



**Key Performance Indicators under the 2010 Standard Civil Contract:**

Guidance document for Social Welfare Law, Low Volume Categories, Mental Health, and Immigration/Asylum Providers

**December 2010**

## 1. Background

- 1.1. On 31 October (2008) we launched our consultation on Civil Bid Rounds for 2010 Contracts. This consultation flagged up our intention to introduce contractually binding KPIs into our civil contracts from 2010. Paragraphs 8.21 – 8.22 of that consultation provided that:

‘From April 2007 we have had key performance indicators (KPIs) in the Unified Contract (civil) addressing quality of work, value for money and client access. Failure by providers to meet these KPIs is not currently a breach of contract in itself (unless they involve a separate breach of contract). We propose to make KPIs within the new contract mandatory. This will mean that there will be sanctions attached to failing to meet them but we will ensure that these sanctions are proportionate.

The KPIs will continue to focus on quality of work, value for money and client access. These are likely to be a development of the KPIs in the current contract but with more category specific detail, for example to reflect the differing merits criteria in the Funding Code, and to encourage early resolution of cases and good outcomes for the client. Further detailed work on the exact format and measurement of KPIs under the new contract will be taken forward in discussion with Representative Bodies.’

- 1.2. This guidance document covers these issues in more detail, looking at both the procedures and sanctions which relate to KPIs and at the detailed contents of the indicators for quality, value, and access.
- 1.3. The Standard Terms of the 2010, Clause 11 contract includes certain procedural safeguards relating to KPIs.
- 1.4. The detail of individual KPIs can be found in the 2010 Civil Specification, Sections 2.70-2.117.
- 1.5. We have carried out an Equalities Impact Assessment in relation to the 2010 civil KPIs. This is available on the LSC website.

## 2. What are KPIs?

### ***Aims***

- 2.1 The LSC wants to buy high quality, accessible services for eligible clients, and to obtain good value for money from its providers.
- Quality – does the provider give advice and representation to the standard and with the outcomes specified in the contract?
  - Access – does the provider offer clients the appropriate levels and range of services, and offer them in appropriate, accessible places?
  - Cost – does the supplier provide the service at an appropriate cost – be it hourly rates, fixed fees, or graduated fees?
- 2.2 The KPIs under the contract relate directly to the contract terms and the rules of the legal aid scheme, and are clear measures of whether a provider is delivering the services that the LSC has specified and is paying for.
- 2.3 KPIs are intended to make it clear to providers what the critical aspects of performance are under the civil contract, and to give them the ability to manage their own performance in line with the LSC’s expectations. Whilst the LSC may use other

management information to monitor providers and to inform contract decisions, it will not introduce any additional new KPIs during the lifetime of the 2010 contract. However, the new KPIs will not take effect until 1 April 2012. When we refer to KPIs in this paper we mean indicators which, if not complied with, can in principle lead directly to sanctions under the contract.

- 2.4 The LSC believes that too great a number of KPIs would be confusing and counter-productive. However, the LSC will continue to make use of a wide range of management information to inform its contract management decisions.
- 2.5 The KPI targets are an aspect of the quality of legal aid services and their development should be seen alongside peer review and other quality measures. All aspects of quality have been considered by the Quality Working Group set up as a part of the Unified Contract settlement.
- 2.6 KPIs may also be used as the basis for extending devolved powers to providers producing good outcomes, in line with our proposals for Delivery Transformation.
- 2.7 The contract KPIs are also designed to support the LSCs strategic objectives:
- Maximise access to quality legal aid to meet the diverse needs of the clients we serve
  - Deliver a sustainable Legal Aid Scheme and an efficient and diverse organisation
  - Facilitate the efficient and effective delivery of justice and wider government priorities

#### ***Application***

- 2.8 KPIs are intended to be applicable to as many providers and categories of law as possible, although how they are interpreted may sometimes vary where there are justifiable differences between categories of law, e.g. as regards patterns of outcomes.
- 2.9 Each KPI measures something that can often fluctuate over the duration of a contract, but which providers have a significant degree of influence over. Each KPI must be based on objective information. One of the most important aspects of KPIs is that they should not be seen, or dealt with, in isolation as a quality tool. They are considered together with other measures to provide a substantial level of assurance, and they present a profile of how the provider is managing and meeting the contract.

