for immigration in those areas where Integrated Services A are applied, and at 35 for asylum and 15 for immigration in areas where Integrated Services B are procured.
- 3.76. We consider that varying the minimum new matter start levels according to recommendations set out in procurement plans will enable us to respond to local factors and achieve greater flexibility for providers. The minimum continues to be set higher for asylum as it is our priority and to reflect the fact that there is little or no private market undertaking this work so higher casework levels are required to assure that expertise will be maintained.
- 3.77. In areas where we intend to let contracts for immigration only services the minimum matter start size will also vary to reflect the service recommendation in the procurement plans. Therefore, the minimum matter start size for an immigration only contract will be 30 for Services A and 15 where Services B are procured.

Low volume categories

² Office of National Statistics, Prevalence of treated depression: by type of area and gender, 1994-1998: Social Trends 31

- 3.78. As consulted on, whilst applicants in these categories would be required to bid for at least the minimum new matter start sizes, it will not be a contractual requirement that they are required to meet these levels as we recognise that it may take time for providers in these categories to build up caseloads. However, providers delivering these categories would still be required to deliver at least 85% of their allocation in each schedule year.
- 3.79. Consultation responses were divided as to the number of minimum matters starts required and were very general in nature. Those who responded that the level was too high did not seem to have appreciated that the minimums were not proposed as a contract requirement. In terms of those who felt the proposed minimums too low, we have decided that a balance must be taken between maintaining access while encouraging providers to bid in new areas and that is reflected in the relatively low minimum matter starts in these categories. We believe this will be sufficient to maintain quality at this time.

Minimum quality standards

- 3.80. When we consulted on minimum quality standards needed to obtain a contract, a review of quality assurance processes and procedures affecting legal aid providers was being undertaken by the Quality Working Group, set up with key stakeholders. The Group's findings were reported in December 2008 in the *Assuring and Improving the Quality of Legal Aid Services* report which is available from our website. The Group made four recommendations which are outlined below:

Recommendation	Action
Work to introduce Lexcel as an optional quality assurance standard as soon as practicable and at the latest by 2013.	To enable us to accept Lexcel sooner as an alternative quality standard from 2010 we have: <ul style="list-style-type: none"> ▪ reviewed and updated the SQM to make it more comparable with Lexcel ▪ moved critical (legal aid specific) requirements such as the supervisor standards into the contract.
Introduce a formal peer review feedback mechanism to ensure its continuing robustness and to improve processes. This will include periodic review by key stakeholders.	We are looking at suitable feedback mechanisms to achieve this aim and will discuss these with the quality working group.
Establish through research, whether a relationship exists between peer review outcomes and the accreditation profile of organisations, with a view to establishing whether accreditation is a quality assurance tool that can be used instead of other quality assurance tools (or vice versa). Initial work conducted in early 2009.	The Institute of Advanced Legal Studies has issued a questionnaire to obtain information on the accreditation profiles of peer reviewed providers in family law. We will look at the results of this survey and decide what the next steps should be.
Continue to work collaboratively where appropriate as a group or with key members	An update meeting was held on 24 June '09.

of the group to secure long-term objectives. This includes the timely sharing of information, developments and where possible reaching agreement on quality framework issues.	
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- 3.81. The minimum quality requirements for new civil contracts will therefore be based on achieving and holding the Specialist Quality Mark (SQM) or Lexcel, and professional, supervisory and training requirements set out in the contract. As well as moving legal aid specific requirements, such as the supervisor standard, into the contract, the SQM will apply at a firm level rather than on an office basis. This means that Office Manuals will only need to be reviewed for a desktop audit where a provider does not currently undertake any legal aid work and is subsequently required to obtain the SQM in full.
- 3.82. As with previous bid round exercises, providers with a confirmed peer review rating (i.e. once the appeals process has been exhausted) below 3 will not be awarded a contract in that category of law. Where services are bundled, for example, debt, housing and welfare benefits, this will mean that a confirmed peer review rating of 4 or 5 in one of those categories would preclude an applicant from bidding for the others. Whilst we are changing our published approach to checking how this standard is maintained, it remains the standard. The Quality Working Group met on 24 June to discuss our quality assurance proposals for 2010 and beyond, further information will be published shortly.

Quality related requirements

- 3.83. As well as building minimum quality standards into the commissioning process, we set out on consultation a range of proposals related to quality that would help to further secure quality of advice.

Minimum ratio of supervisors to caseworkers

- 3.84. A large number of respondents to question 7 of the consultation supported the introduction of a minimum supervisor to caseworker ratio in principle, and many felt that a ratio of 1:4 was appropriate. However, there were some calls for greater flexibility to take into account the experience of caseworkers being supervised. To accommodate more experienced caseworkers and to ensure that in setting the minimum ratio as an essential requirement to obtain a civil contract it is not too harsh a measure, we intend to revise the minimum supervisor to caseworker ratio across all civil categories to 1:6.
- 3.85. A number of respondents asked for clarification of how we would define a supervisor and a caseworker. For the purposes of calculating the ratio a supervisor must be someone who meets the supervisor standard for the category of work bid for and actively supervises staff. The term caseworker will be more closely defined in the contract but is

broadly any member of staff who regularly undertakes civil advice work in the relevant category, and is a fee earner allocated a specific caseload of legal aid work. For the purposes of calculating this ratio, supervisors will not be counted as caseworkers. The ratio applies at an organisational level and relates to full time equivalent caseworkers e.g. one caseworker may be one caseworker managed full time or made up of two caseworkers employed on a half-time basis.

- 3.86. The minimum ratio is intended to set a threshold that providers must meet – we recognise that many providers will have higher proportions of supervisors to caseworkers.
- 3.87. As indicated previously, in mental health, the service specification states that all providers must be able to carry out both non-MHRT and MHRT cases. To comply with the current requirements of the supervisor standard this effectively means that all supervisors must be an MHRT Panel member or equivalent. We believe that this will ensure sufficient expertise and supervision for mainstream mental health contracts.

Family mediation

- 3.88. In family mediation, we will follow similar minimum quality standards as for other civil contracts: organisations will need to hold and comply with the Mediation Quality Mark (MQM) standard, as well as meet the supervisor standards set out in the contract. Each mediator undertaking publicly funded work will continue to be required to have a trained supervisor who is recognised by the Family Mediation Council. Levels of supervision will be determined by member organisations of the Family Mediation Council and contracted organisations must meet the levels set out by their organisation.
- 3.89. Unlike elsewhere, no distinction will be drawn between internal and external supervision. External supervision will be permissible under a mediation contract if it meets the necessary requirements. This is because we consider there to be a significant difference in the supervision requirements for delivering legal advice and providing mediation. Supervision for legal advice might require on the spot guidance or clarification on a point of law, whereas supervision for mediation is much more about professional practice governing a process and the effective use of different approaches. Benefits gained from external supervision for mediation services might therefore include new ideas, mediation models and approaches that encourage the sharing of best practice.

Family

- 3.90. The consultation set out minor changes to the supervisor standard in relation to family providers in Service B areas. It proposed those tendering for public law children only would require a supervisor to be

on the Solicitors Regulation Authority (SRA) Children Panel and those tendering for private family only would require a supervisor to be on the SRA Advanced Family Panel or be a Resolution Accredited Specialist. No substantial concerns were expressed in relation to this proposal. However, following consideration of the impacts, particularly on those public law children providers that specialise in the representation of parents and therefore may not sit on the Children Panel, we are not proceeding with this proposal. As such the supervisor requirements set out in the contract for mainstream family work will not differ from those currently contained in the SQM. However, those delivering services for children would need to be on the SRA Children Panel.

Debt

- 3.91. In the consultation paper we proposed that those providers delivering debt advice be able to deliver Debt Relief Orders (DRO) through at least one Approved Intermediary. Responses to question 8 broadly agreed with this proposal and there was an overall view that DROs will offer an essential remedy to many clients facing severe debt problems. As such, we intend to retain this approach. Administered by the Insolvency Service, the DRO application will have to be made through approved individuals defined as 'Approved Intermediaries'. Organisations will be able to apply to become 'Competent Authorities' which will then be tasked with approving intermediaries through a suitable process. (Potential organisations that may act as Competent Authorities could include, for example, Citizens Advice or the Institute of Money Advisers).
- 3.92. However, in order to respond to concerns on consultation that providers may not be in a position to employ an Approved Intermediary by the start date of the new contracts, debt providers will be given six months from the contract start date to employ at least one Approved Intermediary.

Mental health

- 3.93. As set out on consultation, to safeguard quality in an environment of a changing market we have prioritised peer review of mental health providers by the magnitude of risk they pose. It is not possible within available resource to peer review all current mental health providers before the procurement process for 2010 contracts commences. In April 2009 we completed peer reviews of all providers with a contract value of £50,000 or more and are continuing to work our way through those providers that have not been peer reviewed in descending order of contract value. Current peer review resources suggest that, at best, it will be possible to peer review all those with a contract value of above £25,000 before the current contract expires. This is dependent on peer reviewers being able to provide the necessary time and providers being able to provide a valid file sample. We propose to continue prioritising

peer review by contract value following the commencement of 2010 contracts.

- 3.94. 90% of consultation respondents to question 9 agreed that all advocates before the tribunal for cases in high security hospitals (where Integrated Services A apply) must be members of the Solicitors Regulation Authority/Law Society Mental Health Tribunal Accreditation Scheme (Panel members). We will therefore continue to require this.
- 3.95. Responses to consultation proved that panel membership is a widely respected quality standard and that it should be mandatory for representatives before tribunals in high security hospitals. Many responses, including those from the Law Society, the Mental Health Lawyers Association and the Administrative Justice and Tribunals Council, supported wider mandatory panel membership (or equivalent qualification for non-solicitor applicants), particularly in medium secure hospitals and for those representing clients before the tribunal. Whilst it remains our long-term goal to make panel membership (or equivalent) a mandatory requirement for all representatives before tribunal, we still believe that it would be too restrictive to introduce this within the new contract term. Instead, we will consider introducing this requirement for future contracts. With this in mind, providers interested in bidding for contracts beyond 2013 would be advised to ensure that the relevant fee earners are accredited during the 2010 contract term.
- 3.96. An additional requirement for high security hospitals proposed was that organisations undertaking this work should employ at least one practitioner with experience of advising in restricted cases or confirm their intention to gain such expertise. Whilst no specific question was asked about this proposal, no respondents used other quality related questions or the general comments section to comment on this requirement. We therefore intend to retain this requirement as it reflects the larger proportion of high profile restricted cases in high security hospitals and ensures the requisite expertise to advise and represent effectively.

