RM Assurance Process

Guidance for RM Visits

Version 8

Contents

1. Section A

1.1 Introduction

This is the first edition of the manual to support Relationship Manager (RM) input into the Financial Stewardship Process. This will be a "living, breathing document" that will be kept up to date to help RMs meet the need to validate providers' control of key areas.

Additional elements will be introduced in Phase 2 over the coming months, as lessons are learned from Phase 1.

It is important to note that, whilst this Guidance contains extracts and summaries of rules contained in the Contract, the Contract itself takes precedence at all times.

John Sirodcar
National Relationship Director (Large)
April 2010

1.2 Prioritisation and Frequency of Visits

This will be determined by data held in the Provider Dashboard, once operational.

1.3 Preparing for Visits

- RMs will need to consider other provider activity – see Section B for how this will impact on any visits

- RAs will provide a pack of information ahead of any visit

- RMs should also review the "Preparing for your visit" section in each of the areas of Section C

- Visits are designed to provide an assurance check on all areas identified for phase 1 of the Financial Stewardship activities (where applicable)

- Where assurance checks demonstrate areas of concern, RMs will be asked to consider:

    a) Arranging for further files to be sampled in that area
    b) Escalating to Provider Assurance, or in extreme examples, the Fraud Team for audit activity/investigation
    c) Reducing or nil assessing claims
    d) Whether raising sanctions is appropriate

To prepare for your visit, you should write to the provider explaining the purpose of the visit, and where closed files are to be audited, ensure that they have been allowed sufficient time (usually 14 days) to make them available should the files be stored off-site.

On the visit itself, RMs are asked to look at 5 files **in each of the areas listed in Section C** (where relevant). It may be possible to check more than 1 area on some files (e.g. Family L1&2 and Means), and RMs will not necessarily have to review 5 separate files per area.

2. Section B – Other Provider Activity

The following is the proposed action to be taken by Relationship Managers in the following areas:

2.1 Contract Compliance Audits and Peer Review Results

2.1.1 Issues

- Reports for CCA audits are not being consistently received by RM
- When reports have been received, RMs have historically often taken the view that no action is needed if a A3 score (CCA) or PR4 (peer review) was the result and that "the process" of taking a further sample in 6 months by the CCA or peer review team will "deal" with the issue
- Providers have often made representations and appealed when the underlying issues need action by the provider.

2.1.2 Revised process

- All CCA and peer review audits will be sent to ARMs
- A high level summary showing which audits are started and planned and the status of each, will be sent to NRDs each month

2.1.3 Revised RM action

If any PR4 or A3 score is received, RMs will:

- Contact the providers within a week to discuss the result
- If the provider intends to make representations (and then appeal) this is permitted under the contract and should, of course, be allowed
- The RM will discuss the main issues raised by the audit and be clear that the firms representations are valid and are agreed at a senior level in the provider
- The RM will satisfy themselves that no financial stewardship issues are arising that needs action by the firm, as a priority, irrespective of the outcome of the representations. If actions are needed, the RM will ensure that the provider documents these and a clear timeline for action is agreed. The RM will follow up such action to conclusion

RM activity in these areas should not interfere with any representations or appeals made in line with the CCA or Peer Review process.

Peer Review and CCA results will be displayed on the Provider Dashboard from April 2010 onwards.

2.2 Audit

Provider Assurance audits have been scheduled in for Apr-Jun 2010 (inclusive) by assessing risk from a number of sources: CCA results; Data Validation Exercises; referrals from RMs.

A list of scheduled audits has been circulated to Commissioning Teams and any provider on this list should not receive a Financial Stewardship visit.

From July onwards, it is anticipated that audits will be scheduled based on RM referrals from this process, and the audit schedule will be updated on a rolling basis.

2.3 Fraud

Provider Assurance will provide a list of all providers currently being investigated by the Fraud Department to the NRDs on a Monthly basis. Firms being investigated will be excluded from the RM Assurance Visit Process.

3. Section C1 – Obtaining & Retaining Evidence of Means (Civil only)

3.1 Key Contract & Other References

- Community Legal Service (Financial) Regulations 2000
- Funding Code Procedures Para B6.1 & 2 - requirement to undertake a financial assessment and have the evidence before assessment
- Unified Contract Civil Specification General Provisions:
  Para 2.4 – requirement to retain evidence of means on file
  Para 2.5 – exceptions to requirement to have evidence before starting work.
- Legal Services Commission Manual Volume 2 Part F Section 12 – Evidence of Means requirements and examples of acceptable & unacceptable evidence.

3.2 Further Guidance and Assistance

- http://www.legalservices.gov.uk/docs/civil_contracting/100213ContractComplianceAuditTrends19Feb2010_.pdf - common audit trends
- http://www.legalservices.gov.uk/civil/cls_news_10881.asp?page=1 - Legal Help Financial Eligibility – Advice for providers
- http://www.communitylegaladvice.org.uk - civil legal aid eligibility calculator
- http://www.legalservices.gov.uk/docs/civil_contracting/keycard46.pdf- Civil Eligibility Keycard (rates from April 2010).

3.3 Preparing For Your Visit

You should ascertain whether the organisation has been subject to a Contract Compliance Audit since the introduction of the Unified Contract and if so, whether the retention of evidence of means was noted on any of the files reviewed

Check in SMS using the Post Submission Outcomes Report whether the organisation have made a claim for any exceptional cases and if so whether any of those claims were refused on the basis of the client being ineligible or failing to retain evidence of means

3.4 At the Provider's Office

Initially, select 5 recently closed files at random and check for evidence of eligibility. Note that these could be stored away from the office under Clause 9.1 Standard Terms. The RM should provide 14 days notice to obtain files.

You should see:

- A completed Legal Help (CW1) or Controlled Legal Representation (CW2 Imm) form, or combined form for Mental Health (CW1&2 MH) on file, which the client must have signed or signed on the client's behalf in accordance with the provisions of Rule B5 Funding Code Procedures.

- Evidence, which supports the financial information used in the assessment for the main sources of income such as wages, tax credits or state benefits (as applicable).

- The evidence should cover as much of the assessment period as possible (e.g. Most recent wage slip will suffice – this MUST be dated within one month of the Legal

Help form being signed). However, for passporting benefits we will accept a letter from the Department for Work & Pensions, which predates the date of the LH/CLR for by up to 6 months. The guidance also allows for the provider telephoning the benefit office whilst the client is with them and making a telephone note of the confirmation. The relevant question here is: "was the client in receipt of a passporting benefit at the date the CW1 was signed?"

- Where the client's declared housing expenses exceed a third of their gross income then supporting evidence (bank statement, mortgage statement or rent book) should be obtained.

- Where a person working full time i.e. 35hrs + per week declares childcare expenses in excess of £600 per month then documentary evidence (copy of bank statement showing payment or copy of contract/agreement with nursery/childminder) should be obtained. The £600 per month 'trigger' should be pro-rata'd for part time workers.

Guidance is provided below to avoid the most common means assessment errors:

- A common error involves various welfare benefits incorrectly being treated as passporting benefits. There are over 40 different benefits, but only four are passporting benefits for all civil matters. They are:
    1. Income Support
    2. Guarantee Credit (Pension Credit)
    3. **Income Based** JobSeekers Allowance
    4. **Income Related** Employment and Support Allowance.

- Benefits received from other countries are **not** passporting and a full financial assessment must be undertaken.

- NASS Support is only passporting for LH/CLR in Immigration & Asylum matters. Confirmation from NASS or Local Authority that the individual is in receipt of support or copy of a NASS voucher. Written evidence should be less than 6 months old.

- State Benefits are paid either weekly, fortnightly or 4 weekly and therefore must be adjusted to give a calendar month's figures (weekly = multiply by 52 then divide by 12, fortnightly = multiply by 26 then divide by 12, 4 weekly = multiply by 13 then divide by 12)

- The only sources of income which can be excluded are:
    i. Disability living allowance;
    ii. Attendance allowance;
    iii. War Pensions;
    iv. Constant attendance allowance;
    v. any payment made out of the social fund;
    vi. Carer's Allowance;
    vii. Council Tax benefit;
    viii. Housing Benefit;
    ix. Direct payments made under the Community Care, Service for Carers and Children's Services (Direct Payments) (England) Regulations 2003(a) or the Community Care, Service for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004(b);

x. Any back to work bonus received under Section 26 of the Jobseekers Act 1995 as is by virtue of that section to be treated as payable by way of jobseeker's allowance;
xi. Severe Disablement Allowance;
xii. Exceptionally Severe Disablement Allowance;
xiii. Foster Care payments, which exceed the relevant dependants allowance;
xiv. Any payment made out of the Independent Living Fund (2006).[1]

If the source of income is not on that list it must be included in the assessment. Some of the exceptions are very specific and it may not be possible to make a determination without seeing the relevant documentation. In cases of doubt where an assessment has to be made without the relevant information it would be advisable to include the income in the initial assessment.

- A client who has made a claim for, but not yet been awarded a passporting benefit is not passported and a full assessment should be undertaken. If it is advised that the client has no income then the provider should determine how day-to-day living expenses are currently being met – assessing any financial support received from friends or family – and when the claim for benefit was made. If benefits are subsequently awarded then a copy of the award notice should be obtained and retained on file.

- In civil cases, if the gross income exceeds the gross income cap, the client is not eligible. The assessment is stopped at that point; there is no need to determine disposable income.

- The only allowances which can be made are: Income Tax; National Insurance; Housing costs i.e. rent / mortgage; Childcare costs for those who are in paid work or self employed (it is not available for student nurses or students generally); maintenance in payment to a former partner and / or dependants; criminal legal aid contributions; a fixed allowance for employment expenses; fixed allowances for partner and dependants living in the same household. No other allowances can be made.

- Employment expenses are a fixed allowance of £45 per month for employees only (it is not available for the self-employed). The allowance for housing costs must be for the client's main or only dwelling and Allowed housing costs cannot exceed £545 per month where no partner/dependants' allowances are being made in the assessment.

- Where the client indicates they are paying for board and lodging an allowance can only be made for the accommodation element. If the client cannot provide a breakdown between board and lodging then assume that half of the figure given for board and lodging is for accommodation (LSC Manual Volume 2 part F 6.4.2)

- In relation to evidence of income, it is commonly the case that no evidence has been obtained or that the evidence provided does not match the figures used in the assessment.

[1] For practical purposes, the fostering payment should be wholly excluded from the gross income calculation, no child dependants allowance should be deducted in respect of the child concerned.

- If reviewing bank statements, we would usually expect to see a month's worth of transactions. However, if a shorter period (e.g. 14 days) is provided, but it is clear that the type of income being assessed is likely to be fixed (e.g. weekly child support or benefit payment) then this can be accepted as proof.

3.5 Exceptions

3.5.1 Para 2.5 Unified Contract Civil Specification General Provisions set out the exceptions to the requirement to obtain the evidence before starting work, these being:

a) Where it is not practicable to obtain it before commencing work
b) Pre-signature telephone advice is given
c) Exceptionally, the client's personal circumstances (such as mental disability or homelessness) may mean that it is not possible to obtain the evidence at any point in the case

Unless c) above applies then the evidence should subsequently be obtained, and failure to do so will lead to the file being nil assessed or, where a) above applies, the claim limited to the work carried out in the period before it was reasonable for the client to have provided the evidence.

For example, it may be impracticable for a person who has fled their home to provide the evidence before work is commenced. However they would normally be able to subsequently obtain evidence such as a bank statement or wage slip; or exceptionally it may be that the particular circumstances of that client might then mean that it will not be possible to obtain the evidence at any point in the case.