#### ***Enforcement***

- 2.10 Having employed the KPIs in the Unified Contract for monitoring purposes, the LSC is confident that they can now be used as formal contract requirements from 2010.
- 2.11 The current Unified Contract sets out a range of possible sanctions in cases of contract breach, the guiding principle being that sanctions must be fair and proportionate to the breach. It is highly unlikely that a single failure to comply with a KPI would justify a very serious sanction such as termination, and we introduced new procedural safeguards into the contract. These could provide a clear presumption that, in relation to KPIs, the more serious sanctions should only be available for persistent failure i.e. non-compliance after having received a formal contract notice requiring improved performance. In any event, we would not ordinarily take sanctions on a first breach unless a serious risk to the client or fund presents. We have sought to reflect this approach in Clause 11 of our draft Standard Terms for 2010.
- 2.12 In practice, the consequences of poor performance could include one or more of the following:
- On site audit

- Agreed plan with account manager and undertaking to improve performance
- Extended quality monitoring
- Contract warning / notice requiring improved performance
- Loss of devolved powers
- Peer review (particularly where the principal concern is quality)
- Contract compliance audit.

For serious and persistent breach, the consequences could lead to:

- Contract termination
- Category termination
- Reduced likelihood of receiving a contract – or the same size of contract – in the next bid round

2.13 As contract sanctions will remain discretionary clear guidance will be needed as to whether action should be taken in relation to an individual breach. In particular, data on case outcomes will only be acted upon where a sufficient volume of cases has been concluded to be a meaningful indicator of performance.

2.14 The Standard Terms of the new contracts will govern the contractual status and consequences of breaching a KPI; these can be found at Clause 11. However the substance of the KPIs themselves will be set out in the Civil Contract Specification, since the content will be specific to civil. See Section 2.70-2.117 of the 2010 Civil Specification.

### **3. Proposed Scope of KPIs**

3.1 The following indicative KPIs appear in the Unified Contract:

- KPI 1 Civil Contract Work – matters and cases providing substantive benefit to clients – 40% (min) (Q)
- KPI 2 Controlled Work (non-fixed fee) – Assessment reduction – 10% (max) (V)
- KPI 3 Licensed Work – Assessment reduction – 10% (max) (V)
- KPI 4 Fixed Fee Margin – 20% (max) (V)
- KPI 5 Matter Start Usage – 85% (min) (A)

(A) = Access, (Q) = Quality, (V) = Value

3.2 Having reviewed these indicators, the LSC believes that they remain appropriate for use as KPIs. There is also an opportunity to implement new KPIs to reflect the way the LSC wishes to commission services. We have grouped the KPIs under the following headings with detailed and category specific targets under each:

- KPI 1 Quality: Case Outcomes
- KPI 2 Value: Claims and Costs
- KPI 3 Access: Meeting Client Needs

3.3 The contract sets out not just what the KPIs are (including definitions by reference to reporting codes) but also the categories within which each KPI must be achieved and the time period within which each will be measured. In general we expect that:

- The contract requires compliance with each KPI both overall and within each SQM Category (subject always to volumes). Certain KPIs will in any event be category specific
- KPIs 1 and 2 will be measured over a period of not less than three months. This will be a rolling three months. Where a supplier cannot demonstrate the minimum volumes during a rolling three-month period then we propose that their cases be

aggregated over a longer period of time until the minimum volumes have been met, but not exceeding a period of 12 months

- KPI 3 will be measured on an annual basis
- KPIs will be measured on any case reported from the start of the new contract.