Immigration and asylum

- 3.97. We will continue to require that all advisers be accredited under the Immigration and Asylum Accreditation Scheme. The current work restrictions as amended will continue to apply including the requirements for Immigration Removal Centres.
- 3.98. Providers will be required to maintain at least one Level 2 caseworker for every two Level 1 caseworkers employed during the life of the contract. This is to ensure that providers maintain the capacity to undertake the full range of services to clients and retain the capability to deliver a quality and sustainable service. The work restrictions of the Immigration and Asylum Accreditation Scheme allow only advisers at the senior caseworker and advanced caseworker levels to undertake

the full range of Controlled Work. Advisers accredited at Level 1 and at the corresponding probationary level are broadly prohibited from undertaking work at the appeal stages of the case.

- 3.99. We are maintaining this requirement as 71% of consultation respondents to question 10 agreed or strongly agreed with this proposal. There was though some concern that flexibility should be allowed for unexpected absence and time to replace caseworkers leaving an organisation, particularly in low supply areas outside London as the pool of senior caseworkers from which to recruit replacements is limited. Subsequently, any action taken in response to this contract requirement will be proportionate and in line with contract terms. However, our initial analysis of a sample of accreditation data indicates that on the whole, the existing volumes of Level 2 caseworkers compared to Level 1 caseworkers is comfortably higher than the 1:2 ratio that the contract would require.
- 3.100. We had proposed that we would use compliance with the existing contract requirement to maintain a 40% success rate at appeal before the Asylum and Immigration Tribunal as an essential criterion for the award of 2010 contracts. This has been the subject of much discussion and disagreement between the LSC and the representative bodies.
- 3.101. The primary aim of incorporating this KPI into the contract was to drive up the standards of representation and advice and we remain committed to measuring outcomes for clients to further this aim. Given the concerns raised by representative bodies about using the existing measure as an essential criterion and the lack of an alternative measure for new entrants, we will not be pursuing this as a requirement against which bid round applicants will be assessed. However, any provider bidding for a 2010 contract will be accepting the requirement to meet the amended client outcome KPIs for that contract.

Levels of service to be delivered

- 3.102. In family and all low volume categories we will set out in the contract specification that organisations should have the capacity to deliver all levels of advice from Legal Help through to Legal Representation through employment of an authorised litigator. This is in recognition of the important role that certificated work often plays in these categories and to provide continuity for clients from initial advice through to Legal Representation.
- 3.103. In community care, housing, mental health and immigration and asylum we consulted via question 11 on requiring all organisations delivering Integrated Services A to employ an authorised litigator to be able to undertake Legal Representation work. 66% of consultation responses supported these proposals and as such we intend to retain this

requirement to ensure a seamless service for clients from the start to end of a case.

- 3.104. In recognition of the value of this service for clients we propose giving preference to those with access to an authorised litigator delivering Integrated Services B where we need to distinguish between bids following consideration of the essential criteria. We will consider whether we would accept alternative arrangements to employing an authorised litigator directly in assessing this as a selection criterion.
- 3.105. In community care and housing whilst there was broad support for the proposals, concern was expressed about the impacts on NfPs. We continue to consider that in community care and housing the ability to challenge any third party (including landlords and care providers) at the highest level is important and as such this is a requirement we should maintain.
- 3.106. By continuing with this requirement we can ensure that clients are provided with a seamless service; under existing arrangements clients may need to be referred from one provider to another if they need representation and advice from a solicitor. This leaves too much to chance as it cannot always be guaranteed that there will be a provider available to accept referrals. This may lead to a time lag between clients being referred and receiving advice and could ultimately have a detrimental impact on the outcome of a case, particularly given the urgent nature of many housing cases. We therefore believe that by maintaining this proposal we can ensure an improved service for the client under the 2010 contract. We acknowledge that this may be a harder requirement for some organisations to meet and as such only intend to apply it as essential criteria in procurement areas where we consider the market can support it, as informed by the procurement plans.
- 3.107. In mental health we will continue to require that providers delivering services in high security hospitals (Integrated Services A) employ an authorised litigator. Following the introduction of the Tribunals Courts and Enforcement Act (2007) in November 2008, representation before the Upper Tribunal is funded through Legal Representation. As such, it will be beneficial to clients if providers are able to offer all levels of advice. At this stage, we will not require mainstream mental health providers to undertake Legal Representation work but if they do not employ an authorised litigator, we would expect effective referral to one to be in place.
- 3.108. In immigration and asylum we will require that all applicants in Integrated Services A areas confirm in their bids that they employ an authorised litigator that will be available to advise and represent clients in the access point for which they are bidding (although the authorised litigator may be based at a different office within the same UKBA region). We appreciate that at present London providers undertake a

majority of certificated work and therefore it is unlikely that the entire provider base will be in a position to undertake the full range of work for their clients from 2010. Therefore, it will be an essential criterion in Integrated Services A areas only.

Referral arrangements

3.109. In all categories we will continue to specify that providers should have appropriate signposting systems in place. However, as set out in the consultation, in family and mental health we would want to highlight particular arrangements in the contract specification.

3.110. On family, many of the respondents to question 12 of the consultation agreed that referral to family support services where appropriate was beneficial for clients. However, the responses generally felt that its effectiveness would depend on the availability of such support services in the local procurement area. As such, we will encourage referrals to link support and advice needs where available by reflecting this requirement in the family contract specification.

3.111. The Department for Children Schools and Families (DCFS) has secured funding through the Child Poverty Unit to run a pilot to test how best to co-ordinate local services for separating parents. Approximately £4.75 million is available for the pilot, including its independent evaluation, in the next two financial years, 2009-2011. These services will shortly be tendered for and we hope that this will improve the availability of local services for children and separating parents.

3.112. In mental health we proposed specifying the need for links to and from all relevant local service user support services, including but not limited to independent advocacy services and service user groups, and in question 13 asked for specific examples of the services we should require referral links to. This is particularly pertinent in mental health given the acutely vulnerable nature of clients and the strong statistical link between the experience of rights problems and mental illness³. There was broad support on consultation for closer links with social welfare law providers, Local Authority Social Services departments, local mainstream mental health services (i.e. for non-detained clients) and local service user support organisations, with specific examples given being Mind Associations and ReTHINK. These referral requirements, in addition to local Independent Advocacy services, will therefore be set out in the mental health contract specification.

³ Pleasance, P. and Balmer, N.J. (2008) Mental Health and the Experience of Social Problems Involving Rights: Findings from the United Kingdom and New Zealand, *Psychiatry, Psychology and Law*, Volume [16](#) Issue 1 2009

3.113. Providing specialist advice relating to public law children matters or offering an appropriate local referral to a quality assured contracted public law children provider where required will become a contract requirement for immigration contract holders when advising UASC clients.

Early Legal Advice Pilot (ELAP)

3.114. The LSC has been working in partnership with UKBA in piloting the frontloading of the asylum system to try and improve the quality of the initial decision-making. A pilot has been operating in Solihull and is known as the Early Advice Pilot (EAP). EAP enhances the roles of the UKBA caseworker and the legal representatives at the earlier stages of the process. It also explores more collaborative working between the UKBA caseworker and the legal representative to ensure that the decision maker has all the material facts that they need at the time that they make a decision. This includes an interactive relationship at the asylum interview.

3.115. We are currently in discussions about the next steps for this work and will make an announcement before the tender opens in September. Any revised process will be tendered for as part of the civil bid rounds and exclusive schedules containing specific service requirements for this work would be issued to successful applicants. As with other immigration contracts, they would go live in 2010 and any new process would apply for the duration of the contract.

4. Where services will be delivered

Procurement areas

- 4.1. As set out in the consultation paper we are revising the geographical basis on which we procure services to more closely reflect the types of service we want to buy.

Family and social welfare law

- 4.2. In family and social welfare law we will broadly be procuring services based on Local Authority boundaries in England and Wales. However, in response to some concerns raised during consultation on the size of certain areas, we have reviewed this approach. As part of the development of procurement plans we have identified those procurement areas deemed too large if bid rounds were organised around them to ensure adequate access across the whole area. This has led to the identification of key locations within those areas where we would want to secure services, these will be highlighted in the tender documentation and a set number of matter starts allocated to them. Key locations in procurement areas are detailed in the procurement plans.
- 4.3. In family, we will continue to aim to contract with a minimum of five providers per procurement area to deal with conflict of interest issues. A number of consultation respondents suggested that this should be raised to reflect the increasing number of parties involved in public law children cases. However, we are retaining five as the minimum based on research undertaken for MoJ⁴, which found that the mean number of parties in a care proceedings case was four. We would stress that five providers per procurement area will be a minimum rather than a target and that in the majority of areas we would anticipate letting more contracts than this. We anticipate that there may be a very small number of procurement areas where at least five contracts cannot be secured. In Service B areas there may also be some areas where we have awarded the minimum number of contracts but not in both categories of work. The situation will be reviewed once the contracts have been awarded.

Family mediation

- 4.4. The LSC currently has 198 family mediation contracts across the 134 procurement areas and relies on the delivery of mediation via outreach to ensure that appropriate levels of access for clients are maintained. There are currently an additional 591 outreach locations and some procurement areas will be dependent solely on the provision of outreach.

⁴ *Care Profiling Study*, Judith Masson et al, Ministry of Justice Research Series 4/08, March 2008

- 4.5. As a consequence many services will cover a number of areas and it is therefore not appropriate to contract on a procurement area basis for these services given the volume of services concerned. We will therefore run a national tender and providers will tender for the areas where they want to provide a service – whether full time or via outreach.
- 4.6. Where mediation services are linked to a family solicitor firm then we need to ensure that we have more than one mediation service in the location to avoid any potential conflicts of interest for clients.

Housing possession court duty scheme

- 4.7. We intend to procure HPCDS in courts where we have previously funded a duty scheme. As consulted on, we will require HPCDS providers to have an office in the procurement area to which the scheme is attached. Where schemes run across several procurement areas, the scheme will attach to the procurement area where the court managing the scheme is based.