However, these exceptions are not blanket exclusions and should be applied on a case-by-case basis with the reasons recorded on the LH/CLR form. The circumstances of the individual case must be considered and it would need to be a combination of circumstances that actually made it unreasonable: in a homelessness case, life is likely to be more chaotic; income may be more ad-hoc; and there will be a greater presumption that the client is eligible. Alternatively, the nature of the client themselves may make it appear reasonable: if their mental health condition makes it clear that they are not able to organise the provision of evidence.

It is not considered that the client just attending the initial interview without evidence makes is 'impracticable to obtain it before commencing the controlled work' and by starting work without the evidence, the provider runs the risk of not being able to claim for the work if the evidence is not subsequently obtained, even if the provider has made repeated requests for the evidence, or if the client is subsequently shown not to be financially eligible.

The provisions allowing payment where no evidence is supplied or the client is subsequently found to be ineligible now only apply where the provider acted reasonably in commencing work without evidence. In this situation the provider may claim the fixed fee, together with any disbursements that needed to be incurred in the period before it would have been reasonable for the client to provide the evidence. If instead the matter is payable at hourly rates, the provider is limited to claiming 2 hours profit costs, and disbursements as above. As this limitation would

reduce the costs of any matter governed by fixed fee schemes below the relevant Exceptional Cases threshold, any such case would be assessed down to a fixed fee.

3.5.2 Legal Help and Controlled Legal Representation in relation to Mental Health Tribunal cases is not means tested.

3.5.3 If the means assessment has been incorrectly calculated and the client is not eligible, no claim should be made for that matter. If a claim has already been submitted, it should be nil assessed through SMS

3.5.4 In practical terms, we will accept evidence in support of the assessment regardless of when it is obtained, so if the file is still open the provider should obtain the evidence before making a claim for that matter

3.5.5 If there is no, or inadequate evidence in support of the means assessment then the provider should be given 28 days to obtain the evidence and submit a copy of the LH/CLR form and evidence for review. Until the 28 days has passed, you cannot take action against the provider, as subsequent provision of the evidence will mean that the means assessment is fine.

3.6 Outcomes & Follow-up Action

- See Section D for guidance on when you should take further samples, apply contract sanctions, or escalate to Provider Assurance.

- Files identified, as having been wrongly claimed should be nil assessed by using the standard claim amendment forms and sending to Provider Assurance for processing.

- If RMs come across errors (e.g. calculations are incorrect), but the client is still eligible, this should be pointed out to the provider, but no further action should be taken.

4. Section C2 - Case Splitting & Duplicate Claiming (Civil Only)

4.1 Key Contract & Other References

- General Provisions : Unified Contract Specification 5.6 – 5.22 (incl.)
- Family Provisions: Unified Contract Specification 10.67 – 10.71 (incl.)
- Debt Provisions: Unified Contract Specification 13.2
- Employment Provisions: Unified Contract Specification 14.1
- Housing Provisions: Unified Contract Specification 15.4 – 15.9 (incl.)
- WB Provisions: Unified Contract Specification 16.6 – 16.7 (incl.)

The above categories have predominantly seen the greatest instances of case-splitting in previous exercises – see Appendix 2 for a copy of the relevant references.

4.2 Further Guidance and Assistance

- LSC Recurring Client/Case Splitting Tool. RMs can access this tool via **H:\REGION\LocalOperationalInformation\PerformanceManagement\Recurringclientstool**
- LSC Recurring Client/Case Splitting Tool – Brief User Guidance v1.0, stored alongside the data above.

4.3 Preparing for your visit

The MI Dashboard will flag up any potential incidents of case-splitting The RM will then access the Recurring Clients tool to pinpoint specific claims to review

The tool identifies various scenarios where shared values have been reported for certain key CMRF fields (UCN, start/completion date, matter type 1, etc.) These have been RAG rated, with red scenarios potentially being the most clear cut examples of case-splitting. Guidance concerning the RAG rating is available alongside the Recurring Clients tool

RMs should focus on client (UCN) pairings that occur within the same category of law and duplicates. Full details of these scenarios can be accessed on the tool

The RM should then forward a list of the cases identified by the tool to the provider and detail the concerns raised

4.4 At the Provider's Office

Generally, the RM will be able to get an idea as to the nature of the advice given from the initial attendance note and/or client care letter on file, but should skim through the entire file in order to obtain a fuller picture of the legal issue in each case. **Attendance notes** and **correspondence** will be the key documents on file.

As a starting point, RMs should have a full understanding of the general guidance governing separate matters, returning clients and matter end definitions (Paras 5.6 – 5.22).

4.4.1 Category Specific Guidance – Common Issues

Family

It is important to note that if there is any doubt as to the operation of the relevant paragraph in the Unified Contract; RMs should discuss and/or refer the issue to the legal or operational policy team.

Para 10.68 says that a client cannot generally have two family matters open at the same time. Common occurrences will involve one matter relating to contact and a second matter opened to draw up a will to appoint guardians for the same children; or one matter relating to domestic abuse, and another matter opened to draw up a change of name deed, as the client does not want to be known by previous name.

Providers have argued that these are separate issues in terms of law and procedure and would not form part of the same proceedings, and so therefore justify separate starts. However, the bottom line remains that if two concurrent Family matters arise out of the same presenting set of circumstances, then they remain one matter. Only where issues arise in relation to two entirely separate family relationships will more than one Matter be justified (10.69)

Debt

It is important to note that if there is any doubt as to the operation of the relevant paragraph in the Unified Contract; RMs should discuss and/or refer the issue to the legal or operational policy team.

Providers often open a second matter, which is not fully justified under Para 13.2. For example, opening separate matters for priority and non-priority debts or opening separate matters where there is a "threat" of proceedings or enforcement action for more than one debt. Para 13.2 is in fact very clear: one matter should cover advice and correspondence in relation to all a client's debts. If only one of these debts has given rise to the actual issue of proceedings, to specific enforcement action (e.g. issue of a formal disconnection notice), or is disputed for its own specific reasons, then this should all be dealt with under that same initial matter.

If there are proceedings, enforcement or a contested liability over a second debt, then a second matter may be opened, and so on. Another practice is to open a matter in relation to one debt, carry out a bit of work and then close the file. Client returns within a short period for advice in relation to a second debt, and a new matter is opened. This will not generally be allowable, since on the first occasion the provider is expected to advise regarding all the clients debts, so this is all really one matter. Para 5.15 then comes into play, and rules out a new matter start: (a) within three months, if there has been an unforeseen material development, otherwise (b) within six months of submitting the claim for the first time.

One contentious issue is where providers are opening separate matters in relation Magistrates Court fines handed down in criminal proceedings. This is not permissible since this work falls under the Crime SQM, is not Associated CLS Work and so cannot be carried out under any civil SQM; such matters should be referred to a CDS provider - and if no proceedings have been issued for non-payment then the requirements for a separate matter aren't met in any case.

Welfare Benefits

It is important to note that if there is any doubt as to the operation of the relevant paragraph in the Unified Contract; RMs should discuss and/or refer the issue to the legal or operational policy team.

Providers may sometimes open two or more matters when advising clients about entitlement to more than one benefit, whether or not the client has encountered a specific problem in claiming one or more of these benefits. The argument is generally that the rules concerning entitlement are complicated and/or forms need completing in specific legal terms and more than 30 min work is needed in relation to each different benefit.

Where advice on entitlement is justified (paragraph 16.1 says that benefit checks may only be provided in specific circumstances and paragraph 16.2 rules out advice where the client could easily deal with the matter themselves e.g. by an enquiry to the relevant benefits authority) this is one matter, however many benefits might potentially be available to the client, since there is just one presenting problem - e.g. "in my circumstances, what benefits can I claim?" or "Which benefits is it best for me to claim?" This one matter will include assistance in completing forms for DLA applications: no other benefit is mentioned in 16.3.

Generally helping the client complete a benefits form cannot be claimed as advice under legal help. Two possible exceptions to this are Disability Living Allowance and Attendance Allowance. If you come across claims for form filling relating to any other benefits please discuss with the organisation why they considered this appropriate and if in doubt please refer to legal team. We must not lose sight of sufficient benefit and the fact that this is essentially a private client test; we have to ask whether a client would pay their own money for the advice and assistance in relation to making a claim or seeing whatever other benefits might be available.

This one matter will also include assistance to the client if there is then a problem with an application for one of these benefits, e.g. appeal, and/or overpayment and/or assistance with backdating (including for a fresh claim if it covers the same period as the appeal/overpayment). Para 16.7. states that a second matter start will only be justified if there is a specific problem with more than one benefit, involving different factual or legal issues; for example, housing and council tax benefit appeals may accompany an income support or jobseekers allowance appeal, but involve the same legal and factual issue regarding financial eligibility.

Conversely, where there is more than one appeal in relation to different benefits, qualification for which are subject to separate and distinct tests, more than one Matter is legitimate, even if entitlement arises from the same general issue, such as a particular disability.

Housing

It is important to note that if there is any doubt as to the operation of the relevant paragraph in the Unified Contract; RMs should discuss and/or refer the issue to the legal or operational policy team.

It's not uncommon to see separate matters for advice on a repossession action, and for work relating to housing benefit. These are generally ok. Housing benefit matters and possession cases will usually involve different legal arguments, may involve different

opponents and any proceedings that arise from the housing benefit issues are likely to be separate. It would only be exceptional cases that resolution of one issue would automatically resolve the other in full.

We have previously identified common occurrences where providers open a third matter in such cases concerning disrepair - we have indicated these would not normally be justified if the possession proceedings are based on rent arrears, as any problems of this sort would almost certainly be relevant in the possession proceedings and could be covered as part of the advice given on the possession matter.

For homelessness cases, the rules on where more than one Matter can be opened are quite detailed and specific (15.6). Note that a separate matter should not be opened for a request for permanent accommodation under Part VI Housing Act 1996 unless there are issues separate from establishing entitlement to homelessness accommodation needing to be dealt with (15.9).

For disrepair cases not involving possession, there should generally only be one Matter Start – only where proceedings are actually being pursued both in the county court and magistrates' court (Environmental Protection Act prosecution) can a second Matter be opened (15.4).

A transfer request based on disrepair will only justify a second Matter where the extra work specifically in relation to that request meets the requirements of 5.8 and 5.9 and there is sufficient benefit in relation to that request – note that there is generally little that can be done to assist with transfer requests unless the client's circumstances are serious and it can reasonably be argued that the local authority has not properly applied its transfer policy or that policy is irrational/unlawful.

Mixed categories

It is important to note that if there is any doubt as to the operation of the relevant paragraph in the Unified Contract; RMs should discuss and/or refer the issue to the legal or operational policy team.

Some providers have argued that separate matters can be opened because they involve different categories of law - for example a client has mortgage arrears and various other debts, so separate matters are opened in the housing and debt categories. This is inappropriate as the debt SQM includes advice in relation to mortgage/rent arrears, so these can be treated just like any other debt and would fall within the initial debt advice matter. A second matter might then be justified following the principles in 13.2, e.g. proceedings/enforcement in relation to both the arrears and one of the other debts. Similarly, advice on income maximisation is a normal part of advice to a debt client, so it would be inappropriate to open a WB matter in addition to a debt matter as a matter of course simply to advise on benefits that might be available to a client. There are quite a few crossovers in the social welfare categories and there is no need to split a matter, which really arises from just one problem just because the issues straddle different categories of law.

The questions to consider here are:

- Whether there are actually issues potentially in different categories which meet the sufficient benefit test
- If so, whether they are necessarily in different categories (5.8(a)).