#### **4. KPI 1 – Quality: Case Outcomes**

- 4.1 KPI 1 assesses providers primarily on how frequently they achieve outcomes that are a substantive benefit to the clients they work with. As suggested above, it is assessed separately for each category of law and level of service, so a provider cannot use strong performance in one category to offset weaker results in another. The nature of the benefit obtained varies from category to category, for example retaining possession of one's home in Housing, or obtaining compensation in a Clinical Negligence case.
- 4.2 This measure is of fundamental importance in assessing whether the service a provider offers delivers results. However, we have amended KPI 1 to better reflect the performance that is realistic in each category of law, amending the current requirement that 40% of cases should result in substantive benefit to the client in the light of providers' historic performance and the rules of the Funding Code. In some categories of law, at some levels of service, there is no legal aid merits test, and in these settings it is not appropriate for the LSC to apply an indicator that trades on providers' ability to use their legal expertise to assess the strength of a case.
- 4.3 The current approach taken to assessing KPI 1 is that there are no "neutral" outcomes. A case either results in benefit to the client, or it does not. Treating some outcomes as 'neutral' would be problematic for a number of reasons. Firstly, it is important to look at the full range of a provider's work. Secondly, removing certain codes from the calculations would necessitate percentages proposed in this paper being set at a much higher level as the percentages are currently set to take into account the 'neutral' outcomes issue. Taking out large numbers of cases from the sample would also mean there would be many more occasions where firms cannot demonstrate a sufficient volume within the measurement period.
- 4.4 We have already listened to feedback received from our providers. 'Advice Given No Further Action' is now counted as a benefit to the client. We have also amended the codes for referrals to mediation from 2010 to allow for this type of outcome to be more appropriately categorised.
- 4.5 The percentages are set on the basis that they are intended to provide minimum performance levels. These are set by comparison with the performance being achieved by the majority of providers in these categories. The average success rates are materially higher than these minimums. Our intention is to encourage high performance from our providers, and we expect our providers to consistently exceed these minimums.
- 4.6 We will measure KPI1 over a rolling three-month period with a minimum volume of 10 cases per category of work.
- 4.7 This indicator relies heavily on the accurate and consistent use of outcome codes. Accurately reporting a case will continue to be a contract requirement. There have been widespread examples of misreporting for example in the family category use of stage reached FA (case concluded at the first meeting) when claiming more than a basic level 1 fee.
- 4.8 We will continue to monitor providers to ensure they are correctly reporting work. This will be done through use of management information and contract management activity

- 4.9 Applying the 40% standard to all categories and levels of service (except Special Children Act cases or Controlled Legal Representation in the Mental Health category of law) has proved too simplistic, and a new approach to setting KPI standards is set out below.

### **Legal Help**

- 4.10 Legal Help funds advice, with the principal aim of ensuring that clients are in an informed position regarding their rights and options. In many categories, where a provider completes a range of cases, the LSC believes it is reasonable to expect them to be able to deliver a substantive benefit to a proportion of clients. This proportion will vary from category to category. Current national Legal Help outcomes are summarised in Appendix 1 at the end of this paper.
- 4.11 Outcomes are reported at the close of each Legal Help case using codes that the LSC has specified. We propose the following application of substantive benefits:

Case type	Substantive benefit %	Notes
<ul style="list-style-type: none"> <li>Mental Health (Tribunal work)</li> </ul>	Not applicable	There is no merits test for this work
<ul style="list-style-type: none"> <li>Actions Against the Police</li> <li>Clinical Negligence</li> </ul>	Not appropriate	Legal Help is predominantly used for initial investigation of claims, so lawyers unable to assess merits at outset
<ul style="list-style-type: none"> <li>Immigration asylum</li> <li>Immigration non - asylum</li> </ul>	15%	
<ul style="list-style-type: none"> <li>Community Care</li> <li>Consumer</li> <li>Education</li> <li>Employment</li> <li>Housing</li> <li>Miscellaneous</li> <li>Personal Injury</li> <li>Public Law</li> <li>Tolerance</li> </ul>	40%	
<ul style="list-style-type: none"> <li>Welfare Benefits</li> <li>Debt</li> </ul>	50%	

- 4.12 Where the LSC has concerns about a provider's performance on Legal Help, our first step will be to drill down into more detailed outcome information. This will enable us to identify what type of results are causing the provider's performance to go out of profile, and form the basis for discussing how performance can be improved.
- 4.13 We recognise that one of the functions of Legal Help is to filter out cases which ought not to proceed further. Where a client is correctly advised not to proceed, that outcome does not produce a tangible benefit for the client but might be a good outcome for the fund if litigation costs are thereby avoided. For this reason we will not apply a KPI for Legal Help outcomes in Clinical Negligence, Mental Health, and AAP.
- 4.14 Note that no sanction will be applied if KPI 1A alone is not met, unless the failure relates to Debt, Education or Welfare Benefits
- 4.15 A list of Legal Help outcome codes and details of how they impact on this indicator is attached to the back of this paper in Appendix 1. The full list of Outcome codes and their definitions can be found on our website.