Mental health

- 4.8. As consulted on, we will be setting procurement areas for mainstream mental health services around Strategic Health Authorities (SHAs) in England with Wales forming a separate procurement area. This is to align our service provision with that of other public bodies, to allow providers flexibility to deliver advice across a procurement area and to ensure our forecasts of demand are as accurate as possible.
- 4.9. On consultation 63% of respondents to question 14 agreed that high security hospitals were distinct and as such work within these should be procured separately from SHAs. Some respondents, however, felt that ring-fencing this work would limit providers being able to compete for client recommendations. We intend to retain the approach of procuring work in Ashworth, Broadmoor and Rampton separately: because the work has often been viewed in the past as a 'closed shop' we consider that inclusion of these hospitals in bids for the wider Strategic Health Authorities could distort bids. As we anticipate a high volume of bids for a defined volume of work in these hospitals, they also provide the opportunity to institute and test competition, driving up the quality of advice, without putting access at risk.
- 4.10. To guarantee access at a local level, we will ask applicants to list the detention locations that they intend to work in. Whilst this will not be considered in the assessment of the bid, it will highlight any locations within SHAs where there may be access issues and allow us to take remedial action, such as supplementary bid rounds. All providers will be required to deliver services in at least one detention location (e.g. Mental Health Trust, private hospital or care home) within the

procurement area bid for. The LSC will liaise with Mental Health Act Administrators and Chief Executives of Trusts to explain our procurement strategy and to encourage further engagement with the Whole Systems Initiatives scheme. This will include informing them of who has been awarded a contract in each procurement area, in particular, which providers have indicated they will deliver access in which specific hospitals.

- 4.11. We proposed that, where possible, we would aim for at least three providers at each detention location (including high security hospitals) to avoid potential conflicts of interest and offer meaningful choice for vulnerable clients. A strong response to consultation indicated that there should be a greater minimum choice of providers in high security hospitals, and for that reason we will aim for a minimum of five providers in these hospitals. Based on the minimum new matter start size, and work currently delivered, each high security hospital could accommodate between 6 and 11 contracts at the minimum bid size.

Immigration and asylum

- 4.12. As consulted on, UKBA regions will form our overarching procurement areas (with the exception of Wales and the South West, which will form individual procurement areas). Therefore there will be six procurement areas:
- a. London and South East
 - b. Midlands & East of England
 - c. North East, Yorkshire & the Humber
 - d. North West
 - e. South West, and
 - f. Wales.
- 4.13. Our procurement areas are based on asylum as it is our priority area due to the greater vulnerability of this client group. Our management information shows a significant correlation between the historic location of demand for asylum and immigration (non-asylum); this should ensure immigration (non-asylum) clients' needs can also be met. We also intend to let separate immigration contracts in those areas where it is shown to be necessary due to a lack of corresponding demand for asylum services.
- 4.14. During consultation some stakeholders expressed reservations about basing procurement areas on the UKBA regions as UKBA policy and processes frequently change. However, the location of asylum applicants is heavily impacted by UKBA and it is sensible to reflect this in our purchasing strategy. Moreover, stakeholders have also requested that procurement areas are made large to better allow providers flexibility. Irrespective of the basis on which the procurement areas were set, they do represent large areas as was requested. Setting large procurement areas also provides greater flexibility to react

quickly to changes in demand within a region, for example, changes in UKBA accommodation contracts, dispersal or migration patterns.

Access points

- 4.15. On consultation we proposed identifying areas of high demand (access points) and letting new matter starts for these to secure more focused access within the wider UKBA region. Respondents to question 15 and some stakeholders in subsequent meetings have requested that we avoid any further prescription over where services are procured and that the market is left to organise itself to deliver services where they are required. However, in very large procurement areas we believe further controls are required to safeguard the availability of face-to-face advice to clients locally and to align the allocation of matter starts to meet demand.
- 4.16. As proposed, we have analysed client postcode data from claims submitted by providers to identify areas of likely higher demand – these will form access points. This has been done at local authority area level, which also form the basis of family and social welfare law procurement areas. Where we have identified that two or more areas of higher demand at a local authority level are within close proximity of each other, we have joined these together to form a single access point. This is because we consider it reasonable for the client to travel to any location within that larger area to receive advice.
- 4.17. New matter starts will be allocated to each access point in line with the level of demand identified. Providers will be able to bid to deliver services from an office anywhere within the access point.
- 4.18. Consultation responses raised concerns about the approach of identifying areas of higher demand. One of the main concerns was about data reliability and the ability to centrally determine where demand is by analysing historical client postcode information. Since the consultation was completed we have updated our model using more recent claim data. The LSC local offices have undertaken a further assessment of need and have designated additional areas as access points where local information indicates that there is sufficient demand to support this.
- 4.19. In light of concerns raised in consultation responses, the local offices have also reviewed locations where there is currently a provider delivering services but that was not initially identified as an area of high demand. We do not want to reduce access in an area that currently has a service that is being utilised by the local population. Furthermore, our high level demand estimates are consistent with UKBA's regional approach and dispersal policies.
- 4.20. Concerns were also raised that drive time was used to identify proximity between areas of higher demand for the purpose of linking

local authority / social welfare law areas to form larger access points, as a majority of clients in this category will travel by public transport. However, our analysis shows that if we maintain current provision, by letting new matter starts on an access point basis we will be ensuring that over 90% of starts let in England and Wales will be for clients within 45 minutes of a provider by public transport. Access points around which we propose to organise services for 2010 are set out at Annex B.

- 4.21. We proposed that access points in London should be defined differently. We identified that there has traditionally been high demand across most of the region and most London boroughs could in theory be designated as access points in their own right. We proposed to split London into four large access points North, South, East and West. This split was designed to provide safeguards to local provision by guaranteeing some spread across the region and to afford the LSC some control over where matter starts are allocated.
- 4.22. However, consultation responses to question 16 argued that the proposed safeguard of splitting London into four was unnecessary. They believed that clients are able to travel across London boroughs and that travel costs do not increase significantly when travelling greater distances across London. This is supported by LSC management information that shows very little correlation between client postcode and the location of the provider handling their case within London. Therefore, London will form a single access point with matters allocated to the entire region only. This means that any organisation with a permanent presence within London may bid for matter starts to provide services to clients anywhere within the region. This does present a risk that there could be a reduced spread of provision with successful bidders being located in fewer locations. However, we have been convinced by stakeholders that the risk of this is limited and if it were realised, the impact on client access would not be significant.
- 4.23. There are certain areas within the South East region but outside of London where we do want to protect access and we have designated these as access points for the bid round. We will therefore be allocating new matter starts to these access points and running a separate tender (please see Annex B for details).
- 4.24. Through the approach of allocating new matter starts by access point, there is no guarantee that services will be available in every town within an access point that currently has a provider. However, as stated, we believe that it is reasonable for a client to travel to any location within the access point to receive advice. The requirement for a minimum number of contracts in many areas should partly mitigate the risk of all provision being in a single location within an access point.

Minimum number of contracts within a procurement area

- 4.25. We had not originally proposed setting a minimum number of contracts per area in immigration. However, several consultation responses argued that there is significant potential for a single provider in an area to encounter conflicts of interest, which the client needs to be protected against. Examples given included applications for leave based on domestic violence and where a family member has had previous experience with a provider that could compromise the client / lawyer relationship.
- 4.26. In light of these concerns, we will require a minimum of three contracts to be awarded in access points where enough new matter starts will be allocated to support this. We are requiring a minimum of three contracts as this provides two alternatives for a client should a conflict of interest arise. These areas have been identified by applying the minimum number of contracts requirement to the top third largest access points in terms of projected new matter start volumes (see Annex B). This is because these areas have the most projected clients so both present the biggest risk to client access if a single provider pulled out and contain enough new matter starts to allow for at least three sustainable contracts.

Low volume categories

- 4.27. In contrast with all other categories of law, the proposals in the bid round consultation suggested that there would be no formal procurement areas as such in the low volume categories. Providers would be able to bid for work across the whole of England and Wales, with no restrictions on where cases could be carried out. The consultation did, however, also make reference to organising services around regional boundaries. Specifically, applicants would need to indicate the former LSC region in which they intended to carry out work. This would allow the LSC to get a better idea of the state of access in each area, and prepare the market for future regional procurement exercises.
- 4.28. Whilst no direct consultation questions were asked on the basis on which we should procure low volume categories, there was a general feeling that the LSC should be promoting a more local service in the low volume categories where possible. For example, when answering Question 22, 10 respondents argued that the ability to deliver face-to-face advice in person was necessary if a provider was to carry out work in a procurement area. A very large number of respondents (95) also stated that the use of video conferencing should not be considered as an alternative for local advice in the low volume categories, with 13 arguing that this technology was no substitute for face-to-face services. These responses are significant when considering the limited number of overall respondents from a low volume categories point of view.

4.29. Given the strength of the concerns raised and the principles governing the bid round process, we have sought to amend our proposals so that we procure services at a more local level. It is recognised that there is unlikely to ever be sustainable volumes of this type of work to justify letting contracts in each of the 134 family and social welfare law procurement areas. Therefore, suitable procurement areas we have identified for the low volume categories are the former LSC regions and Wales. These areas are large enough to group together procurable amounts of Legal Help work, while also guaranteeing at least some local service.

Presence

4.30. On consultation we proposed more tightly defining our presence requirements for where services should be delivered. Following a number of comments received to consultation question 17 that the proposed presence definitions lacked clarity we have sought to firm these up. Whilst proposed definitions are set out below these may be amended as part of discussions on the contract. We have included them here to provide a better indication of our requirements and an understanding of the concepts we intend to promote. All providers will be required to have an office; we propose to define this as follows:

Office

An 'office' is defined as a suitable building(s), which must cater for client and employees' needs (including but not limited to, compliance with your Quality Assurance Standard, Health & Safety legislation and the protection of client confidentiality). The office will be visible through the displaying of the CLS logo and through category and location specific details on the CLA Directory. For the avoidance of doubt, the following locations will not comply with the definition of an office: hotels; coffee shops; vehicles (except specialist advice buses).

4.31. The level of presence required at an office will depend on the category of law and procurement area. However, broadly there will be two types: permanent and part-time.

Permanent presence

The office must be where the majority of your services are accessed and must be physically accessible for clients each day from Monday to Friday, excluding public holidays, to set up appointments, attend face-to-face appointments for specialist publicly funded legal advice and to access basic information. Where an office is shared, it must be clear which organisation a client is dealing with.

During office opening hours, clients must also be able to speak to a person by telephone to set up appointments and to contact about emergency matters. Outside opening hours, clients will be able to obtain by telephone, details of opening hours, details of the CLA (Community Legal Advice) helpline or website and arrangements for dealing with emergency matters.

Part-time presence

The office must be physically accessible for clients at least one full day or two half days per week at the same advertised opening hours, to access a service providing face-to-face specialist publicly funded legal advice. Where an office is shared, it must be clear which organisation a client is dealing with.