The fact that a matter may arise from the same problem does not rule out separate matters if there are substantial legal issues necessarily in different categories e.g. if a client has a council tax summons there may be a valid debt and welfare benefits (council tax benefit) Matter Start.

There are, however, some matters that could be in more than one category and it would be wrong to open separate matters just because one of the issues could be in a different category e.g. the above example regarding mortgage arrears and other debts, or housing benefit advice (that could in principle be housing) with other welfare benefits advice.

There is also a specific right to assess a Matter Start at nil where more than one Standard or Graduated Fee has been claimed for a case that we consider should have been one Matter Start (8.46(c)).

4.5 Worked Examples section

Please see Appendix 3 for Q&A Guidance produced by the Legal Team.

4.6 Outcomes & Follow-up Action

See section D for guidance on when you should take further samples, apply contract sanctions, or escalate to Provider Assurance.

Files identified as having been wrongly claimed should be nil assessed by using the standard claim amendment forms and sending to Provider Assurance for processing.

5. Section C3 - Family Level 1 & 2 Fees

5.1 Key Contract & Other references

- Family Specification (Part 10 of Unified Contract Civil Specification) in particular paragraphs 10.29 and 10.53-10.71.
- Funding Code Criteria 11.3
- Paragraphs 20.10 and 20.11 of the Funding Code guidance see http://www.legalservices.gov.uk/civil/family_guidance.asp

5.2 Further Guidance and Assistance

- Guidance for reporting controlled work and controlled matter starts (particularly pages 41 – 46) at http://www.legalservices.gov.uk/civil/forms/7451_7524.asp
- Q & A on fee schemes at http://www.legalservices.gov.uk/civil/payrates_schemes.asp and http://www.legalservices.gov.uk/civil/family/legal_guidance_updates.asp
- Civil Code Guidance (Family from page 39): http://www.legalservices.gov.uk/docs/forms/Civil_Codes_Guidance_Version_7_January_2010(1).pdf

5.3 Preparing for your visit

- RMs might want to consider the proportion of claims that are being made by the firm for cases which have progressed to Level 2 or where the settlement fee has been claimed or where the enhanced petitioner fee has been claimed.
- RMs may therefore want to select those files where a Level 2 fee or a settlement fee or an enhanced petitioner fee has been claimed.
- Using data Oct '07 – Aug '09, the ratio of L1:L2 fees claimed nationally is 57:43. There is new KPI relating to this measure from Oct 2010. RMs can access data for providers at **H:\REGION\Local Operational Information\Performance Management\ Family fees L1 L2 report Mar 10.**

5.4 At the Provider's Office

RMs should review 5 files at L1 (petitioner fees claimed) and 5 files at L2. The issues set out below are those which the RM might want to consider when looking at files.

5.4.1 Is the matter one, which can only be claimed at Level 1?

Matters, which can only be claimed at Level 1, are:

- Divorce proceedings only (i.e. not involving children or finance issues)
- Domestic abuse only matters
- Child abduction matters
- Where the issue is about a will
- Change of name applications in the family category of work
- The issue is about child support and CSA/CMEC would have jurisdiction. This will be in most cases involving child maintenance. The most likely exceptions are where one of the parents lives outside the UK. In addition, CMEC will not have jurisdiction

where there is an existing court order for maintenance and this was made before 1 April 2003 or where there is a court order after this date and it was made less than 12 months previously. In these cases any disputes about maintenance would have to be dealt with through the courts.

Note: although divorce proceedings, domestic abuse matters and child abduction matters may only be claimed at Level 1 they may become exceptional.

See paragraph 10.55 of the Family Specification for details.

5.4.2 Should an enhanced petitioner fee be claimed?

An enhanced petitioner fee may be claimed if:

- The provider is advising the petitioner. The petitioner is the person who presents the formal written application requesting a court hearing for a specific judicial action
- The divorce petition is prepared by the provider and issued
- The matter does not progress to Level 2 for children and finance issues.

See paragraph 10.53 of the Family Specification for details.

5.4.3 Should a separate matter start be used?

In family cases, it is generally the case that no more than one matter start should be claimed for one client i.e. separate matter starts should not be opened for children and finance issues or for a will or change of name if advice is already being given under a matter start. Exceptions may be:

- If the matter arises out of a different relationship e.g. there are two matter starts, both for contact issues but they relate to children with different fathers and the provider is advising and negotiating separately with each father.
- Where a new matter start is justified because of a change in circumstances, time since last matter start closed. This usually requires either six months to have elapsed since the previous case closed, or three months and a material change of circumstances (paragraph 5.15 of the general specification rules)
- Where the two matters are public and private. Two matter starts, one in relation to divorce and one in relation to potential care proceedings may be justified.
- However for cases which go on to Level 2 (also known as “Family Help (Lower))” Children and Finance issues are considered separately and the rules do allow a client to have two Level 2 fees, one for Children and one Finance if all relevant criteria are satisfied.

See paragraphs 10.67 to 10.70 of the Family Specification for details.

5.4.4 Is a Level 2 fee justified?

Level 1 is designed for one-off pieces of advice and simpler cases which do not require substantial ongoing assistance. Level 2 should not be claimed if:

- There is only one meeting with the client
- There is no dispute to be resolved between the parties
- It is a matter which cannot progress beyond level 1

- The cost benefit criteria are not met – does it justify the likely costs, such that a reasonable private paying client would proceed in the circumstances.

Level 2 should usually be used in cases where more substantive negotiations are required for children or finance issues above and beyond the work covered by Legal Help. For example, where following the first meeting with the client and the initial letter sent to the other party there are further meetings and negotiations following which contact arrangements are agreed. There is currently a requirement that there must have been a second meeting for a L2 fee to be claimed, though this requirement is being removed from the October 2010 contract.

See paragraph 10.55 of the Family Specification for details.

5.4.5 Should a settlement fee be claimed?

A Settlement is defined as:

- Finance cases - a formal written agreement is evidenced on file.
- Children cases – no formal written agreement is required. However there must be evidence on the file that an agreement has been reached as opposed to there being a reconciliation where the issues have not been resolved. If the majority of the substantial issues have been resolved, then the RM has discretion to allow a settlement fee. If in doubt, please contact a member of the Family team to discuss. No settlement fee is claimable if the matter goes to a certificate.

No settlement fee can be claimed at level 1. A settlement fee can only be claimed at Level 2 if:

- That particular aspect of the case has been fully concluded e.g. the children aspect may have been fully concluded but the finance aspect may go on to certificated level. In this case only the children settlement fee can be claimed.
- That particular aspect does not go on to another level of service within the next six months as far as the provider is aware.
- There is a genuine settlement e.g. one party dying or disengaging from the case is not a settlement. A settlement fee would not be payable if the parties reconciled.
- If it is a financial dispute the settlement must be recorded in a formal written agreement or consent order. In children cases evidence of the settlement would need to be apparent from the file e.g. correspondence with the other party.
- No settlement fee is payable if the case becomes exceptional.

A settlement fee may still be claimed if the client has attended mediation e.g. the client is referred to mediation for a finance matter, which is then agreed during mediation. The client returns to the solicitor and a consent order is finalised.

See links in 1st section for a list of fees that are claimable. See paragraph 10.62 of the Family Specification.

5.5 Outcomes & Follow-up

See Section D for guidance on when you should take further samples, apply contract sanctions, or escalate to Provider Assurance. Files identified as having been wrongly claimed should be amended using the standard claim amendment forms and sent to Provider Assurance for processing.

6. Section C4 - Evaluating publicly funded work in progress "WIP" (Civil only)

6.1 Background

The purpose of this check is to review the overall WIP figure for the provider, and check that the amount of unbilled WIP on all certificated cases versus the amount of POA claimed does not pose a risk.

Nearly all providers doing civil certificated work claim payments on account from the Commission, to ease the burden of carrying the full cost of work in progress until a final claim can be made.

Where the Commission has made payments on account, it is exposed to risk. Money has been paid out on the basis of a provider's valuation of the work they have done but not yet billed. If the value of the work done has been exaggerated or miscalculated, or if for any reason it will not be possible to for the provider to make a final claim, the Commission may lose some or all of the money that has been paid out.

For this reason, as part of the assurance process, it is important to check whether the value of a provider's unbilled civil certificated work in progress ("WIP") is, or is not greater than the amount that has already been paid for the work "on account".

This check is important because it is the value of WIP that provides a financial safeguard for the Commission, in the event that a provider should suddenly cease to trade, cease to submit bills, or be subject to a Law Society intervention. Put simply:

a. If a provider ceases to trade and the value of the provider's unbilled certificated work exceeds the amounts paid on account, the Commission's financial position is secure.

b. If a provider ceases to trade and the value of the provider's unbilled certificated work is less than the amounts paid on account, the Commission is likely to lose money as a result.

Note that when conducting this check it is not necessary to get an absolutely accurate, "to the penny" WIP valuation. Your objective is to gain an assurance that because the valuation of WIP exceeds the amounts paid on account by a sufficient margin, the position of the Commission is likely to be secure.

However, cumulative Payments on Account for profit costs under a Licensed Work Certificate must not exceed 75% of the amount of your incurred profit costs, calculated at the date of each application for the Payment on Account. Overclaiming Payments on Account beyond this level is a breach of Contract.

Key Contract References

Clause 8.2 (b) Standard Terms

Clause 17.4 – 17.6 Standard Terms

Monitoring Annex – “Current IT Requirements”
The full claiming rules are set out in the Unified Contract Standard terms, Clause 17.

6.2 Preparing for your visit

You should obtain an electronic copy of an “Interventions Report” in relation to each of the provider’s accounts. This will provide a list of every “open” certificate” attaching to the provider’s account(s) and show, in relation to each certificate, the amount of any payments on account that have been made.

To do this:

- Go to the intranet search facility
- Type in “Interventions Spreadsheet”
- Click the option at the top of the list
- Open the spreadsheet
- Enter the account number
- Click “get data”
- Save the resulting sheet in Excel.

The report will show:

- Certificate number
- Date of issue
- Client name
- Case status (live = not discharged; dead = discharged)
- Category of work
- POA to the firm (the firm is liable)
- POA to any previous solicitor (the firm is liable)
- POA to counsel (the firm is unlikely to be liable, unless they have received a payment from the other side and have not paid counsel the full amount due) – counsel can be identified, as their reference will not be in the provider account number format.
- Whether an interim bill has been paid. An interim bill paid to counsel is a FGF. The firm will not be liable for the recoupment of any interim payment, unless their costs have been paid by the other side following the interim payment being made.

You should therefore filter the report, to distinguish the total amount paid to counsel from the total amount for which the provider is responsible, namely payments on account made in respect of profit costs, disbursements and any payments made to previous solicitors.

6.3 At the Provider’s Office

Open the discussion by telling the provider what you are trying to check and why.

Give the provider a copy of the “Interventions Report” and explain what it shows. Distinguish the amount paid to counsel from the amount for which the firm is likely to be responsible and obtain their agreement for the amount the firm is responsible.

Ask the provider how best he or she thinks they can best demonstrate to you that the value of their as yet unbilled work exceeds the total amount paid on account across all cases.

6.4 The Provider's Response

Providers who are confident that their claiming and control systems are robust will tend to refer you to the way in which their POA claims are managed; they will be able to demonstrate, by reference to (or by giving you access to) computerised accounting data, that their unbilled WIP exceeds any POA made and that they do not present a risk overall. Smaller providers may not have computerised accounting data but should still be able to demonstrate a robust manual system using timesheets. Providers who do not have adequate control systems will tend to be less able to justify their position.

Just because a provider is unable to produce the information you are looking for quickly or easily does **not** mean that they must be acting improperly or make it inevitable that they are a risk to the fund. However, it does mean that they are more likely to be a provider exposing us to risk – and that risk should therefore be further investigated.