### ***Controlled Legal Representation and Licensed Work***

- 4.16 The grant of CLR and Civil Representation (post-investigation) are premised on the case having sufficient prospect of success. The Funding Code specifies the prospects that a case must have in order to merit funding.
- 4.17 In our view, these services should show a strong correlation between Code criteria and success rates. For example where the Code specifies a minimum 50% (moderate) merits threshold meaning that cases taken on should have prospects of success of 50% or higher, we would expect suppliers to achieve successful outcomes in the majority of cases, assuming a reasonable volume of cases is concluded such that outcomes reported cannot be attributed to an anomalous series of results (minimum volume of 10 cases).
- 4.18 The Code criteria are based on likely outcome if determined at trial, not on likelihood of settlement, which will be much higher in most categories. This is another reason why average success rates should be significantly higher than minimum Code thresholds. We have also distinguished categories of cases where it is usual for the initial grant to be for Investigative Help. In such cases it is important to look not just at overall success rates but, perhaps even more significantly, at success rates of cases which proceed beyond initial investigations.

<b>Case type</b>	<b>Investigative Help typical?</b>	<b>Minimum Merits</b>	<b>Substantive benefit (All Certificates)</b>	<b>Substantive benefit (Post-issue of proceedings)</b>
• Mental Health Tribunal	No	No test/ Reasonable ness	Not appropriate	Not appropriate
• Community Care • Education • Housing (Possession) • Immigration CLR* • JR (any category) • Upper Tribunal • Welfare Benefits	No	Borderline	40%	N/a
• Actions Against the Police	Yes	Borderline	30%	50%**
• Clinical Negligence • Professional Negligence	Yes	Moderate	30%	60% **
• Consumer • Debt • Housing (Disrepair) • Miscellaneous • Other Cases under the General Funding Code	No	Moderate	50%	N/a

\*See Appendix 1; paragraph VI for more detail on Immigration CLR.

\*\*Our intention would be to increase these figures by 10% from 2013

- 4.19 The LSC retains this indicator in the 2010 contract as a means of monitoring the quality of a provider's work.

### ***Alternative Dispute Resolution (ADR)***

- 4.20 Case outcomes that benefit the client directly need not be the only ones considered under KPI 1. Section 4 of the Access to Justice Act tasks the LSC with encouraging dispute resolution. Mediation and other ADR techniques are therefore strongly encouraged in the Funding Code.

- 4.21 The government and the LSC have for many years had strong policies in favour of greater use of mediation and other forms of Alternative Dispute Resolution. This is reinforced by our statutory duties – section 4(4)(c) of the Act requires us to seek to: “achieve the swift and fair resolution of disputes without unnecessary or unduly protracted proceedings in Court”. There is also strong judicial support for ADR and a government pledge to use mediation in all “appropriate” cases. Further we have a direct financial interest in encouraging early resolution. These policies are primarily reflected in our support for family mediation and in pro –ADR criteria in our Funding Code and Guidance.
- 4.22 Despite this guidance and judicial support, the use of ADR in funded non-family proceedings remains low. Outcome codes indicate that more than 96% of non-family certificates end without either side even proposing ADR. We do not believe this reflects the value that ADR can bring to funded clients. It would be inappropriate to require that ADR be used in a fixed proportion of cases, as take-up depends on cooperation from the other side. Therefore we expect that, as part of KPI 1, ADR must be either proposed or accepted (where the other side proposes it) in no less than 10% of a provider’s Civil Representation cases where appropriate. We accept that there are some Categories, such as Immigration and Mental Health, where this requirement may not be appropriate.
- 4.23 The KPI on Non-Family ADR is new and will apply from 1 April 2012 and we will work with providers to help them to meet it. During the first 17 months of the contract (i.e. until 1 April 2012) we will take no contract sanctions under these KPIs, but will use them as management information. From 1 April 2012, the normal enforcement principles set out in section 2.10 – 2.14 will apply.

***Timeliness for Completion of Cases***

- 4.24 The LSC considers that timely completion of cases is an essential component of the service we are procuring. In some periods, particularly pre proceedings in negligence cases, progress is in the control of the litigators. The LSC does not presently have sufficiently advanced information to make proposals at this time for KPIs. In the interim it is proposed that management information be developed for monitoring the timely progress of a case.