A permanent phone number must also be available each day from Monday to Friday during normal office opening hours where clients can speak to a person to set up an appointment and to contact in emergency matters. This number can be the number of an actual office or a central number but access only to mobile phone numbers will not be acceptable. Outside of opening hours, clients will be able to obtain by telephone details of opening hours and locations, details of the CLA (Community Legal Advice) helpline or website and arrangements for dealing with emergency matters.

- 4.32. Whilst a number of consultation respondents welcomed the LSC's aim of promoting client access in its definition of presence, many (particularly respondents to question 18 in relation to family and social welfare proposals) did not feel that the definitions were sufficiently flexible. We have considered this and do not feel the definitions of presence are overly onerous. Whilst we have specified that to comply with a permanent presence services need to be provided from Monday to Friday, we have not specified opening hours in order to allow providers to respond to local needs. There were also concerns about the financial viability of our presence requirements. However, our definition of an office does not preclude arrangements such as office shares, provided the services remain visible and accessible to clients and presence requirements can be met.
- 4.33. There was some concern that in previous bid rounds those awarded services had not delivered commitments made around presence and that part-time presence could be open to abuse. We have sought to deal with this through tightening our definitions, and will limit the acceptance of a part-time presence to those categories or areas where there is insufficient demand in a procurement area to justify a permanent presence (e.g. community care). Where providers commit to delivering a service in their tender but do not have those in place at the time of bidding, we will also verify that they are in place before new contracts go live.

Outreach

- 4.34. As consulted on, we still intend to allow providers to deliver outreach. We consider this differs from a part-time presence because it responds specifically to local issues or particular client groups as need arises, and as such, may be subject to greater variation around when and where it is delivered. Owing to the nature of outreach services we therefore do not feel it is appropriate for it to form part of the bid round

process for mainstream services and consider it sits better as part of negotiations with Relationship Managers about how to deliver matter starts allocated following contract award.

- 4.35. However, in family mediation, whilst providers will need an office, they will be able to tender to deliver additional services via outreach. Outreach for mediation covers an office or other suitable premises as defined in the family mediation contract specification, that are occupied on set days/hours or are used solely when a client needs to access this service. We may authorise additional outreach locations during the lifetime of the contract. Part-time presence is not a requirement for mediation, as this would restrict services to delivering a service on set days. This broader definition allows outreach to be used flexibly where appropriate, based on client need.

Family

- 4.36. As consulted on, in family, providers will be required to have a permanent presence in the procurement area within which they are bidding to do work, unless the findings of the procurement plans recommend that a part-time presence is sufficient in certain locations.
- 4.37. However, we appreciate concerns raised in response to question 18 about the ability to deliver specialist services nationally. As such, providers bidding to deliver child abduction work or children only services will be required to have a permanent presence in at least one procurement area in England and Wales. However, this will not restrict them from taking on clients in other procurement areas. For example, a child abduction specialist may be based in Leeds but it is likely that all the cases will take place in the High Court in London.

Social welfare law

- 4.38. For debt, housing and welfare benefits the LSC would continue to expect a permanent presence in each procurement area unless the findings of the procurement plans recommend that a part-time presence is sufficient in certain locations. Whilst there was no dominant view emerging from the consultation, we will continue to specify a permanent presence in most areas to ensure that these services remain visible to clients and they are subsequently able to access them easily.
- 4.39. We proposed that in community care and employment, single category contracts could be delivered through a part-time presence in each procurement area. This continues to be our approach as it remains our view that it might not be sustainable for providers delivering these categories on their own to have an office in each procurement area. This is due to the fact that contracts in these categories tend to be much smaller in volume and that some providers delivering in these

categories may want to deliver in a number of procurement areas within their region.

Mental health

4.40. We proposed that where providers did not have a permanent presence they would be able to deliver services via suitable arrangements whereby practitioners are based within a procurement area, and can visit or meet with non-detained clients at a suitable location as necessary.

4.41. Whilst a number of respondents to question 19 felt that a fee earner being based in a procurement area would not facilitate good access to advice, we remain of the view that we need to offer an alternative to a permanent presence in recognition of the differing delivery models presently used by mental health providers and the detained status of the majority of clients. In response to some of the suggestions received about how we should more tightly define our requirements, particularly around acceptable models for delivering community advice, we propose accepting the arrangements set out below as an alternative to a permanent presence. The final definition will be subject to further discussions around the contract.

Alternative presence arrangements for mental health

Alternative arrangements to providing a permanent presence must not be exclusively composed of home visits and/or arrangements to meet in a mental healthcare setting (although, if suitable, these types of arrangements can be considered for individual clients) but must as a minimum include a written arrangement to use interview facilities in the relevant procurement area in one of the following:

- Another legal aid provider's offices (e.g. Law Centre, Solicitor)
- Another legal service provider's offices (e.g. Solicitor without a legal aid contract)
- A mental health third sector organisation (e.g. local Mind Association)
- Non-mental health primary care services (e.g. GP's surgery)
- Commercially available rented office space

A permanent phone number must also be available each day from Monday to Friday during normal office opening hours where clients can speak to a person to set up an appointment and to contact in emergency matters. This number can be the number of an actual office or a central number but access only to mobile phone numbers will not be acceptable. The alternative interview facilities must be available for use as reasonably requested by clients. Out of hours, clients must be able to obtain by telephone details of opening hours and locations, details of the CLA (Community Legal Advice) helpline or website and arrangements for dealing with emergency matters.

- 4.42. We believe that this definition should ensure enough flexibility for providers that wish to use novel national business models composed of satellite offices or fee earners, whilst providing an assurance that such providers without a permanent office in the area can deliver good access to both those that are detained and those in the community. We will require all bidders, including those bidding for high security hospital work, to have an office somewhere in England or Wales. This does not necessarily have to be in the procurement areas bid for.
- 4.43. There will be no requirement for those bidding for high security hospital contracts to have a presence in the surrounding procurement area. We will, however, require those delivering advice in high security hospitals to hold a contract to deliver advice in at least one SHA procurement area.

Immigration and asylum

- 4.44. Applicants will be required to have a permanent presence within at least one of the access points within the procurement area (UKBA region). If the applicant bids to deliver at more than one access point, they must have either a permanent or part-time presence within each access point bid for.
- 4.45. There was a mixed reaction to this proposal within the consultation responses to question 20. Some agreed with the proposal but others thought that a permanent presence may be unnecessary and / or that a part-time presence in each access point in which a provider wishes to bid for matter starts to service may be unnecessary. There was also concern that this requirement may disadvantage small providers who may find it difficult to expand and increase the spread of delivery points that they provide.
- 4.46. Some respondents warned of the risk to the service offered to clients if larger providers were able to dominate access points outside of the area where their main presence is located, at the expense of other providers who do have their main office based in that area. It was argued that more should be done to safeguard against this.
- 4.47. We are purchasing regional and local services for clients and we believe that it is reasonable to require that any bidder must have at least one permanent presence within the procurement area. We also maintain that it is in the interests of clients to require that providers must have at least a part-time presence within any access point which they are bidding for. We do not want a position whereby a bidder can be allocated a significant share of the new matter starts needed for one part of the UKBA region but not deliver services to the clients in that area, especially if there are others that would provide the service locally. Providers should only bid for matter starts for clients in areas where they propose to deliver the service.

- 4.48. We will run the bid round in a way that will first look to award matter starts within an access point to bidders who meet the minimum requirements and will have a permanent presence within that area. Following this initial allocation remaining matters will be allocated to other bidders wishing to expand their delivery of face-to-face services in the area by way of opening a part-time presence.
- 4.49. The requirement to have a permanent presence within a procurement area may exceptionally be relaxed, for example if an access point within one procurement area is unlikely to attract bidders from within that procurement area but a provider near the border of the neighbouring procurement area may be able to provide an appropriate service for those clients.

Rota Arrangements

- 4.50. We had proposed that if we operated a rota scheme in an access point, all successful bidders must participate in that rota. Several responses to question 29 argued that if rotas do operate, they should not be mandatory. Therefore, we do not propose to make participation in any rota scheme compulsory. We believe that there will be sufficient interest on a voluntary basis to facilitate access for clients.
- 4.51. Furthermore, having considered consultation responses we will open rota schemes to all providers within the procurement area rather than limit them to those who successfully bid for matter starts in the access point where the rota operates. However, we maintain our belief that it is not reasonable to expect a client in initial accommodation to be referred to a legal adviser to whom they would be required to travel a significant distance to visit merely by virtue of their position on the rota. Therefore, any provider wishing to join a rota will be required to provide preliminary advice to the client (prior to further dispersal from the initial accommodation) from an appropriate delivery site within the access point where that initial accommodation is located.
- 4.52. Concerns were also raised about the effectiveness of rotas and the impact that rota schemes have on client choice. We are currently piloting a web-based appointment-making scheme which allows all providers within the UKBA region where the pilots are operating to upload available appointments. Asylum applicants are then able to choose an appointment with a provider knowing the location of the provider and when an appointment is available. It is hoped that this scheme will successfully facilitate access to local, quality advice as early as possible and prior to their substantive interview with UKBA.
- 4.53. This pilot will be evaluated to inform whether it is an effective mechanism and whether it would be a suitable replacement for paper-based rotas in the future. If the evaluation is favourable, this will address many of the concerns raised by stakeholders. Furthermore, as

the client will be choosing an appointment themselves further prescription about where within the procurement area services to these clients are delivered would not be necessary. However, if the evaluation does not conclude that this appointment making scheme is suitable to replace paper based rotas, these will continue as outlined.

Prisons

- 4.54. We had proposed to introduce mandatory rotas connected to access points for some prisons of likely high demand. However, we do not think that there is enough information on the Government hub and policy for foreign national prisoners available to allow us to identify where we may wish to install rota arrangements in time for the start of the 2010 bid round.
- 4.55. Therefore, mandatory rotas for prison work will not be incorporated into 2010 contract requirements. We will instead use voluntary rota scheme arrangements as and when need is identified and there is sufficient local supply to do so. This would likely be by way of an amended version of the Appointment Making Pilot system if possible.
- 4.56. Furthermore, flexibility over the thresholds for allowed work outside of the procurement area may be considered if a provider demonstrates that they are undertaking work for prisoners detained outside of their procurement areas where more local providers are not providing access for all those prisoners that require the service. This solution was suggested in some consultation responses.
- 4.57. We have identified certain prisons housing significant volumes of foreign nationals that are in areas where there has historically been little immigration and asylum provision. Where it is anticipated that organisations providing services to clients in these prisons will need to undertake travel above the permitted threshold allowed by the contract specification, additional travel time and costs will be allowed. These prisons will be detailed in individual contract schedules.