When a provider has a computerised "WIP" figure you should check how the figure is derived. Normally this will be from time / cost entries made on the computer system on a regular basis as cases progress. You should check:

1. That the WIP figure relates to publicly funded certificated work (and does not include work done on cases funded by other means).

2. That the WIP figure is calculated using the appropriate legal aid rate (rather than a private charging rate)

3. Refer to the Payment Annex of the Unified Contract for latest rates: http://www.legalservices.gov.uk/civil/unified_contract_civil.asp

4. Whether the WIP figure includes or excludes the value of work done and already paid for "on account" – an important consideration because you will need to factor it into your assessment of the level of assurance you can have about the risk the firm presents. . A good system will reduce the level of work in progress by the amount paid on account.

If a provider does not have what appears to be a robust, computer-based system for calculating WIP you need to make a number of further checks:

1. Does the firm have what appears to be a sound method of recording time spent and costs accrued on individual cases as the case progresses, or are the costs calculated only when cases conclude?

2. Is the value of work done calculated properly before claims for payments on account are made?

3. What control systems does the provider have to ensure that claims for payment on account are proportionate and are in line with the rules governing the claiming process: POAs for profit costs can be made after 3 months only, and twice in a 12-month period, at a time of the provider's choosing. Providers report their total costs incurred to the date of the claim and they are paid 75% of those costs. Disbursement POAs can be made at any time, and for 100% of the cost.

4. Is there any evidence to suggest that the provider may be failing to bill cases promptly when work concludes? For example the accounting system may show the last time any time was recorded for an open file.

6.5 Outcomes and Follow-up

To determine the outcome of your assessment you will have to use your judgement, based on:

1. The behaviour of the provider and their ability to answer your enquiries.

2. The evidence you have been given to show how the provider has arrived at their WIP calculation.

3. The extent to which you are convinced that the valuation is more or less reliable.

4. The relationship of the value of WIP figure to the figure that has been paid to the provider "on account".

The way in which you choose to follow-up your assessment should be dictated by the judgement you make.

- **GREEN:** You should give this rating if you have grounds for believing that the provider's WIP valuation is sound and it is clear to you that the WIP figure exceeds that paid on account by 25% or more.

- **AMBER:** You should give this rating if you have grounds for believing that the provider's likely WIP figure exceeds the amount paid on account, even if you judge the provider's control systems to be less than entirely robust.

  As a minimum by way of follow up you should require the provider to provide you with a plan to introduce the control systems necessary to better manage claims for POA and/or maintain an accurate WIP figure in future, such that a further assessment will result in an improved assurance rating.

- **RED:** You should give this rating if you have not been able to derive what you believe is a reasonably accurate WIP figure; if you believe the provider does not have sufficiently robust systems for managing claims or for recording time and activity on cases; or if you believe the provider <u>may</u> present a risk to the fund, for example, if you have grounds for believing that the amount paid to the provider "on account" is likely to exceed the value of the WIP the provider has such that the Commission is at risk of making a material loss.

  As a minimum by way of follow-up you should require the provider to provide you with a plan to introduce the control systems necessary to better manage claims for POA and/or maintain an accurate WIP figure in future such that a further assessment will result in an improved assurance rating. Inform the provider that you will conduct a further assessment when the new systems have been introduced or:

Inform the provider that you believe an audit is required and that you will be referring this issue to Provider Assurance because of your concerns.

Contract Sanctions and other steps

Contract Sanctions and/or other steps may be appropriate in the Green, Amber or Red Scenarios. For example, in the Green scenario you may be satisfied in relation to the WIP position but the provider may be failing to submit Claims in accordance with Clause 17.4 – 17.6, may not have an IT system which complies with the Monitoring Annex or have made requests for Payments on Account on the files you have looked at in excess of the allowable level. You should therefore consider the appropriateness of the following in all scenarios whilst bearing in mind that before taking the most serious of these steps an audit by Provider Assurance will most likely be appropriate.

Clause 30.10 – 30.12 Standard Terms – Contract Notice

Clause 17.7 Standard Terms – stopping further Payments on Account

Clause 29 Standard Terms – Sanctions other than termination

Clause 18 Standard Terms – taking money back

Clause 30.9 – immediate termination

6.7 Additional Note

- Many of our providers have not been subject to checks of this kind before. They may find it difficult to provide the evidence you need during your visit.

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7. Section C5 – Management of Certificated Payments on Account "POA" (Civil only)

7.1 Background

Having checked the provider's overall unbilled WIP versus POA claimed in section C4, these checks focus on looking at 5 individual files, to ensure that the process by which the firm calculates their overall WIP is an accurate one.

This check should be conducted alongside the check designed to assess the value of a provider's work in progress ("WIP").

Nearly all providers doing civil certificated work claim payments on account from the Commission, to ease the burden of carrying the full cost of work in progress until a final claim can be made.

Where the Commission has made payments on account, it is exposed to risk. Money has been paid out on the basis of a provider's valuation of the work they have done but not yet billed. If the value of the work done has been exaggerated or miscalculated, of if for any reason it will not be possible to for the provider to make a final claim, the Commission may lose some or all of the money that has been paid out.

Inflating claims for POA and/or improperly retaining monies that should be repaid into the fund are recognised forms of fund abuse. For this reason, as part of the assurance process, it is important to check whether a provider has in place systems to:

a) Properly cost work done before a claim for payment on account is made

b) Ensure that claims submitted are compatible with the rules governing the terms under which payments are made

c) Ensure that the claim or report that must be made to the Commission when a case closes is made promptly and is accurate such that the Commission can recover any money due to be paid back into the fund without delay

7.2 See above at 6.1

7.3 Preparing for your visit

You should obtain an electronic copy of an "Interventions Report" in relation to each of the provider's accounts (see note in section C4 for how to do this). This will provide a list of every "open" certificate" attaching to the provider's account(s) and show, in relation to each certificate, the amount of any payments on account that have been made.

Your first check should be to review this report for "unusual" cases – those on which a payment on account has been made and a final bill has not been received where, in all probability, a claim is overdue.

The report shows the category of work for which each certificate has been granted and the date of grant. You should look for:

a) Cases in which the certificate has been granted some years ago, which have in all probability concluded. If a Housing case commenced two or three years ago, is it *really* still ongoing? If a certificate was granted for Judicial Review two or three years ago, is it *really* likely that the matter has not been concluded?

b) Highlight any cases where you suspect the firm may have concluded the work but not submitted a bill.

You should also review the report to see if you can identify a sample of other key cases you might want to review – those on which the total of POA made to the firm looks particularly high; or where a significant number of POA have been made.

Then use (or get somebody to use) the payment enquiry facility in CIS to provide you with more detail about the POA that have been made on these sample cases and crucially, to note when the dates on which the POA were made. You can view dates of individual POAs by selecting the following in CIS:

- Select “APM”, followed by “Post Application”
- Enter certificate reference no, and click “Query”
- Select “Enquiries”, followed by “Case Summary”
- Select “Finance”, followed by “Case Review”
- Select “Overview”, followed by “Bills”
- Select “Trans Details”

7.4 At the Provider’s Office

Open the discussion by telling the provider what you are trying to check and why.

Give the provider a copy of the “Interventions Report” and explain what it shows. Ask the provider to explain:

a) How work done is given a value before a claim for a POA is submitted?
b) How they can be sure that claims submitted are compatible with the rules governing the terms under which payments are made.
c) What procedures they have to ensure that claims or reports are made to the Commission promptly when cases close?
d) Whether they run periodic checks to ensure those procedures are working effectively?
e) Whether they have any current billing backlog? And if so, what steps they are taking to address it?

Tell the provider that you would like to run a few checks against a sample of cases, to ensure their procedures are sufficiently robust.

Note: If the provider has a computerised system for recording time, activity and financial transactions on a case, it not usually necessary to access any files to conduct the checks you need to make. It is often easier to make the checks directly on screen, against the

computerised ledgers the firm maintains, working with someone in the accounting department, who can explain the ledgers to you.

You should check that the:

a) Information available on any case on screen is apparently sufficient to enable the firm to make a proper POA claim.
b) Claims made in the sample of cases you identified before the visit appear to have been properly made and to satisfy the rules governing claiming.

Use the information you gathered earlier from CIS to make this last check. That is, explain to the firm that you made a payment of £x sum in a particular case on a particular date, and ask them to demonstrate that the WIP on the case at that time was sufficient to justify the claim.

You should do 5 checks of this type.

You should also ask the firm to demonstrate to you that the "unusual" cases you identified prior to your visit, because you felt they should probably have been billed by now, are in fact either ongoing or are currently being billed. This will give you an indication as to how well – or otherwise – the provider's case closure process is working.

If a provider does not have a computerised system to manage POA claims and case closure you will need to check whether any alternative systems they have are sufficient to provide an assurance that the management of claims and payments is satisfactory. This may involve you looking at a sample of case files.

You are not being asked to conduct a formal assessment of costs on the files you are looking at. In these circumstances you can only use your best efforts to determine, taking account of the work on file, the date POA claims were made and the value of the claims, whether or not it appears likely that the claims for POA are exaggerated or may be problematic.

Again, in making your assessment you should look at 5 files – it may be helpful to do this with the provider, asking them to justify the claim made in relation to the work done, on the basis of what the file contains. When making your assessment or considering whether further investigation may be appropriate you should also consider the behaviour of the provider and the way he or she works with you.

7.5 Outcomes and Follow-up

To determine the outcome of your assessment you will have to use your judgement, based on:

a) The behaviour of the provider and their ability to answer your enquiries.
b) The evidence you have been given to show how POA claims are made.
c) The extent to which you are convinced that the claims made conform to the claiming rules.
d) The extent to which you believe the provider's case closure procedures are effective and working properly.

Your previous assessment of the provider's WIP figure.

The way in which you choose to follow-up your assessment should be dictated by the judgement you make.

- **GREEN:** You should give this rating if you have grounds for believing that the provider has in place effective time recording and costing procedures; effective procedures for managing POA claims and effective procedures for claiming or reporting promptly to the Commission when cases close.

- **AMBER:** You should give this rating if you have grounds for believing that the provider has in place generally sound case management procedures of the type above, but you believe the procedures are not effective in every case or should be improved in order to achieve a greater (more appropriate) level of control.

  As a minimum by way of follow up you should require the provider to provide you with a plan introduce the control systems necessary to better manage claims for POA and/or case closure, such that a further assessment will result in an improved assurance rating.

- **RED:** You should give this rating if your evaluation of the provider's case management procedures suggests that they are defective and present a potential risk to the fund, because POA over-claims may go unnoticed and/or because the procedure for claiming / reporting when cases close is potentially ineffective. You should also give this rating if you have grounds for believing that POA are being regularly or systematically over-claimed; if there is evidence that cases are not being closed promptly and payments are being improperly retained; if you believe the provider's case management systems expose the Commission to real risk of a material loss; or if you have grounds to believe that the provider is knowingly claiming or retaining money improperly.

  By way of follow-up you should require the provider to provide you with a plan introduce the control systems necessary to better manage claims for POA and/or case closure such that a further assessment will result in an improved assurance rating. Inform the provider that you will conduct a further assessment when the new systems have been introduced or

  Inform the provider that you believe an audit is required and that you will be referring this issue to Provider Assurance because of your concerns. .

Contract Sanctions and other steps

Contract Sanctions and/or other steps may be appropriate in the Green, Amber or Red Scenarios. For example, in the Green scenario you may be satisfied in relation to the overall Payments on Account position but the provider may not have an IT system which complies with the Monitoring Annex or have made some requests for Payments on Account in excess of the allowable level. You should therefore consider the appropriateness of the following in

all scenarios whilst bearing in mind that before taking the most serious of these steps an audit by Provider Assurance will most likely be appropriate.