**5. KPI 2 – Value: Claims and Costs**

- 5.1 KPI2 assesses providers on the value for money of the service they provide. It will measure whether providers are providing the service at an appropriate cost – be it hourly rates, fixed fees or graduated fees.

***Controlled Work (exceptional cases) – Assessment reduction – 10% (max)***

- 5.2 The Assessment reduction for Controlled Work has been set bearing in mind our published costs assessment guidance and the rules in the Specification. It is the maximum percentage reduction of Claims on Assessment that we expect to be made.
- 5.3 We will measure this indicator over a rolling three-month period and will base any assessment on a minimum volume of 5 cases per category of work. For any provider unable to meet the minimum volume during a three-month period we will aggregate cases over a longer period of time until this can be met.
- 5.4 The LSC has considered reducing the acceptable percentage reduction to 7.5%, but believes that 10% reflects more appropriately the legitimate differences in judgement that two people may have when looking at a bill. We therefore retain this indicator in the 2010 contract as a means of monitoring the value for money of a provider’s work



***Licensed Work – Assessment reduction – 15% (max)***

- 5.5 The Assessment reduction for Licensed Work was set bearing in mind our published costs assessment guidance and the rules in the Specification. It is the maximum percentage reduction of Claims on Assessment that we expect to be made.
- 5.6 We recognise that for Licensed Work there is a considerable element of discretion in cost assessment, particularly in relation to the level of enhancement to be allowed. To ensure that suppliers are not inappropriately deterred from claiming enhancements due under the contract, we have changed this KPI to allow greater flexibility by replacing the 10% threshold for reduction under the current KPI with 15%. Otherwise we will retain this indicator in the 2010 contract to monitor the value for money of a provider's work
- 5.7 As for controlled work, we will measure this indicator over a rolling three-month period and will base any assessment on a minimum volume of 5 cases per category of work. For any provider unable to meet the minimum volume during a three-month period we will aggregate cases over a longer period of time until this can be met.

***Fixed Fee Margin – 20% (max)***

- 5.8 The Fixed Fee Margin is the amount by which the fixed fees a provider claims for Controlled Work exceed the costs that would have been payable had the previous hourly and per item rates applied. We will monitor the relationship between average case costs and the fee paid through management information and raise concerns with providers where the management information shows significant variances.

***Damages: Net costs – 2:1 (min)***

- 5.9 In areas of law where the main focus of Licensed Work is the recovery of damages, the LSC wants providers to demonstrate that the work they do is good value for money. In Clinical Negligence and Actions Against the Police, the LSC will monitor the costs that providers report (net of costs recovered from the opponent when cases are settled or won). It will compare this with the damages that a provider recovers for its clients. We expect that as a minimum, damages should be more than double the net costs incurred. However we will continue to seek better data on damages recovery that might justify a higher threshold.
- 5.10 This KPI supplements the current KPIs and forms part of the LSC's monitoring of the value for money a provider's work offers. It recognises that some suppliers specialise in the most complex cases which will tend to involve high costs and high damages. Comparing net damages recovered for clients (successful cases) with net costs to the fund (unsuccessful cases) may be a fairer comparison of suppliers than looking at costs alone.
- 5.11 This is a new KPI and we will work with providers to help them to meet it. During the first 17 months of the contract (i.e. until 1 April 2012) we will take no contract sanctions under this KPI, but will use it as management information. From 1 April 2012, the normal enforcement principles set out in section 2.10 – 2.14 will apply.

**KPI 3 – Access: Meeting Client Needs**

***Minimum Matter Start usage***

- 6.1 Matter Start usage is the percentage of the Controlled Work Matter Starts, allocated to a provider at the start of each year, which they have used by its end. The LSC wants to ensure that clients have access to services, by ensuring that its providers wherever possible deliver the volume of work specified within the contract.
- 6.2 The 85% standard in the current contract allows providers sufficient flexibility to deal with any unforeseen disruption to their services, whilst giving the LSC assurance that the monies it has budgeted will be utilised.