Immigration Removal Centres

- 4.58. In relation to detained clients we believe that the location of the provider is less relevant given the clients are held in one location. We wish to ensure that clients in detention have prompt and easy access to legal advice. Rota arrangements will be in place to ensure that detainees can have such access. We therefore intend to allow firms from outside the procurement area in which they are based to tender for these services.

Low volume categories

- 4.59. We consulted on requiring a part-time presence in clinical negligence and personal injury. We continue to consider that there is sufficient

volume and distribution of these services to warrant this requirement and as such will be requiring providers to have a part-time presence in each procurement area where they are contracted to deliver clinical negligence and personal injury work.

- 4.60. The consultation asked at question 22, in areas where no permanent or part-time presence was required, what facilities should be offered to clients to allow them to access services and how those services should be marketed. A few respondents felt that because of the nature of the work, particularly in the area of public law, that there should be no or few requirements in this respect. However, a number of positive suggestions were also made as to what access might mean if there was not a permanent or part-time presence in the area. We would not accept that there should be no requirements on a provider to be able to access clients within the area in which they bid for work. Our aim is to improve services for the client and this must mean providers making services accessible for clients.
- 4.61. Drawing on the responses received on consultation, we will be asking providers to demonstrate that they have provisions in place to provide face-to-face services to clients within the procurement area in which they bid. We recognise from responses that video conferencing is not always an adequate substitute for face-to-face advice in person, particularly where it is the only point of access.
- 4.62. We therefore propose to permit alternative arrangements to a permanent or part-time presence in low volume categories, other than clinical negligence and personal injury, similar to those proposed in mental health. In the consultation we stated that providers would need to produce and adhere to a “marketing plan”, given that we are further clarifying alternative arrangements we no longer consider this necessary. The final definition will be subject to further discussions around the contract.

Alternative presence arrangements for actions against the police, consumer, education and public law

Alternative arrangements to providing a permanent or part-time presence must not be exclusively composed of home visits and/or non face-to-face methods such as telephone, email or video conferencing (although, if suitable, these types of arrangements can be considered for individual clients) but must as a minimum include a written arrangement to use, where appropriate, interview facilities in the relevant procurement area in one of the following:

- Another legal aid provider’s offices (e.g. Law Centre, Solicitor)
- Another legal service provider’s offices (e.g. Solicitor without a legal aid contract)
- Primary care services (e.g. GP’s surgery)
- Commercially available rented office space

A permanent phone number must also be available each day from Monday to Friday during normal office opening hours where clients can speak to a person to set up an appointment and to contact in emergency matters. This number can be the number of an actual office or a central number but access only to mobile phone numbers will not be acceptable. The alternative interview facilities must be available for use as reasonably requested by clients. Out of hours, clients must be able to obtain by telephone details of opening hours and locations, details of the CLA (Community Legal Advice) helpline or website and arrangements for dealing with emergency matters.

Proportion of work in a procurement area

4.63. We would expect providers to deliver services in the corresponding procurement area where matters have been awarded. In mental health and immigration and asylum, where much of the client base is detained or dispersed to specific locations, we proposed formalising this through requiring most matters to be delivered to clients within the procurement area for which work had been awarded and as such, allowing a small proportion of work to be delivered outside the procurement area. This was in recognition that providers may sometimes need to advise clients based in other areas. Where a provider exceeds the allowance of work outside their area, we may take proportionate action. Further detail will be set out in the contract.

Mental health

4.64. Some consultation respondents to question 24 expressed concern at the prospect of having to turn clients from other procurement areas away and the additional impact of this proposal on client choice. However, given the non-competitive nature of procurement proposed in the SHAs and the less demanding presence requirements (by comparison with other categories), the risks of these concerns materialising are minimal. Most existing providers are likely to bid in the procurement areas they currently carry out work in, and will receive a contract for that area, even if it is only at the minimum bid size. This means that client choice will be maintained according to existing working practices.

4.65. We accept feedback that previously proposed allowances may cause some difficulties for those whose clients are transferred to a procurement area in which the provider does not have a contract, and for those located on borders (although they could be expected to bid in all the areas they currently do work in). For this reason we are increasing the allowance of contracted work that can be done for clients from outside the procurement area from 15% to 30%. Currently, providers do on average 80% of their work for clients from within their office schedule procurement area so this should allow sufficient flexibility.

- 4.66. We reiterate that those who carry out significant volumes of work in an area would be expected to bid in that area as long as they meet the presence requirements described at paragraph 4.41. Therefore, this requirement should not unreasonably restrict providers from working across borders for established clients or transferred clients.
- 4.67. The volume of work available in each of the three high security hospitals is comparatively much smaller than that in larger SHAs. It would therefore be unfair if providers awarded work in SHAs were able to use their outside of area allowance to deliver up to 30% of their contract allocation in the high security hospitals where other providers had competed for contracts. Respondents though were very concerned that ring-fencing high security hospital work would severely damage client choice. However, if restrictions were completely removed then there would be no benefit to providers that competed for high security hospital work.
- 4.68. For that reason we will maintain restrictions on high security hospital work. However, we recognise that where an existing client is transferred in to a high security hospital, it may be beneficial for them to continue to see the same adviser. In these instances, providers would be permitted to undertake work in a high security hospital, providing they meet the requirements for this work. Further detail will be set out in the contract specification.
- 4.69. As proposed, those with contracts for high security hospitals would be permitted to deliver their outside of area allowance in any other procurement area, including SHAs. Evidently, the volume of work in high security hospitals is much lower than that available in other procurement areas and given the objective of achieving a minimum of 5 providers per high security hospitals, contracts are likely to be smaller on average. This means that 30% of a high security contract will represent a small volume of new matter starts. For this reason we have decided that high security hospitals providers will be required to hold an active contract to deliver advice in at least one SHA procurement area throughout the lifetime of the contract. Since all providers, regardless of service type, will be required to deliver the full range of work (including non-tribunal work for non-detained clients) we consider this measure necessary to facilitate maintenance of appropriate expertise.
- 4.70. Whilst some interesting suggestions around modulation of matter start awards between providers were made in response to consultation, it remains the LSC's view that Relationship Managers should retain control of any variations in new matter starts allocated during the life of the contract in line with arrangements permissible under the contract. It is important that the LSC retains oversight of access and working patterns to inform future commissioning.

Immigration and asylum

- 4.71. In immigration and asylum we intend to maintain proposals that providers have an allowance for advising clients outside of their procurement area of 10% of asylum matter starts and 30% of non-asylum matter starts. We do not wish to prevent providers on the edge of one procurement area from operating in the neighbouring procurement area; neither do we wish to prevent clients from accessing their most conveniently located provider.
- 4.72. There was a mixed response to this proposal on consultation with just under half the respondents supporting the proposal and just over half disagreeing with the proposal. There was a noticeable split between representative bodies and London based providers disagreeing with the proposals and providers from other regions supporting the proposals. We remain convinced that there is a need for provisions to ensure that matters allocated to address demand in a particular area are delivered in that area. This offers some protection around the availability of work locally for providers based outside of London. However, it must be stressed that we can offer no guarantee of work at the volumes bid for.
- 4.73. Some responses argued that restricting London providers from undertaking unlimited work outside of the region would create access gaps as more local providers would not bid to provide the necessary services. However, a national bid round has not been undertaken in the immigration category in recent years. This potentially provides both the opportunity for providers to expand, including into new regions, and will also allow new entrants to the legal aid market to compete for contracts. The aim in procuring services for clients must be to commission the delivery of those services near to where the clients are located. The restrictions do not mean that London providers who currently undertake a large proportion of their work for clients from other areas cannot continue to do so. However, they must successfully bid for matter starts in those areas and ensure that they set up a presence that meets the requirements of the tender.
- 4.74. We will continue to set a lower allowance in asylum because:
- Supported asylum clients will be allocated to a local provider through rota or appointment schemes
 - A majority of asylum clients are not generally in a position to make a well informed decision on the quality of an adviser.
- 4.75. It should be noted that the allowance applies to areas outside the UKBA region rather than the access point for which the provider has been awarded matters starts. The UKBA single caseowner policy for asylum applicants means that although clients are routinely moved to different areas within the UKBA region (which broadly match our procurement areas); applicants will only exceptionally be moved outside of the region. Our management information corroborates this.

4.76. Following overwhelming support (86%) in response to question 23, there will be no restriction on providers in Wales from accessing clients in the South West and vice versa and this will not count to the out of area allowance. This is because the UKBA operates only one region covering both areas. However, Wales and the South West will remain separate procurement areas and the requirement to have a permanent presence within the procurements area will apply.

Low volume categories

4.77. In the consultation, there was no obligation for providers to complete any proportion of work in any given procurement area(s). However, as set out at 4.28, a number of respondents called for the promotion of more local services in these categories. Subsequently we intend to allocate matter starts regionally. Whilst we expect providers to deliver services in those regions in which they have bid to deliver matters, we recognise that due to the nature of some of the work and the geographical spread of providers in these categories, it may sometimes be necessary to undertake work for clients outside the designated regions. As such, we will set out in the contract an allowance to undertake up to 40% of the total matter starts allocated outside of the region where they have been awarded.

Welsh Language Requirements

4.78. If providers deliver a service under the contract within Wales, they must ensure, in accordance with the Welsh Language Act 1993, that those services are accessible to and understandable by clients whose language of choice is Welsh. This position will be reflected in the contract specification.

Budget allocation

Family and social welfare law

4.79. The procurement plans will identify the number of matter starts available in each procurement area. This will be based on the indicative spend model developed by the Legal Services Research Centre which identifies the rational allocation of the budget in each procurement area based on the likely incidence of problems. This compares the comparative incidence of problems in each procurement area against the actual spend in each procurement area.

4.80. The indicative spend model is based on the actual number of new matter starts reported in 2008/09 and not the number of new matter starts allocated in 2008/09. In family and social welfare law the budget will be allocated as follows:

- Those procurement areas over 100% will be allocated their 2008/09 usage
- Those procurement areas under 100% will be allocated 100% of their indicative position.

4.81. As a result, no procurement area will have less matter starts available than were used in 2008/09 as part of this bid round. Some procurement areas are geographically large. To ensure that access is maintained across the area we may break down the overall available matters and specify these by location(s) within the area.

4.82. The allocation system set out above will give us an overall spend for social welfare law in an area, but will not be used to break down spend within each of the five social welfare law categories. As a solution we proposed in the consultation paper to look at historic data to see what proportion of social welfare law spend has previously been used on each category nationally to provide a percentage that each category takes from the total social welfare law allocation. This should be seen as the starting point for finalising the number of new matter starts per category in individual procurement areas. It would then be essential that we sense check the figures against historical performance to establish whether there are any anomalies.