Clause 30.10 – 30.12 Standard Terms – Contract Notice

Clause 17.7 Standard Terms – stopping further Payments on Account

Clause 29 Standard Terms – Sanctions other than termination

Clause 18 Standard Terms – taking money back

Clause 30.9 – immediate termination

Clause 7.4 – a failure to bill cases properly will be a breach of Clause 7.4 either through a failure to report under the Funding Code Procedures 42.2 (iii) that the proceedings/work under the certificate is completed, or breach of Paragraphs 8.16 or 8.17 of the Specification, for failure to pursue detailed assessment within the CPR timescale or claim costs from the Commission within 6 months of the right to claim arising. If you encounter a provider with large numbers of cases which appear to be completed but where the position has not been reported to the Commission you should seek further guidance and assistance

7.6 Additional Note

- Many of our providers have not been subject to checks of this kind before. They may find it difficult to provide the evidence you need during your visit.

- As the provider's Relationship Manager it is open to you to defer making a RED rating during or immediately after your visit, if you believe that within 28 days the provider may be able to give you evidence sufficient to justify a AMBER rating – but you should use this discretion only where you have grounds for doing so and you should not defer according a rating for more than 28 days in any circumstances.

8. Section C6 – Validation of tolerance claims

8.1 Validation of tolerance claims involves:

- Ensuring that providers billing tolerance claims tick the tolerance indicator on their LSC Online submission, thereby generating the correct (lower) fixed fee.
- Ensuring that no tolerance-barred category is claimed by an agency without a contract to open NMS in that category of law.
- Ensuring that providers opening tolerance matters have authorised NMS to do so, and stay within the limit of their allocation.

8.2 Key Contract & Other references

- **Unified Contract Civil Specification, s1 para 1.8** outlines the restrictions on tolerances-barred (or "exclusive") categories of law.
- **Unified Contract Civil Specification, Paragraph 3.1** – states that providers can undertake Controlled Work provided it falls within the scope of a Category of Law that the provider is authorised to undertake in their office schedule subject to … (b) any restrictions in that schedule and (c) any categories stated by Paragraph 1.8 to be exclusive
- **Unified Contract Standard Terms para 11A.1** outlines that the schedule will govern what work may be opened under the contract. **Standard Terms para 16.1** confirms that we will only pay for work done in accordance with the Contract.
- **Unified Contract Standard Terms 15.4** states that claims must be true, reasonable and accurate.

8.3 Further Guidance and Assistance

- LSC Online guide to claiming (tolerance indicator - page 9) http://www.legalservices.gov.uk/docs/forms/Guidance_For_Reporting_Contolled_Work_Version_6_January_2010i(1).pdf
- Guidance on how to export data from SMS for visit preparation: http://www.legalservices.gov.uk/docs/online_services/QG0012_v2-00_amreports.pdf

Reports can be exported into Excel, with the tolerance indicator shown in column AC

8.4 Preparing for your visit

An exercise to check the validity of tolerance claims took place in late 2009 for all providers. The exercise was based on data for the period Oct 2007 to Sep 2009 (inclusive).

You should review this exercise to see if the provider had incorrectly claimed tolerance matters in this period, and to see if any action was taken (claims reduced, letter sent to provider warning about their action, raising of sanctions for mis-claiming)

You should review the providers claims on SMS for the period Oct 2009 onwards and check:

- Are all claims in categories for which the provider holds a contract? If yes, no further action is required.
- If not, has the provider ticked the tolerance indicator for all claims made in non-contracted categories?

- Are any claims in non-contracted categories in tolerance-barred categories, namely: Family; Immigration; Clinical Negligence, or Mental Health.
- Does the provider have / Did the provider have until recently an allocation of tolerance NMS. If yes, check nos. of tolerance NMS reported as opened on CMSFs and that they have remained within their limit.

If you see non-contracted matters claimed and the tolerance indicators not ticked, you should compile a list of all such cases. You should also compile of list of all non-contracted tolerance-barred cases.

Where a provider has recently withdrawn from or lost a category of law, you should be careful that the matters may have been opened under a full contract, and the claim made correctly.

Consideration is being given to running the tolerance claim exercise nationally on a regular basis, and in time, may negate the need for RMs to include checks in this area.

8.5 At the Provider's Office

If you have found anomalies with any of the claims, or that the provider has exceeded their NMS allocation (including opening tolerance matters without a contract allocation to do so) you should present your evidence at the provider's office.

You should confirm that:

1. For any matter where a tolerance indicator has not been ticked, SMS will be amended and the fixed fee payable will be reduced to the relevant amount.
2. For any NMS opened outside of an approved allocation, you should advise the provider that billed claims will be nil assessed, and that open matters should not be billed.

You should review whether providers have been warned about contract breaches (or had sanctions raised) in either: (a) opening NMS where there is no allocation; or (b) mis-claiming tolerance matters recently, and consider whether a contract notice in either area is appropriate – see section below.

8.6 Outcomes & Follow-up

Claims made incorrectly should be reported to Provider Assurance on standard claim amendment forms.

8.6.1 Warning or raising a contract sanction?

If either matter has not been raised with the provider in the recent past (3 years), it is likely that nil assessments and a warning as to future conduct is the only course of action necessary. Only in cases where a significant number of cases have been mis-claimed should you consider raising a Contract Notice.

For mis-claiming, a significant number might be defined as over 50% of tolerance claims over several months.

For opening NMS beyond allocation, a significant number may be defined as opening more than 20% of allocated matters. (Based on current rules for increasing NMS without bid round).

If either matter has been raised with the provider in the recent past, then a contract sanction should be raised, providing:

1. It is clear that the provider has been warned in writing and

2. The subsequent breach cannot be regarded as a one-off e.g. **for allocations**, opening one or two matters beyond what has been allocated; or **for mis-claiming**, if the mis-claim is on one or two cases only, or applies to only 1 month out of several.

If in doubt about the correct course of action, please contact the Legal Team.

8.6.2 Corrective action follow-up

There is unlikely to be a need for escalation of these issues, unless you consider that anomalies in this area potentially represent wider fraud, in which case you should escalate to the Fraud Team.

Where you have raised a sanction or warned the firm, you should diarise the firm for review after 6 months and check that the firm is no longer breaching the relevant contract rules.

9. Section D. File Sampling

9.1 File Sampling – applicable to sections C1-3 inclusive

9.1.1 First Sample by RM

RMs will examine recently closed files for assurance checks in the following areas:

- Means
- Case Splitting/Duplicate claiming
- Family L1&2

Files should initially be selected from all claims made in a recent 12 month period and providers should be given 14 days notice to obtain them. If systemic issues are found, RMs may wish to look at a period beyond the last 12 months to consider whether financial recovery over a longer period is appropriate.

RMs will initially select a sample of 5 files to look at each of the issues. The total number of files selected is likely to be more than 5 as one selection of 5 files may not contain all of the issues to be considered.

In each of the areas listed in sections C1-3, the following action should be taken:

Number of files where issue identified	Action by RM
0	A high level of assurance on this issue can be considered and the issue closed
1-2	Issue discussed with the firm and further sample of 20 files to be taken by the firm
3-5	The RM will request that the firm reviews all of the files billed in the 12 month period under review, for the particular issue identified i.e. where there has been no second meeting on a L2 file, all L2 files would be subject to review by the firm. The RM will spot check a couple of the reviewed files and come to an agreement with the organisation about which claims need amending. If no agreement can be reached, the RM will refer the issue to Provider Assurance. It is likely that a Contract Notice or Contract Notices will be appropriate. The number and duration will depend on the findings. Ordinarily, however, if the same error is identified on a number of files then only one Contract Notice will be appropriate. Follow up visit required within 6 months.

9.1.2 Second sample by firm - of 20 files:

If 1-2 errors are found on the initial sample, the RM will select the sample of 20 files to be examined by the firm. The provider should be given a period of 28 days to obtain them. The firm's results will be discussed with the RM and the RM will select at least two files from the 20 to confirm that the firm has correctly examined their sample. The results from the aggregated sample of 25 files will lead to action being taken as follows:

Number of files where issue identified on aggregated sample of 25 files	Action
1-2	A high level of assurance on this issue can be considered and the issue closed. The individual errors will usually be nil assessed or reduced and RMs will advise PA to take this action
3+ files	The firm will be required to review all of the files billed from the 12 month period under review for the particular issue identified i.e. where there has been no second meeting on a L2 file, all L2 files would be subject to review by the firm. The RM will spot check a couple of the reviewed files and come to an agreement with the organisation about which claims need amending. If no agreement can be reached, the RM will refer the issue to Provider Assurance. It is likely that a Contract Notice or Contract Notices will be appropriate. The number and duration will depend on the findings. Ordinarily, however, if the same error is identified on a number of files then only one Contract Notice will be appropriate. Follow up visit required within 6 months.

When an RM is negotiating financial recovery with an organisation, it is important to note that we have the right to go back to the last contract compliance audit or 12 months, whichever is the shorter period.

10. Section E - Contract Sanctions (Unified Contract 2007 and Unified Contract (Crime) July 2008

10.1 Principles

The Provider's main obligations are covered by the Contract Standard Terms. The principal obligations are set out in Clauses 7.4, 7.5 and 7.6 as follows:

"What must you comply with?

1. All relevant legislation (including all Access to Justice Legislation), with the Contract Documents and with all relevant Points of Principle of General Importance.

2. Conduct and practice rules of the Relevant Professional Body. Where you are in practice as solicitors, these include the Solicitors Practice Rules and the Solicitors Accounts Rules.

3. Q.A. Standard specified in the Service Schedule (except so far as the Specification or a Schedule specifically relieves you of compliance with some or all of it). If your Q.A. Standard is not the SQM and you cease to meet your Q.A. Standard, we may require you to comply with the SQM."

Contract Documents are defined as "(a) the Contract for Signature (including the Key Information Tables); (b) the Schedules; (c) the Contract Standard Terms; and (d) the Specification;"

10.2 Demonstrating compliance and co-operating in audits

Section 8 is also relevant (Clauses 8.1 and 8.2) and are as follows:

Are you obliged to demonstrate compliance to us?

8.1 You must demonstrate to our reasonable satisfaction that you are complying with, and have at all times while it has been in force complied with, this Contract. You must demonstrate this when we are auditing you and at such other times as we may require.

8.2 You must maintain:

(a) Your matter and case files in an orderly manner, showing what Contract Work was performed, when it was performed, how it was performed and how long it took; and

(b) An up-to-date running record of costs and disbursements incurred for each matter and case.

Otherwise you will be unable to demonstrate compliance with this Contract.

Providers have to do more than just comply with the Contract Documents, QA Standard etc. Clause 8.1 provides that they have to demonstrate compliance.

10.3 When does a right to apply sanctions arise?

Sanctions (including termination) may be applied if a provider has breached a contract. They may also be applied if the provider is under Official Investigation, or if a Report following an Official Investigation is received, or if a provider's financial position is such that we consider that the Commission or clients are at risk of financial loss or other material prejudice – see clauses 29 and 30 of the Contract Standard Terms.

10.4 Public Body – Justifiability

Just because the Commission has a right to apply a contract sanction, does not mean that it should do so. As a public body responsible for the public funding of legal services, the Commission's actions must be justifiable.