- 6.3 The KPI will require that providers must use at least 85% of the volume of New Matter Starts for each category allocated under the Schedule during the Schedule period.
- 6.4 Where the Schedule covers more than one Procurement Area, the KPI must be complied with each Procurement Area
- 6.5 Note that if the 85% of the allocation of Matter Starts is no greater than the Minimum Matter Starts specified under the Schedule (see paragraph 2.18 of the 2010 Civil Specification) the Contract obligation to that minimum takes precedence over this KPI.

## Appendix 1 – Outcome Codes

### KPI Calculation

- I. The following paragraphs set out how individual Outcome Codes will be treated for the purposes of the KPIs set out above. The full list of our Outcome Codes and their definitions are set out on our website. You must report all case outcomes promptly, fairly, and accurately using our published codes. Only correctly reported codes may be relied upon as evidence of compliance with your KPIs. This information on outcome codes can also be found in the 2010 Civil Specification paragraphs 2.106-2.115.

### Legal Help Codes

- II. For cases concluded under Legal Help, Help at Court and Family Help (Lower), the following outcome Codes will be treated as demonstrating a Substantive Benefit for the Client for the purposes of KPI 1A:

#### **Consumer General Contract**

GA, GB, GC, GD, GE, GF, GG, GH, GK, GL

#### **Community Care**

CA, CB, CC, CD, CE, CF, CG, CH, CI

#### **Debt**

DA, DB, DC, DD, DE, DF, DG, DH, DJ

#### **Education**

EA, EB, EC, ED, EE, EF, EG, EH, EI, EJ

#### **Employment**

YA, YB, YC, YD, YE, YF, YG, YH, YI, YJ, YK

#### **Housing**

HA, HB, HC, HD, HE, HF, HG, HH, HI, HJ, HK, HL

#### **Immigration**

IA, IB, IC, ID, IG

#### **Miscellaneous**

XA, XB, XC, XD, XE, XF, XG, XH, XI

#### **Personal Injury**

PA, PB, PC, PD, PE

#### **Public Law**

BA, BB, BC, BD, BE, BF, BG, BH, BI, BJ, BK, BL

#### **Welfare Benefits**

WA, WB, WC, WD, WE, WF

- III. All other outcomes are considered to not provide the client with substantive benefit.

### **Immigration CLR Specific Outcome codes**

- IV. For cases concluded under CLR in the Immigration Category, the following outcome Codes will be treated as demonstrating a Substantive Benefit for the Client for the purposes of KPI 1B:

**Immigration**

IA, IB, IC, ID, IG

- V. For cases concluded under CLR in the Immigration Category, the following Outcome Codes will be excluded from any calculation (either as numerator or denominator) for the purposes of KPI 1B:

**Immigration**

IV, IW, IY, IZ

- VI. In the Immigration Category, CLR for cases in the Fast Track Scheme (as defined in the Immigration Specification) will not be taken into account for the purposes of KPI 1B. Applications for stage payments will not be taken into account for the purposes of KPI 1A and 1B. Only cases reported using the following Stage Reached codes will be taken into account for these KPIs:

KPI 1A (Legal Help): IE, IF

KPI 1B (CLR): IG, IH, IK, IS

### **Legal Representation Other than CLR**

- VII. For Legal Representation (other than CLR) the following certificate outcome Codes will be treated as demonstrating a Substantive Benefit for the Client for the purposes of KPI 1B:
- i. Certificate Outcome Endpoint 3: Codes A to O inclusive
- VIII. For the Consumer and General Contract Category, only certificates covering proceedings for professional negligence, as evidenced by Proceedings Code CO 035, will be taken into account for the purposes of KPI 1B and 1C
- IX. For the purposes of KPI 1C (Post Investigation Success) only the following certificates will (subject to the following Paragraph) be taken into account:
- i. All certificates in which you achieved a Substantive Benefit for the Client (as defined at Paragraph VII); and
  - ii. All other certificates which concluded after issue of proceedings: Certificate Outcome Endpoint 1: Codes B, C, or D.
- X. For the purposes of KPI 1B or C (Licensed Work Outcomes) the following certificates will be excluded from any calculation (either as numerator or denominator):
- i. Certificates concluded with Endpoint 3: Code Q (Outcome not known/Client proceeding by other means).

### **ADR**

- XI. For the purpose of KPI 1D, the following certificate outcome codes will be treated as demonstrating that you have either proposed or used ADR:
- i. Certificate Outcome Endpoint 4: Codes B, D, E, F, G, H, I, and J.