4.83. The work around the proposed allocation system has now been taken forward. We have analysed historic data to establish what proportion of social welfare law spend has previously been allocated to each category nationally. The national proportional split, as a percentage, is as follows:

Community Care	2%
Debt	29%
Employment	4%
Housing	30%
Welfare Benefits	34%

4.84. Where additional funding is apportioned to underspent areas, the difference between the previous underspend and indicative spend, would be divided by the 5 categories by applying the national proportional split in debt, housing and welfare benefits. However, in community care and employment, to ensure that the volume of work we offer is attractive to potential providers, we would always seek to offer at least 100 new matter starts in each procurement area. In some areas this would mean higher proportions of work in these categories were available than indicated above.

Child abduction

4.85. As outlined in the consultation, child abduction cases are not included in our assessment of budget allocation of each area, this is because we have an obligation under the Hague Convention to fund those

cases meeting the appropriate merits tests. In any event, these cases would almost always start at certificated work.

Services for children

- 4.86. As these are national contracts it would not be appropriate to allocate new matter starts to a provider from the budget allocated to the procurement area in which they are based because that is no indication of where their clients will come from.
- 4.87. Additionally, because these contracts will not be competitively tendered it would not be fair to award providers a large number of matter starts from the existing procurement area budget at the expense of those providers bidding for general family contracts. This could have an adverse impact on local providers and clients.
- 4.88. A small number of matter starts will be held back from the overall allocation to fund these national contracts. This will be based on the number of matters opened in 2008/09 by specialist children providers. This constitutes less than 0.0002% of the Family Help budget.

Family mediation

- 4.89. There will be no restrictions on the volumes of mediations that services will be able to undertake on mediation, as we are keen to encourage and increase the number of family disputes resolved via mediation.

Housing possession court duty scheme

- 4.90. In the consultation paper we set out proposals for allowing HPCDS services to deliver up to 30% of the total claims listed for each County Court where we fund a scheme. This was a shift from previous arrangements where schemes were permitted to see more people than their allocated volume with no limitation and no need to seek prior approval from the LSC. Given the proposed change we asked whether, in the context of the limitations of the legal aid fund, the initial 30% ceiling was the most suitable way to calculate and manage the HPCDS budget for 2010 onwards.
- 4.91. The vast majority of responses (72%) to consultation question 26, including those from ASA and Citizens Advice, suggested that the figures on which the estimated HPCDS budget was based should be recalculated with an uplift to reflect higher demand as the UK economy enters into recession. It was also suggested that some courts would be more likely to exceed their allocated volume and, indeed, the 30% ceiling, than others.
- 4.92. We have taken the decision to keep the budget ceiling at the proposed level of 30% of the claims listed for each County Court where we fund schemes because we consider this is sufficiently generous. We

propose that for schemes already in operation, we will allocate the budget based on the volume of clients seen by the scheme in the previous year. For any new schemes we will allocate the budget/volume of clients based on the numbers seen in a comparatively sized court.

- 4.93. We will be able to build in some further flexibility through enabling courts that are exceeding their allocation to request further funding from the LSC to cover any additional clients seen. This is possible because performance data shows that it is unlikely that all schemes will hit the 30% ceiling, allowing flexibility for other schemes set in areas of exceptional demand to be able to see a greater number of people. This will allow some schemes to assist more people than their allocated volume where demand is high enough. Whilst performance data does not indicate that total spend for all schemes will exceed 30% of all claims listed, if this were to happen, the LSC would need to review its budget position. However, we recognise that this service will be of significant importance during the current recession and we will seek to prioritise spending on these schemes should the proposed budget become insufficient.

Mental health and immigration and asylum

- 4.94. As proposed, in mental health and immigration and asylum the key change will be a move to allocating budget based on client location. The current pattern of provision reflects where providers have historically delivered services from rather than areas of need and has often led to inconsistent access across England and Wales. We will therefore move to a position where funding is allocated according to where clients have historically been located, achieving more client focused services. However, this does not necessarily mean that particular providers in particular areas will lose out. Though there may be a reduced allocation of work in an area, providers will still be able to bid for work in the areas where they have historically worked provided they meet the presence requirements.

Mental health

- 4.95. The majority of consultation respondents to question 27 agreed to some degree that we should move towards distributing mental health matter starts more closely to where clients are located. Specific comments on forecasts of demand and non-competitive allocation tended to focus on the uncertainty inherent in the process, both for the LSC in forecasting volumes and for bidders as regards their final allocation. However, we still consider non-competitive allocation in SHAs the best solution at present to securing good access. In addition we have mitigated concerns about limits on flexibility through increasing the allowance for working outside a contracted procurement area.

- 4.96. We have used data on client and case distribution across procurement areas in order to allocate the budget and therefore new matter starts to each area. Not only have we taken into account current trends in case volumes (for example a long term rise in MHRT cases) we have also considered the impact of the following legislative changes:
- Mental Capacity Act 2005 – implemented in October 2007 (also amended by Mental Health Act 2007)
 - Mental Health Act 2007 – implemented in October 2008
 - Tribunals, Courts and Enforcement Act 2007 – implemented in November 2008.
- 4.97. Since the above steps are largely based on historical data, the volume of cases predicted have been converted to the equivalent number of matters we would expect under the current definition of a matter introduced in January 2008 with the Mental Health Standard Fee Scheme. An initial sense check using external sources of data, such as general patterns of demand for mental health services and the number of beds in a procurement area, has also been carried out. We have also used up-to-date LSC data on client location to estimate what proportion of the overall total of work we expect to be started in each procurement area.

Immigration and asylum

- 4.98. There was little disagreement on consultation that services should be procured where the need is or that attempts should be made to try to align supply with demand. We remain convinced that it is important to take steps to align matter starts to where clients are located. We have updated the postcode analysis of historical claim data from October 2007 to September 2008 to remodel where demand is likely to be in the future.
- 4.99. In asylum, UKBA dispersal policy and accommodation locations is a key driver for demand in different areas. Their introduction of a policy not to accommodate supported asylum clients in London and the South East is reducing the volume of clients requiring services in those areas and increasing demand across certain regions outside of the South East.
- 4.100. We proposed not to immediately reconfigure new matter starts at a regional level and allocate to procurement areas based on where providers starting matters were located rather than where the clients who needed the matter starts were located. We proposed to address changing demand patterns by holding back a proportion of the new matter starts used by providers from London and the South East and reallocating these during the life of the contract in whichever region they were needed.

- 4.101. However, we are refining our approach in light of concerns raised to question 28 about the practicality of maintaining a central bank of new matter starts to meet increased demand anywhere in the country. In UKBA regions where our analysis indicates that demand is likely to be higher than the matter starts historically delivered by providers, we have increased the volumes of asylum matters that will be allocated there in 2010. This means likely increases in demand are factored into the initial allocation rather than being reliant on in year increases.
- 4.102. In accordance with our consultation proposals, new matter starts available in the South East (including London) will be reduced to reflect the emerging trend of reducing demand in the region in line with changes to Home Office dispersal policy. However, we will revisit this approach if there is a change in Home Office policy.
- 4.103. There is, of course, no cap on the volume of asylum clients that we will fund advice for, so new matter start allocation is a necessary control mechanism, but if demand for services for eligible clients increases in a year, as a result of changing world events for example, increases to our baselines can be made. This is not the case for non-asylum, which is not our priority. We have not realigned the volumes of non-asylum matter starts awarded at a regional level as these clients are not subject to changing UKBA dispersal and accommodation policies in the same way as asylum clients, so demand trends are more static.
- 4.104. The new matters allocated to access points for both asylum and non-asylum have been allocated based on where within the regions clients have historically been located rather than where the providers have historically delivered the service. This has seen some significant changes in where new matter starts are allocated with reductions in some areas and increases in others. We hope that this will encourage providers to bid for work to deliver services closer to where the clients that they serve are located, improving local access and achieve more client-focused services.
- 4.105. We have sought to address concerns raised about data reliability and changing demand. We have updated our postcode analysis, sense checked our access points with Regional UKBA caseworker teams and local LSC offices have reviewed the central analysis. Amendments have subsequently been made based on their local knowledge where necessary.
- 4.106. We accept that demand is not static and it is not possible to predict with accuracy the volumes of clients that will be seeking access in every location across England and Wales over the life of the contract. However, the information that we do have has allowed us to ascertain with some certainty that previous allocation of new matter starts has not been well aligned to where clients receiving services are located and the letting of new contracts offers the opportunity to consider and address this. The fact that access points are based around relatively

large geographical areas rather than specific locations also offers some flexibility. If demand patterns do change significantly during the life of the contract, the LSC will work with the local provider base to ensure that clients continue to receive services locally wherever possible.

Immigration Removal Centres

4.107. Demand is determined by bed space within each Immigration Removal Centre (IRC) and the throughput of detainees. New matter start volumes and rota slots allocated for each IRC will be based on UKBA forecasts of throughput and historical data from pilot schemes/LSC claims data.

4.108. New matter start allocation is an indicator and there will be no guarantee of minimum demand for work. The frequency and numbers of clients are outside the control of both the LSC and the IRC and therefore providers must have the ability to be flexible when tendering for this work, catering for periods of reduced and increased demand.

Unaccompanied Asylum Seeking Children

4.109. As we are not tendering for separate contracts for services to UASCs, new matter starts will not be allocated specifically for this client group but will be included in the total allocation for each access point.

Low volume categories

4.110. As stated in the consultation, in the low volume categories, apart from clinical negligence, we will publish the number of matters available in each region based on the number of cases carried out there historically.

4.111. As indicated on consultation, we will be introducing new matter starts in personal injury. The establishment of conditional fee arrangements and the subsequent reduction in matters and providers means we are now in a position to allocate matter starts and for normal contract management to be feasible. The level of personal injury matters starts available in each procurement area will be calculated based on numbers historically started.