To reflect this, Clause 2.1 and 2.2 of the Contract Standard Terms provide:

> **2 Relationship**
>
> **Value for money and good faith**
>
> 1. In funding services as part of the Community Legal Service we are bound by sections 5(7) and 18(3) of the Act to aim to obtain the best possible value for money. Without prejudice to more specific provisions of this Contract and to your professional obligations in respect of Clients, you and we agree to work together in mutual trust and co-operation to achieve this aim.
>
> **2.** In relation to this Contract, you and we will act in good faith and we will act as a responsible public body required to discharge functions under the Act.**"**

Clause 2.2 means that, while the Commission must have regard to its statutory duties under the Access to Justice Act 1999, particularly:

- quality assurance (ss.4 & 12);
- value for money (ss.5 & 18);
- meeting identified needs (s.4); and
- ensuring that funding is available only in appropriate cases (s.8);

It must also have regard to the effect of any sanction on the Provider (and on their duties to clients).

In other words, the Commission must consider the interests of all its stakeholders and take a responsible and proportionate approach to the application of contract sanctions, consistent with its public functions.

10.5 Breaches of the SQM

10.5.1 General

Breaches of the SQM are divided into “General Quality Concerns” and “Critical Quality Concerns”. The SQM sets out procedures that apply whenever there is a non-compliance with the SQM. These procedures, and the distinction between “General” and “Critical” concerns, help to ensure that the Commission takes a responsible and proportionate approach.

10.5.2 The Auditor’s Recommendation

If an auditor finds that a provider has failed an audit, the provider has not, at that point, failed the audit. They fail the audit only if the Director of Provider Assurance or a National Relationship Director (the “Relevant Director”) upholds the auditor’s finding. If an auditor recommends that a sanction should be applied, the decision rests with the relevant Director.

An auditor’s recommendation should cover:

- Non-compliances with the SQM
- Quality Mark
- Contract consequences

For example, if the contract is a Unified Contract (Civil) and a provider has failed an SQM audit in one category of work but has passed in another category of work, the recommendation will be:

- To terminate (or refuse) the Quality Mark in the failed category of work
- To terminate the provider’s right to make any further Matter Starts in the category of work, by amending the Provider’s Schedule so as to set the number of Matter Starts in the category of work at the number already started
- To terminate the licence in the category by amending the Provider’s Schedule so as to remove the licence tick by the category of work. N.B. This is normally done only if the failure was in a category where a licence will be granted only to organisations that have passed a Preliminary Audit in the category (Family, Immigration, Personal Injury and Clinical Negligence)
- To allow Remainder Work, in the category, to be carried out

If the audit failure was not in Family, Immigration, Personal Injury or Clinical Negligence (for which providers have to pass a preliminary audit in the relevant category before they are awarded a licence in that category) it is still open to the auditor to recommend termination of the licence in the category.

If the failure was in the only category of work (or all categories of work) in which the provider holds (or is applying for) the SQM, the auditor’s recommendation will normally be:

- To terminate (or refuse) the Quality Mark in the failed category (categories) of work;

- To terminate the contract; and

- To allow Remainder Work to be carried out.

10.5.3 Remainder Work

Remainder Work is work that we permit a (former) provider to do after their contract (or a category of work) has ended. Although a provider has no right to do Remainder Work, the Commission's normal policy is to allow Remainder Work to be carried out unless there is a significant risk to either clients or to public funds (See Deed of Settlement with the Law Society).

Where there is a risk, Remainder Work may sometimes be allowed only for a specified period, to enable the orderly transfer of clients' files etc or by allowing Remainder Work only in a specified category of work, or subject to conditions.

10.5.4 Giving the audit result

An auditor may give the results of the audit to the Provider orally but must always write with their decision and recommendations, pointing out the provider's right to make representations. If the decision is adverse, this allows the provider to make representations that address the auditor's concerns

10.5.5 Giving the opportunity to make representations

Section 6 of the SQM provides that, when an auditor intends to make an adverse decision, the provider must be given the opportunity to make representations. Therefore, the auditor must write to the provider setting out:

- Their audit finding;

- What their recommendation will be (and why) and (if they are recommending a sanction) when the sanction will take effect (normally 28 days after the relevant Director's decision) and whether Remainder Work will be permitted (as it normally is);

- That the provider has a right to make representations within 14 days of receipt of the letter; and to

- Draw the provider's attention to section 6.4 of the SQM, which sets out important guidance on the form of representations the provider should follow.

Even when the auditor intends to make a favourable recommendation (that the SQM should be awarded or retained), they should advise the provider that they are just making a recommendation and that the final decision is the relevant Directors, in case the relevant Director takes a different view. Favourable recommendations need not be in writing.

10.5.6 The Relevant Director's decision

Before making their decision, the relevant Director must consider both (a) the audit findings and recommendation and (b) any representations. The relevant Director cannot make their decision until either representations have been received or the period for making them has expired.

If an auditor has made a favourable recommendation, it is still open to the relevant Director to disagree with it. When this happens, the relevant Director should write to the provider to say what they have in mind and to invite representations within 14 days, which if received, must then be considered as described above.

The application of contract sanctions is never automatic. The relevant Director must always consider:

- Whether there has been a breach of contract; and
- If so, what is the appropriate response to the breach

10.6 Breaches of Other Contract Documents

10.6.1 Contract management

Unlike the SQM, the other Contract Documents do not specify "General" or "Critical" concerns. The range and degree of possible breaches means that this is not really practicable. Relationship Managers must take a "contract management" approach to breaches of the other Contract Documents, having regard to the provisions of Clause 2.1 and 2.2 of the Contract Standard Terms.

A "contract management" approach means having regard both to the Commission's statutory obligations and to the fact that the Commission's General Contracts are long-term service contracts under which we seek to work in a "partnership" with providers. This does **not** mean never applying contract sanctions or never terminating contracts. There will always be circumstances when sanctions should be applied and when contracts should be terminated, and the contracts expressly provide for this.

10.6.2 Informal warnings

Providers must be expected to know their obligations under the General Contracts and to comply with them. However, it is inevitable that even the best managed providers and their personnel will, from time to time, make mistakes. The normal approach to this is for the Relationship Manager to discuss the problem, informally, with the provider. If more frequent non-compliances occur, or if they are more serious, the Relationship Manager may decide to meet the provider or to write to them, setting out the concerns and what the provider should do to address them. These communications will normally be in the name of the Relationship Manager. The Director of Provider Assurance and/or the National Relationship Director do not need to approve them.

With a well-managed provider, this should normally be all that is necessary. With such a provider it may, occasionally, be necessary to apply one of the contract sanctions set out in Clause 29 of the Contract Standard Terms e.g. if a breach of contract has caused a financial loss but, generally, such providers will agree to make good any loss without the need for a contract sanction.

However, there may be occasions when non-compliance with the contract is more serious – either because an individual breach is, in itself, more serious or because breaches keep being repeated. In these circumstances (where the concerns do not relate to compliance with the SQM) it will be appropriate to issue a formal warning - a notice under the Contract Standard Terms.

10.6.3 Representations

In many cases, before deciding whether to issue a notice, the Relationship Manager will want to notify the provider of their concerns at the relevant meeting and to invite their comments on them within 10 working days – just as the SQM provides for "representations" before the relevant Director makes their decision.

This will not be necessary in some circumstances e.g. when a provider has failed a Costs Compliance Audit (as there are rights of appeal against costs assessments). However, it is likely to be appropriate when there is the possibility of the provider having a view of events, which is different from those presented.

Notices and rectification notices (formal warnings)

There are two types of contract notice that give formal warnings. These are a "**rectification notice**" and the "**notice**" **both under Clause 30.10, 30.11 and 30.12** of the Contract Standard Terms as follows:

"When might we terminate after a previous notice?

30.10 If you have breached this Contract, we may serve you with a notice specifying the breach. If we consider that the breach is capable of remedy, the notice will require you to remedy it within a specified period, which will not be shorter than 28 days. Otherwise, the notice will require you not to repeat the breach.

30.11 If a notice requires you to remedy a breach within a specified period and you fail to do so to our reasonable satisfaction, we may serve a notice on you terminating this Contract on the date specified in the notice.

30.12 If a notice requires you not to repeat the breach then, if you do so, or we serve you with two further notices specifying any breaches, we may serve a notice on you terminating this Contract on a specified date."

Failure to comply with the requirements of either notice may lead to a termination notice (or notice of other sanctions) being issued. As such, the issue of either warning notice is a serious step, similar to an employer giving an employee a formal written warning.

The Commission cannot terminate a contract for breach unless a formal warning (either a "notice" or "rectification notice") has been served and the provider has either failed to comply with the notice or has repeated the breach. The only exceptions to this are listed at Clause 30.9 of the Contract Standard Terms.

10.6.4 Rectification Notices

A “rectification notice” is used where the breach can be put right. It tells the provider that they must put a breach of contract right within 28 days (or longer).

Rectification Notices are used only rarely because most breaches are incapable of remedy. For example, if a provider has submitted claims for payment that have been assessed as being in breach of the Contract, they cannot take them back. They may be used e.g. if a provider is describing themselves as holding the SQM in a category in which they do not hold it or if a provider is refusing to provide files for assessment, or access to premises, or is otherwise not properly co-operating with the audit process – because these are things that can be put right.

10.6.5 Notices

A “notice” is used where a breach cannot be put right. It tells the Provider not to repeat a breach of contract.

Notices are the normal means of providing formal notice of a breach of the Specification, the Contract Standard Terms or any other Contract Document (apart from the SQM), which cannot be put right.

There is no right of appeal against the issue of a Notice or Rectification Notice unless and until a contract sanction is later applied, relying on the (earlier) Notice or Rectification Notice.

10.6.6 Duration of Notices

The Contract Standard Terms do not specify that notices last for a specified period of time. However, it would be unfair to providers for contract notices to last indefinitely – particularly as any replacement contracts will provide that any notices issued under the previous contract will continue to have effect under the replacement contract. The duration of the Contract Notice will be stated in it and will be proportionate to the breach or breaches of the Contract identified. Any notice issued without an expiry date will be deemed to expire three years after they were issued.

You must record the dates of issue and expiry of contract notices, otherwise they will not know how to deal with any subsequent breaches (or even know that they are “subsequent”).

10.6.7 Termination following a notice

If the provider fails to rectify a breach following service of a Rectification notice you can consider termination of the contract and/or applying another sanction.

If you have served a notice and (while it is in force) the provider repeats the breach of contract (or you serve two further notices in connection with any other breaches) you may consider termination of the contract and/or applying another sanction.

Before terminating or applying any other sanction you should, except in exceptional circumstances, write to the provider to give details of the earlier notice and the fact that they have repeated the breach and to say that you will be recommending termination (and/or another sanction) to the relevant Director – and invite them to make representations. In other words, you should normally take the same approach as if you were recommending termination (or another contract sanction) following an SQM failure.

10.6.8 Acting proportionately – relevant considerations

The current Contract Standard Terms are over three years old and in relation to Notices are not fully reflective of the case law in this area. In essence you should not assume that the service of two Contract Notices for the same breach automatically entitles you to terminate and that 28 days after service of a Rectification Notice you are automatically entitled to terminate. Relevant considerations might include:

- what informal steps were taken before going down the formal route i.e. do the facts show that you've been ignored.
- what other remedies are available under the Contract including for example taking money back
- what is the context – for example all of the breaches may relate to one office of a provider or even one caseworker. In these circumstances it might be disproportionate to terminate the whole contract. You could consider part termination and/or other available sanctions
- the Law requires material or persistent breach before you can terminate. Can you demonstrate this?