5. How we will procure services

- 5.1. In accordance with EU procurement legislation, we are required to run a process that enables new entrants to bid for contracts as well as existing providers. We therefore cannot guarantee contracts to those already delivering services. In developing a procurement process we have considered how we can best ensure that providers are in a position to deliver a full service from the start date of the contract. This requires recognition of those already delivering LSC services but also those with a track record in delivering comparable services to allow new entrants access to the market. We are still developing the details of the process and the precise criteria will be set out in the tender documentation. This section, however, sets out the key principles which we intend to apply.
- 5.2. One of the key themes arising from consultation responses was the need for flexibility in our service requirements and the fact that a 'one size fits all' approach would not be appropriate. We recognise that conditions differ between procurement areas and, as far as is possible with a bid round exercise on this scale, we will seek to reflect this in the types of services we ask for in each area.
- 5.3. As consulted on, in mental health and immigration and asylum we will distinguish between Integrated Services A (more integrated services) and Integrated Services B (our minimum requirements). Integrated Services A will be specified in those areas where we believe the market can support this without having a detrimental impact on client access. We intend to go a step further in family and social welfare law by setting more bespoke services specifications to respond to the circumstances of each procurement area. For example, the minimum new matter start levels will vary to reflect local conditions. The types of service we will ask for in each procurement area and our rationale behind it will be set out in local procurement plans.

Procurement Plans

- 5.4. In order to procure services that respond to local needs, we will shortly publish procurement plans for each of the 134 procurement areas covering family and social welfare law, with separate plans covering immigration and mental health services. These will set out how we intend to apply the service requirements that we have consulted on. We have not produced plans for low volume categories at this stage as we are neither significantly reshaping services in these categories nor adapting services to respond to local conditions, as the relative volumes of work we fund do not justify such an approach.
- 5.5. In preparing the procurement plans we have used factors such as the volume and value of work presently done in an area, the eligibility of the population and key access points to inform how we will apply our service specifications in each procurement area. This includes, where relevant,

whether we will ask for Integrated Services A or Integrated Services B and, in social welfare law and family, the level at which minimum new matter starts are set. The procurement plans will be available on our website.

E-tendering

- 5.6. As indicated on consultation, the bid rounds for 2010 contracts will be operated via an e-tendering system; this means that applications for new contracts will only be accepted through this online facility. We consider that e-tendering provides a number of benefits for applicants including:
- Information provided on the application, such as organisation details, can be saved and used for further applications
 - Instant validation of data, reducing scope for errors in submissions
 - Instant submission and confirmation of receipt without the need for posting or email
 - Provision of a full audit trail and application history for future reference.
- 5.7. The e-tendering portal will be provided by Bravo Solutions UK, an official UK public sector e-tendering service provider, and will be accessible via the LSC's website. It is straightforward to use and only requires that applicants have a PC with a minimum of Internet Explorer 6+. However, we appreciate that many applicants will have little or no experience of submitting an electronic tender and as such we will be offering support closer to the time that the bid round is due to open. Help will also be available during the bid round to deal with any technical queries applicants may have.

Stages of the bid process

- 5.8. Bids to provide civil face-to-face services will be invited in September 2009, this is later than originally envisaged owing to the later than planned publication of both the *Civil Bid Rounds 2010* and *Family Legal Aid Funding from 2010* consultations. Tenders will be advertised per category of work (or bundles of categories in social welfare law) and procurement area. Applicants will bid by completing a tender for each of the services they wish to provide and submit it by the deadline (the bid round will be open for six weeks). However, we anticipate the e-tendering system will assist multiple applications by allowing common sections of the application process to be automatically duplicated. All applicants will be assessed on the basis of information submitted and as such, any prior knowledge of an organisation will not normally be taken into account when assessing bids. Whilst all information will be submitted by the same deadline, the information requested will fall into two broad areas: the pre-qualification questions and questions relating to the tender itself, which will include essential criteria common across the whole of civil, category and procurement area specific criteria and selection criteria.

Pre-Qualification Questions

- 5.9. On consultation we outlined our proposals to have a stage of the process considering generic criteria. We are proposing to refer to these as pre-qualification questions in the tender documentation, more closely reflecting their aim to assess applicants' suitability to contract with us as a public body.
- 5.10. This stage will be divided into two sections. Part A will request applicant information and will not be assessed but used for organisations to register their details with the LSC. Part B will contain questions intended to ensure applicant organisations meet a basic level of suitability to enter into a public sector contract with us. The main areas we will look at are: professional and business conduct; financial and economic standing; conduct under public sector contracts; compliance with key legislation, and insurance. It will largely consist of a series of yes/no questions to enable applicants to certify their compliance with key legislation and aspects such as professional conduct. Except in the case of mandatory serious criminal offences such as bribery and fraud (set out in Section 23(1) of the Public Contracts Regulations 2006), we will give bidders an opportunity to explain if they cannot meet any requirement but wish to submit that their application should be considered.
- 5.11. We have decided to look at financial standing by asking for financial information about the provider, which we will use to estimate the current financial standing of the applicant and apply a red, amber or green rating. We are developing our assessment approach to this, in particular whether an amber or red rating will act as a flag for further consideration of the application or a prompt for future contract management.

Invitation To Tender Stage

- 5.12. This stage will contain questions relating to the requirements of the tender. As consulted on, some of this will be generic across all civil categories (e.g. compliance with the relevant quality standards) and some which will be specific to the individual category (e.g. presence requirements). Additionally, to reflect the increased focus on local conditions in some categories, some criteria may also be tailored to the procurement area (e.g. minimum new matter start level in family and social welfare law). Applicants will need to pass the pre-qualification stage and pass at least the minimum entry requirements in order to qualify for a contract. Set out at Annex A is a list of the minimum entry requirements by category. Selection criteria will also be included within the main invitation to tender.

Testing capacity

- 5.13. In order to ensure that applicants have the capacity to undertake work awarded, we will ask them to detail the number of full time equivalents they have (or have realistic plans to recruit) to deliver the work. A number of comments were received to this proposal on consultation, whilst 83% of respondents to question 36 agreed with the aim of identifying unrealistic bids, there was differing opinion as to whether this was the best measure and with some of the maximum levels set.
- 5.14. We have considered calls for more sophisticated measures taking into account experience and time spent on cases but feel this detracts from the intention to provide a simple measure of capacity on assessment of bids. The full time equivalents cited should only be those delivering the work bid for, as such it should only take account of fee earners who after the award of any contract will be conducting legally aided work and should not relate to full time equivalents within an organisation delivering legal advice through other funding streams. The maximum number of matter starts is designed to provide an outlier of volumes above which we do not consider it achievable for a full time equivalent to deliver. It is not intended to represent an ideal of the number of cases a full time equivalent should undertake in a year; rather it is a safeguard to discount unrealistic bids that do not have sufficient capacity to deliver. We may reduce our assessment of the capacity of bidders who have posts vacant at the time of bidding, to reflect a lower level of confidence of delivery against a vacant post. Full details will be in the tender documentation.
- 5.15. A number of concerns were expressed on consultation on the maximum levels proposed – particularly that these were too low in mental health, immigration and some social welfare law categories. As a result, we have adjusted some of the maximum matter starts per full time equivalent per contract year, revised figures we intend to apply are set out below:

Category	Maximum number of matter starts per FTE
Family private	Maximum of 200 matters per FTE
Debt	Maximum of 300 matters per FTE
Welfare benefits	Maximum of 300 matters per FTE
Housing	Maximum of 250 matters per FTE
Community care	Maximum of 200 matters per FTE
Employment	Maximum of 300 matters per FTE
Mental health	Maximum of 150 matters per FTE
Immigration and asylum	Maximum of 150 matters per FTE
Actions against the police etc.	Maximum of 200 matters per FTE
Clinical negligence	N/A
Consumer	Maximum of 250 matters per FTE
Education	Maximum of 180 matters per FTE
Personal injury	Maximum of 230 matters per FTE
Public law	Maximum of 180 matters per FTE

- 5.16. We would not expect the matter starts bid for to exceed the ratios set out above. We will apply the above test to ensure applicants have sufficient capacity to deliver against their tender. Where the above levels are exceeded, it will impact on the number of matter starts we offer but will not be used to reject a bid entirely.
- 5.17. In addition to the above measure, we anticipate that the proposed introduction of a KPI requiring providers to deliver at least 85% of matter starts allocated under each schedule in a category will help to reduce the numbers of unrealistic bids received. If a provider is unable to deliver against this measure in each contract year, it will result in action being taken. KPIs under the new contracts are being discussed with representative bodies as part of consultation on the civil contract specification and these are due to be finalised prior to the bid round opening in early September.

Allocation of matter starts

- 5.18. On consultation we proposed applying selection criteria to provide a means of distinguishing between bids for the purpose of allocating new matter starts in the event of excess bids compared to the work on offer. Whilst this remains our approach, we have revised selection criteria in response to comments received to question 38 of the consultation and the level of matter starts we will offer to ranked bidders. We also set out below more detail on our approach to allocating new matter starts where there is not over demand.
- 5.19. In each procurement area we will state the maximum new matter starts available. Nationally, we will ensure that a contingency is available to deal with national contracts and any successful appeals so that in the event these being received we can in most cases allocate work to the applicant without reducing the allocations made to the bidders successful on initial assessment. We intend to ask applicants to set out in their tender the number of new matter starts they wish to tender for. Where we can satisfy the amounts requested we will allocate to all those meeting the minimum entry requirements without applying selection criteria.
- 5.20. Where the total number of matter starts requested exceed the volume available for the procurement area, we propose that new matter starts will be allocated to providers following a ranking exercise using selection criteria. Providers would receive matter start allocations in order of ranking up to the point where the available new matter starts were used up. The remaining lower ranked applicants would have their bid rejected.
- 5.21. In consultation we proposed one or two selection criteria per category largely based around supervisor to caseworker ratios or panel membership. 50% of respondents agreed with these measures. Whilst we plan to retain criteria around panel membership, we are

reconsidering whether preferring those with a better supervisor to caseworker ratio would be appropriate. A few respondents were concerned that this would favour smaller providers and that it does not take account of the experience of caseworkers. As such we consider it more useful to us as minimum entry criterion rather than drilling down further.

- 5.22. To respond to other comments received, we will expand the range of selection criteria we will consider. In the main this will seek to build on the minimum entry criteria to enable us to further decide which providers are able to deliver the best services for clients. This might include considering the access points that an applicant will deliver advice from to respond to calls for more detailed local criteria, recognising the greater confidence we have in those with a track record of delivering either LSC services or comparable services, reviewing experience of delivering priority areas, considering whether all levels of advice can be delivered and the extent that integrated services can be provided. We will, however, be unable to include some of the alternative criteria suggested on consultation because they are either difficult to measure objectively or would be difficult for newly established organisations to meet, for example, taking client awareness of services into account.
- 5.23. Full detail on the matter start allocation process and our selection criteria, including how it will be scored will be set out in the tender documentation due to be published prior to the opening of the bid round in September.