10.7 What is a Sanction?

Sanction is defined in the Contract Standard Terms as follows:

"*Sanction*" means (i) any of the sanctions that we may apply under Clause 29 and (ii) suspension or termination by us under Clause 30 because we consider that you have breached this Contract (automatic termination and no fault termination are not Sanctions);

10.8 What is not a Sanction?

A reduction in monthly payments, to reflect fewer (or lower value) matters being started, perhaps following a contract compliance audit, is **not** a contract sanction. It is simply the operation of mechanisms within the contract to ensure that payments reflect claims.

Likewise, assessing a Claim and taking money back if a payment on account has been made is not a sanction but it is akin to one. Service of a Notice under Clause 30.10, 30.11 and 30.12 is not a Sanction.

10.9 Sanctions available

The Sanctions available are set out in Clauses 29 and 30 of the Contract Standard Terms. They allow a proportionate approach and are:

10.9.1 Clause 29 - Contract Sanctions reads as follows:

29 Contract sanctions

When may we apply the sanctions in this Clause?

1. We may apply any of the Sanctions in this Clause 29 if:

   (a) you have materially or persistently breached this Contract; or
   (b) we are entitled to suspend or terminate this Contract.

2. In addition

(a) we may apply any one or more of the Sanctions referred to in Clauses 29.6, 29.7 and 29.12 if you are under Official Investigation;
(b) we may apply the Sanction referred to in Clause 29.6 if your financial situation is such that we consider there is a risk to Clients or to public funds; and/or
(c) we may apply the Sanction referred to in Clause 29.12 below if any solicitor who is engaged in Contract Work on your behalf and who is required to have a valid practicing certificate under the Solicitors' Act 1974, ceases to have one.

3. The application of any Sanction shall be without prejudice to any other rights that we may have, but we shall only apply a Sanction to the extent that it is proportionate to the circumstances or (in the case of persistent breaches), to the extent that it is appropriate for us to apply it, having regard to any wider concern that we may have as to your capability as a result of the number and/or range of those breaches.

10.9.2 Sanction No.1 - May we bar types of Contract Work?

4. We may by written notice bar you from performing Contract Work in specified Categories of Law and/or Classes of Work and/or imposing restrictions on the Contract Work that you may perform. If we do so, we will also issue a Schedule Amendment Notice.

10.9.3 Sanction No.2 - May we refuse to pay for specified Contract Work?

5. We may by written notice specify that you are not entitled to payment for, and we will not pay you for, some or all of the Contract Work specified in the written notice.

10.9.4 Sanction No.3 - May we suspend payments?

6. We may by written notice suspend some or all payments due from us to you under this Contract for such period as may be stated in it.

10.9.5 Sanction No.4 - May we prohibit you from taking on any new matters or cases?

7. We may by written notice prohibit you from starting any new matters or cases under this Contract.

10.9.6 Sanction No.5 - May we exclude individuals from being supervisors or performing Contract Work?

8. If any of your personnel or former personnel is, or has been:
(a) a cause of, or a subject of, an Official Investigation or Report; or
(b) a cause of a Sanction; or
(c) charged with, or convicted of, an imprisonable offence

We may, if we reasonably consider that such a step is necessary either to protect Clients' interests or to protect public funds, or to protect us from material harm

prohibit the person concerned, for such period as we may reasonably specify, from being a:

- Supervisor; or
- Approved Personnel

so that he or she can no longer supervise and/or perform any Contract Work for you or any other Supplier.

9. Clause 29.8 applies even if the relevant circumstances occurred before the person concerned became a member of your personnel.

We will maintain a list (accessible by you) of individuals whom we have prohibited from being Supervisors of Contract Work or from being Approved Personnel.

10.9.7 Sanction No.6 – May we remove your Preferred Supplier status?

11. No longer applicable.

10.9.8 Sanction No. 7 - May we prohibit you from holding yourself out as a Supplier?

12. We may serve a written notice on you suspending (with effect from such date as we may specify) your entitlement under this Contract to use LSC Promotional Items and to hold yourself out, or to promote yourself, as a Supplier, for a specified period."

10.10 Clause 30 – How this Contract can be ended

Deals with:

- Termination of the contract or part of it (e.g. a Category of Work)
- Suspension of the contract or part of it (e.g. a Category of Work) and reads as follows:

30 How this Contract can be ended Applies

10.10.1 No fault termination by either party

1. You may, at any time, serve no less than three months' notice on us terminating this Contract.

2. If we amend this Contract at any time under Clause 13, you may serve notice on us terminating this Contract at any time before the amendment comes into effect and any such notice shall take effect on the day before the day on which the amendment would otherwise have come into effect.

3. Subject to Clause 30.4, we may, at any time, serve no less than six-months' notice on you terminating this Contract, or terminating specified powers, rights and authorities to perform Contract Work under it e.g. we may terminate your right to perform Contract Work in a specified Category of Law or Class of Work in a specified geographical area (and may amend this Contract accordingly).

4. We will exercise our rights under Clause 30.3 only when we consider it necessary or desirable to do so in order to facilitate a Reform of the Legal Aid Scheme.

10.10.2 When will this Contract terminate automatically?

5. If, after you have signed this Contract, but before the start date of the first Schedule, we notify you that we have lawful grounds for terminating this Contract, it terminates automatically on the date specified in the notice. If we notify you, before the Contract Start Date, that we have grounds for terminating this Contract, it immediately lapses and shall not come into force on its Contract Start Date.

6. If you have failed to meet a condition specified by us before the Contract Start Date and on which we granted this Contract (e.g. that we would receive satisfactory responses to what are normally pre-contract enquiries or that you would recruit a Supervisor) this Contract terminates on:

   (a) the date specified in the condition; or

   (b) if no date is specified in the condition, on such date as we may specify.

10.10.3 When will this Contract terminate immediately?

7. This Contract terminates immediately if your Relevant Professional Body (or any other organisation that may lawfully do so) makes an intervention, order or direction that has the effect of preventing you from performing Contract Work.

10.10.4 When might either party terminate this Contract?

8. Any material breach of Clause 22.1 or 22.2 (warranties) by one party to this Contract entitles the other party:

   (a) where the information related either to becoming a Supplier or to demonstrating compliance with this Contract, to issue a notice terminating this Contract; and

   (b) where the information related to the authorisation or allocation of Contract Work, to issue a notice terminating the right or obligation to perform that Contract Work.

10.10.5 When might we terminate immediately?

9. We may serve a notice on you terminating this Contract on the date specified in the notice in any of the following circumstances:

   (a) we receive a Report and consider that termination is required to protect Clients or us from possible serious harm or to protect public funds or Clients' interests;

   (b) we receive a Report that identifies that there has been such a serious breach of Contract or of legislation or such serious professional misconduct or dishonesty that, in all the circumstances, termination is justified;

   (c) Your financial situation is such that we consider that we or Clients are at risk of financial loss or other material prejudice;

(d) you have failed to provide documents or access to premises in accordance with Clauses 8 and 9 and have not remedied such breach within 7 days of a notice from us referring to this Clause and requiring you to do so;

(e) either you are required to comply with the SQM and a Notice to Terminate under the SQM has been issued or your right to hold the Q.A. Standard has been terminated or has otherwise ended;

(f) we entered into this Contract on the basis that you were receiving core funding from another organisation (e.g. you are a Not for Profit organisation and you receive core funding from a local authority) and that funding ceases or is materially reduced (unless it is replaced to our satisfaction within such period as we may specify);

(g) you have committed a Fundamental Breach"

10.10.6 Can there be termination or suspension of part of this Contract?

13. Whenever we are entitled to terminate this Contract we may issue a notice terminating any part of it or suspending it, or any part of it. We will set out the effects of any suspension (which shall be less serious than termination) in the notice to you.

14. The giving by us of any termination or suspension notice shall be without prejudice to any other rights that we may have, but we shall only give a termination or suspension notice under Clauses 30.9 to 30.13 (inclusive) if termination or suspension is proportionate to the circumstances or (in the case of persistent breaches), if it is appropriate for us to do so, having regard to any wider concern that we may have as to your capability as a result of the number and/or range of those breaches."

10.11 Clause 29 – Contract Sanctions

10.11.1 Notes and examples of when these sanctions might be used

Any Clause 29 Sanction may be applied when the Supplier is in breach of contract or we have grounds for termination

Clause 29.1 of the Contract Standard Terms allows the Commission (whenever a Supplier is in breach of contract or the Commission may terminate the contract under Clause 30 of the Contract Standard Terms) to apply one of the sanctions specified in clause 29 (as well as, or instead of, terminating). Like other contract notices, Clause 29 notices or orders may be set out in a letter.

The provisions in Clause 29 mean that there is no need for there to have been e.g. a prior notice or rectification notice before Clause 29 sanctions are applied. However, in all (except exceptional) cases where the relevant Director is considering applying a sanction, it is sensible to outline to the Supplier what is proposed, and why, and to obtain the Supplier's representations before making a decision to apply a sanction. This approach should avoid sanctions being applied inappropriately and will ensure that the relevant Director has all relevant information available to them before they make their decision.

- **Sanction No 1 – barring types of Contract Work**

Examples:

1) You establish through audit that, in the Employment Department of a particular provider they do not have adequate procedures around Legal Help. As a result Legal Help forms have not always been signed and means assessments have not always been undertaken. As well as serving a Contract Notice and taking back monies as a result of the nil assessments which will follow you could consider barring work in the Employment Category.

2) You establish through audit that, in the Employment Department of a particular Provider they regularly pay for referrals from another Legal Aid Provider in breach of Clause 20 of the Contract Standard Terms. As well as serving a Contract Notice and considering whether the Commission should pay for the work obtained in breach of the Contract Standard Terms (see below) you could consider barring work in the Employment Category

- **Sanction No 2 – refusal to pay for specified Contract Work**

This is essentially a fallback provision, in that most issues relating to specific work will be addressed through assessments on Contract Compliance Audits.

Examples:

1) You discover that a Provider has received numerous referrals of housing disrepair cases from another Legal Aid Provider and has paid a fee for those referrals in breach of Clause 20 of the Contract Standard Terms. As well as serving a Contract Notice you could consider refusing to pay for the work – which may include taking back payments already made.
2) Where the Contract requires that work is undertaken by a caseworker with particular qualifications e.g. the Immigration Specification and this has been breached, as well as serving a Contract Notice you could consider refusing to pay for the work

- **Sanction No 3 – suspension of payments**

Clause 29.1 of the Contract Standard Terms allows the Commission (whenever a Supplier is in breach of contract or the Commission may terminate the contract under Clause 30 of the Contract Standard Terms) to apply a Payment Suspension Order under Clause 29.6. Clause 29.2 of the Contract Standard Terms also allows for a payment suspension order if the Supplier is under Official Investigation or their financial situation is a risk.

A Payment Suspension Order is a “vendor hold”. No special form is required – a letter is sufficient. The letter should state that a Payment Suspension Order (or “vendor hold”) is being applied under Clause 29 of the Contract Standard Terms and explain the reasoning.

Payment Suspension Orders are likely to be appropriate when a contract is to be terminated and there is a risk to public funds. In these circumstances, it is likely to be appropriate to apply the Payment Suspension Order without delay, even though the contract termination may be suspended pending review

A payment suspension order need not stop all payments. Instead, it can limit the payments out, so that overpayments by the Commission are gradually recovered without prejudicing the Supplier's existence. The Accounts Department can ensure that this happens by stopping BACS payments, manually calculating an "agreed payment value" and entering it on the system after raising a manual cheque each month. However, there will, of course, be occasions when a Supplier is in such severe financial difficulties that stopping all payments is the only appropriate response.

Examples

1) You may consider suspending payments if the provider's financial situation is such that we consider there is a risk to clients or to public funds. There does not have to be a contract breach so e.g. a provider has been overclaiming Licensed Work payments on account (but it is not possible to establish that this amounted to a breach of contract).