Procurement for mainstream mental health services

- 5.24. Whilst in mental health we stated that in principle contracts would be awarded to applicants for the minimum amount of work they bid for, we also stated that we would not be applying competition in SHAs. There is a clear tension here and a risk of overallocation, reflecting an error in the approach set out in the consultation. We are in fact intending that everyone that meets the minimum requirements in mental health will be awarded a contract but that this could be at the minimum matter start size of 30 rather than the minimum that applicants bid for.
- 5.25. In terms of how the process will work in mental health, we plan to advertise the number of new matter starts available in each SHA. As with other categories, applicants will be required to state the number of matter starts they are tendering for in each SHA that they are bidding in. All those meeting the minimum entry requirements will first be awarded the minimum new matter start size of 30.
- 5.26. All remaining new matter starts will then be allocated up to the levels requested in each of the successful applicants' bids. To mitigate the risk of over-allocation, this will be subject to the capacity test of one full time caseworker undertaking a maximum of 150 matter starts. Where

applicants need to recruit to deliver the service they will be asked to state that the post is vacant and will be required to confirm caseworker details 6 weeks before the start of the contract. We may reduce our assessment of the capacity of bidders who have posts vacant at the time of bidding, to reflect a lower level of confidence of delivery against a vacant post. Full details will be in the tender documentation.

- 5.27. In the event that this approach results in the matter starts available in the SHA being exceeded, all applicants' bids will be reduced by the percentage that the SHA is over-allocated.

Approach to procurement in family mediation

- 5.28. Mediation services will be required to bid to undertake work from a main office and will also set out additional locations where they wish to provide outreach services. We have reconsidered our proposals set out in the consultation on applying selection criteria for this work, 73% of respondents to question 39 did not consider the proposed measures appropriate. Mediation will be a registration scheme therefore any organisation that meets the minimum requirements will be awarded a contract.
- 5.29. Payment for mediation is based on a standard monthly payment linked to matter starts allocated. Mediation services will bid for the work they will undertake. We will set new matter start allocations based on what is requested by providers, although we reserve the right to limit certain requests if the number of bids exceeds the forecasted number of clients.
- 5.30. If a mediation service fails to undertake the volume of work set out in the standard payment limit then payments made will be reconciled to ensure payments are only made for work undertaken. If a mediation service does more work than bid for, then they will be paid for this additional work and the monthly payment adjusted accordingly.
- 5.31. Any new organisations that are awarded a contract will need to demonstrate they meet the mediation supervisor standards 6 weeks before the contracts go live. Failure to do so will mean that the contract award is withdrawn.

Timeline for bid process

- 5.32. The anticipated timeline for the bid process is set out below. Further detail will be provided as part of the tender documentation.

Bid rounds	7 Sept – 16 Oct '09
Bids assessed	Oct – Dec '09
Notification of contract award	Dec '09
Appeal deadline	Jan '10
Appeals reviewed	Jan – March '10
Contracts go live	1 April '10

6. Changes to the scope of funding

Tolerance

- 6.1. On consultation we proposed that actions against the police etc, education and public law should be removed from the scope of tolerance work at both Controlled Work and Certificated level in light of the relatively low volume of tolerance work done in these categories and the lower proportion of successful outcomes for those cases undertaken through tolerance. Although some respondents through question 52 raised some concerns as to whether this would limit access, most considered that only allowing those with contracts in these categories to undertake the work would lead to improvements in the quality of advice clients received. We therefore plan to implement a tolerance bar for these categories as originally proposed. Through tendering for services in low volume categories on a regional basis that seeks to encourage local provision of advice where appropriate, we anticipate that we will deal with a number of the concerns about access expressed by consultation respondents.
- 6.2. In those categories where tolerance will continue to be permitted, we intend to align allocation of tolerance work with those procurement areas where we expect there to be potential gaps in services without it. Applicants will be asked to indicate as part of their bids whether they would want a tolerance allocation. Where we allocate tolerance work, we will seek to limit it to 5% of a provider's schedule allocation.

Cancellation, administration and travel and waiting costs of experts

- 6.3. We consulted on three changes to the scope of funding in relation to experts fees – cancellation fees, administration costs and travel and waiting costs. The majority of respondents to question 40 agreed with the proposals to remove expert administration and cancellation fees from the scope of funding and to cap travel and waiting times but a substantial number did so with some reservations. In particular there were concerns that the proposals would lead to a reduction in the pool of experts that would be available for instruction in legal aid cases.
- 6.4. However, a number of respondents commented that experts' costs should be controlled in the same way as the rest of legal aid. A subsequent consultation - *Family Legal Aid Funding from 2010* which closed on 3 April 2009 - set out proposals to reduce inflationary increases in the cost of family cases through changing the way solicitors and barristers are paid. There were over 1,492 responses to that consultation and a majority of the responses highlighted experts' costs as a significant driver of increased costs that needed to be controlled.

Cancellations

- 6.5. If a hearing (whether a court hearing or a Mental Health Review Tribunal or an Immigration Tribunal) is cancelled then no cancellation fee will be payable. However, to address concerns raised by several respondents, including the British Medical Association, that doctors who undertake work outside of their contractual duties will be expected to allocate and fund appropriate locum cover which is often an expensive non recoverable cost, cancellation fees may be payable in exceptional circumstances. In such circumstances experts will have to justify payment of the cancellation fee and provide a satisfactory explanation of why they were unable to find other work.
- 6.6. The same principle will apply to cancelled appointments. Where an expert is available to see a client who does not turn up e.g. an interpreter attends at a provider's office and the client is not there then there will be no need to justify the payment of a cancellation fee.

Travel and waiting

- 6.7. Most consultation respondents accepted there should be a cap on mileage charged. Various suggestions were put forward as to what the rate should be. We proposed paying the same mileage rate we pay to solicitors and barristers as set out in our cost assessment guidance and intend to implement this approach. This means it will be capped at 45p per mile.
- 6.8. From the responses received it is clear that experts charge for travel time in very different ways. Some charge hourly rates at court, others charge half or full days, some charge travel time at a third of their hourly rates, others at half their hourly rate and some at their full hourly rate. Solicitors and barristers are currently paid for travel on an hourly basis at rates less than £40 per hour. In accordance with this approach, we intend to amend experts' travel time rates to a maximum of £40 per hour.
- 6.9. As with travel, experts have very different ways of charging for time spent at court. Some charge on an hourly basis and some charge on a half day/full day basis. Responses highlighted that often the majority of the expert's time at court can be giving evidence or liaising with the legal team and providing comment and advice regarding the evidence and that in many cases whilst experts are "waiting" they are ordered by the court to have a meeting of experts and/or review additional documentation. We therefore do not propose to cap waiting time at this stage.

Administration

- 6.10. Many respondents including the Academy of Experts agreed that experts should charge their fees on a "gross" basis which should include the costs of necessary overheads and expenses incurred and there should not be a need for additional "administration costs".

Several respondents queried the distinction between administrative costs and additional disbursement such as obtaining x-rays. We do not propose to provide an exhaustive list, but will not pay separately for the costs of:

- Offices and consultation rooms
- Administrative support including typing services
- Subsistence
- Couriers.

- 6.11. We would pay separately for items which may be incurred that are not in the normal course of business such as interpreters and x-rays.
- 6.12. Many providers expressed concerns that this proposal would effectively mean that providers would be required to pick up any shortfall between what the expert charged and the amount which the LSC were prepared to pay for a report if hearings were cancelled or clients failed to attend appointments.
- 6.13. The LSC will work with the Law Society to develop a protocol for instructing experts. The new contract will require that when providers instruct experts, the contract with the expert contains standard clauses which replicates the principles set out above.

Change of name

- 6.14. We consulted on whether change of name work should be available only by telephone. In light of the consultation responses received to question 41, we will not be proceeding with the proposal to restrict change of name work to telephone advice only at this stage.
- 6.15. The consultation responses raised concerns that undertaking this work exclusively through telephone advice would be inappropriate for certain clients. In particular, non-English speakers and people with mental health problems were identified as needing extra support to carry out the process. In addition, detained mental health clients may not always have access to the telephone.
- 6.16. In family cases the responses highlighted that changing a child's name could involve reasonably complex legal issues that could sometimes require a court order to be resolved. This work could also sometimes form part of other matters such as domestic abuse cases or complex contact disputes.
- 6.17. The expansion of the CLA telephone service for family advice services has been tendered for and the national service will be available from August 2009 for clients who do choose to seek advice on this issue over the telephone.

Other contract changes for 2010

Community Legal Advice Services and Civil Best Value Tendering

- 6.18. In the main, contracts awarded as part of this tender process will run for three years. However, there will be some exceptions, most notably where we look to roll out further jointly funded Community Legal Advice (CLA) Services and in a small number of geographical areas (two or three) where we may trial civil best value tendering in particular categories prior to contracts potentially being let through price competition for 2013. Earlier termination may also be necessary were there a change in policy direction which would require us to allow new entrants an opportunity to bid for contracts.
- 6.19. Jointly commissioned CLA Services for social welfare law advice awarded before the start of the 2010 contract will not form part of this bid process. This will mean that in those procurement areas where centres have opened we will not be offering additional work as part of this bid round.
- 6.20. Whilst we will be able to highlight prior to the bid rounds opening those procurement areas where we have already approached Local Authorities about the possibility of implementing a centre or network during the life of the new contract, there may be others that we are not currently in a position to anticipate. We propose to overcome this issue by notifying providers in procurement areas affected a year in advance of a jointly funded CLA Service opening.
- 6.21. As set out in the civil route map, we will look to trial best value tendering during the life of the new contract in a small number of geographical areas in particular categories. An announcement of the areas we are considering will be made prior to the bid rounds for 2010 contracts commencing.

Amendments to contract terms

- 6.22. A number of initial proposals highlighting key amendments to the contract were set out in the consultation paper. These have since been further developed and set out in draft versions of the Standard Terms and the Civil Contract Specification, which are being discussed with representative bodies.
- 6.23. The draft terms have been used to facilitate discussion around key performance indicators (KPIs), applying for additional matter starts and implementation of new provisions to reflect the policy outcome of this consultation.
- 6.24. We also set out a number of proposals in relation to payments on account for certificated work. Responses to questions 46-49 around

these proposals were varied with a number of respondents expressing concern that they would have a detrimental impact on cashflow and that the existing system was already working well. We have therefore decided not to proceed with any of the consultation proposals in relation to amending existing payment on account arrangements.

- 6.25. An amended draft version of the civil contract for 2010, which will reflect the final policy contained in this paper, will be discussed with representative bodies shortly.

Legal Services Commission
4 Abbey Orchard Street
London SW1P 2BS
DX:328 London

www.legalservices.gov.uk