2) You discover on audit that the provider has numerous contract breaches around signing of Legal Help forms and obtaining evidence of means in breach of provisions in the Contract Specification. As well as serving a Contract Notice and taking back monies on files that are nil assessed as a result you could consider suspending payment for Controlled Work pending further investigations e.g. you may decide that a Contract Compliance Audit should be undertaken.

- **Sanction No 4 - prohibition of starting new matters and/or cases**

Examples

1) You discover that a provider has applied for and received Payments on Account in Civil Certificated cases in breach of the provisions in Clause 17 of the Standard Terms In this case they genuinely misunderstood the provisions. As well as serving a Contract Notice and taking overpaid monies back you could consider prohibiting the provider from starting new cases until they had robust systems in place to ensure compliance with the contract

2) You discover that a provider has been opening new Matters in circumstances where the Specification makes it clear that they should not be doing so. As well as taking payments back on the Matters which should not have been opened ("overpayments") and serving a Contract Notice you could consider prohibiting the provider from starting new Matters until you were satisfied that systems were in place that ensured compliance with the Contract.

- **Sanction No 5 – excluding individuals**

In example 1 above – assuming we had invoked the prohibition against starting new cases we could consider excluding the individuals concerned from "being a Supervisor or; Approved Personnel. The definition of Sanction in the Contract is as follows:
"Sanction" means (i) any of the sanctions that we may apply under Clause 29 and (ii) suspension or termination by us under Clause 30 because we consider that you have breached this Contract (automatic termination and no fault termination are not Sanctions)"

This means that if you just served a Contract Notice in the example, the requirements for invoking Sanction 5 would not be met.

- **Sanction No 6 - removal of Preferred Supplier status**

No longer used

- **Sanction No 7 – prohibition of holding out as a Provider**

This would be used in conjunction with the other Sanctions detailed above.

10.12 Clause 30.7–30.9 and 30.13–30.14. How this Contract can be ended (Notes)

- **30.7** – Covers intervention by Professional Body

- **30.8** – Covers material breach of Clause 22.1 and 22.2 (warranties) by either party

- **30.9 (a)** - Report is defined as follows:

    - "Report" means a report (written or oral) about you or your personnel from an organisation that may carry out an Official Investigation;

    - Official Investigation is defined as follows:

      "*Official Investigation*" means:

      (a) any investigation, of which you are aware, into suspected serious professional misconduct, breaches of the Act (or other legislation), or dishonesty by you or your personnel, being carried out by or authorised by:

      i. any organisation (e.g. where a Supplier that is a firm of solicitors, the Solicitors Regulation Authority) which is responsible for regulating, or disciplining, you or your personnel; or

      ii. Legal Services Commission's Investigation Section;

      (b) any investigation, of which you are aware, by the police into suspected criminal offences relevant to your operations; or

      (c) any investigation, on reasonable grounds, authorised by the Legal Services Commission's Investigation Section into suspected serious breaches of this Contract;

An example might be a Report from PACT, which has identified dishonesty in claiming

30.9 (b) – an example could be a Report from the Solicitors Regulation Authority which identifies serious breaches of the Solicitors Practice Rules

30.9 (c) – this is rare you should first consider whether an alternative to termination e.g. Sanction No 3

30.9 (d) – can be used but see "Contract Management Steps akin to Sanctions" below.

30.9 (e) – note – the removal of the SQM does not mean that you have to terminate the Contract. It is however normal to do so.

30.9 (f) – there are no current examples of this type of arrangement so the provision can be ignored

30.9 (g) – you have committed a Fundamental Breach

10.12.1 Inviting representations

It is normal to write to a provider to say that you are making a recommendation to the relevant Director that a sanction should be applied, saying why, and inviting the provider to make representations – which the relevant Director will consider with the recommendation.

10.12.2 When sanctions take effect

Sanctions are normally specified to take effect after 28 days. This allows a provider to apply for review. If they do so, the sanction is normally suspended, while the review proceeds.

If there is a serious risk to clients or to public funds, sanctions may be applied without delay and without suspension, but this should normally occur in exceptional circumstances.

10.12.3 Termination

Termination is not confined to termination of a contract. A Category (civil) or Class (criminal) of work may be terminated.

Whenever there are grounds for termination, it is open to the relevant Director to say that they have considered terminating the contract but, in the circumstances, have decided to take less serious action, explaining why.

A sanction less than termination may be applied for a temporary period, or for a temporary period followed by termination, or for a temporary period followed by termination if conditions are not met. The Contract Lawyers Team should be consulted in all cases that are not simple terminations.

10.12.4 Suspension

Whenever the Commission is entitled to terminate a contract, it may suspend it – as Clause 30.13 and 30.14 of the Contract Standard Terms provide.

Suspension is most likely to be appropriate when termination is being considered but, in the meantime, there is a serious risk to clients or to public funds so it is necessary to restrict either payments to a Supplier or the work they can do, or both.

Factors and considerations that are/may be relevant in applying Sanctions (including termination) are as follows:

- To apply a Clause 29 Sanction there must be material or persistent breach or we must be entitled to suspend or terminate the Contract.

- We must act proportionately so that, for example, on the facts only part suspension of payments or part termination may appropriate.
- We must not rush to impose Sanctions including termination.
- The Contract contains comprehensive provisions in relation to its management. Particularly in relation to termination therefore there will be an expectation that those steps will be taken before we move to termination.
- Even the establishment of "fundamental breach" may not be sufficient to justify the termination of the whole Contract. For example where there is one individual responsible for fraudulent activity, steps and sanctions short of full termination may be appropriate.

10.12.5 Contract Management Steps akin to Sanctions

These are important and include the following:

1) Clause 9.5 of the Contract Standard Terms, which reads as follows:

"Failure to provide required access, documents, information etc

5. If you fail to co-operate, provide access, documents etc as required by Clauses 7, 8 and 9, there is a risk to Clients and public monies. In such cases your authority to start new matters and cases, and your entitlement to receive payments from us, are immediately suspended until further notification from us."

You must request the access, documents etc in accordance with the relevant Clause/Clauses. If your requests are not met you can suspend payments (Sanction No3). You must inform the Provider in writing that you intend to take this step and give them sufficient time, before doing so, to invoke the review procedure.

The Clause makes the use of Rectification Notices for failure to allow access to premises or provide documents largely redundant.

2) Clause 17.7 of the Contract Standard Terms (Payments on Account of Licensed Work) which reads as follows:

"When deciding whether to make any Payment on Account, the Director will exercise their reasonable discretion and is entitled to take into account:

(a) the limitations on the Licensed Work Certificate; and

(b) the financial situation of your account with us."

You may be able to justify stopping payments where for example the Provider has payments on account but is unable to demonstrate that the work in progress on files justifies those payments.

3) Taking monies back from a Provider either through assessment or through Contract Compliance Audit and extrapolation of findings.

Appendix 1 – CASE SPLITTING AND DUPLICATE CLAIMING

Extracts from the Unified Contract Specification

General Provisions

5.6 It is a requirement of this Contract that Controlled Work is allocated to individual Matter Starts appropriately and in accordance with the provisions set out in Paragraphs 5.6 - 5.22.

5.7 These provisions govern when a Matter Start may be commenced and when it is legitimate to commence more than one Matter Start for one Client. Where Controlled Work is paid for under a Standard or Graduated Fee it is essential that additional Matter Starts are not artificially created or used for work, which should in accordance with these Paragraphs and any Category Specific rules, be carried out under a single Matter Start. You are also required to comply with any Category of Law Specific provisions on use of Matter Starts set out at Sections 10 to 16. Conversely, you should not include clearly unrelated matters in a single Matter Start.

5.8 You must not open more than one Matter Start for a Client unless the Client has more than one separate and distinct legal problem. Legal problems will generally be regarded as separate and distinct where:

(a) they necessarily fall under different SQM categories; or

(b) both

1(i) If legal proceedings were started, or other appropriate remedies pursued, for each problem it would be appropriate for such proceedings to be both issued and heard, or for other remedies to be dealt with, separately; and

1(ii) Each problem requires substantial legal work which does not address the other problem(s).

5.9 For the purpose of paragraph 5.8 (b) above 'substantial legal work' must consist of at least:

(a) 30 minutes of preparation or advice; or

(b) Separate communication with other parties on legal issues

5.10 Each separate Matter Start must be the subject of a separate application form. You must identify, and record on the appropriate case file, any point at which the work, which you are performing for any Client, becomes two separate matters and you open a separate Matter Start.

5.11 A Matter Start should be commenced only where all applicable Funding Code Criteria are met in respect of opening the new matter. In particular, each separate Legal Help Matter Start must satisfy the sufficient benefit test set out at Section 5.2.1 of the Funding Code Criteria.

5.12 Where the Client raises several issues at the first meeting, a single Matter Start should be completed to identify the issues and provide general, preliminary advice. If

one legal issue is identified then the original, single Matter Start should be used for the provision of further Controlled Work. However, more than one Matter Start may be opened at the initial meeting where this is justified under paragraph 5.8.

5.13 A Matter Start cannot be in more than one Category of Law.

5.14 The fact that circumstances have changed or developments have occurred as the case has progressed will not mean that a separate Matter Start is required if the Controlled Work continues to be provided on the same overall legal issue.

5.15 If you have completed a Controlled Work matter, whether under this Specification or any previous Specification, you may not subsequently commence a Matter Start in relation to the same problem. The only exceptions are where:

(a) a period of at least 6 months has elapsed since you submitted your claim for that Controlled Work matter; or

(b)

1(i) there has been a material development or change in the Client's instructions; and .

2(ii) save where the matter was concluded under paragraph 5.33(b) below, a period of at least 3 months has elapsed since you submitted your claim for that Controlled Work matter; or

(c) the assistance provided on the problem formed only a minor part of the previous matter, such that the problem did not qualify as a separate and distinct legal problem under paragraph 5.8.

5.16 For the avoidance of doubt, for the purposes of Paragraph 5.15 (b):

(a) The fact that the Client has failed to give instructions shall not constitute or give rise to a change in the Client's instructions;

(b) a decision or other response from another party to any correspondence, application, appeal or review or other request that was made in the course of the original Controlled Work matter cannot constitute a material development.

5.17 Where a matter has been closed under paragraph 5.33 below and claimed for but further work is necessary and a separate Matter Start is not justified:

(a) the work already undertaken and the further work should be taken into account in determining whether the matter is an Exceptional Case that escapes from the Standard Fee or Graduated Fee provisions. If we agree to pay the matter as an Exceptional case, we will take into account any payments already made by way of the Standard Fee or Graduated Fee;

(b) you may claim further disbursements as part of the matter where appropriate;

(c) where the matter has already been paid as an Exceptional Case, the further work is payable on an Hourly Rate basis, subject to Assessment; and

(d) unless the matter is accepted as an Exceptional Case, the further work carried out will be included in any calculation of average costs per matter.

5.18 Where you act for more than one Client in relation to the same general legal problem a single Matter Start should generally be used. Matter Starts in respect of more than one Client may be commenced only where the following are satisfied:

1(a) If proceedings were issued each Client would be a party to those proceedings;

1(b) Each Client has a separate legal interest in the problem or issue; and

2(c) Where Legal Help is provided, there is sufficient benefit for each client in receiving Legal Help, having regard to the Legal Help provided to each other Client.

5.19 A Legal Help Matter Start is not justified in the following circumstances:

(a) Providing information to Clients or to other persons contacting your organisation.

(b) (b) Supplying a new Supplier with a former Client's file or a copy, or information about the circumstances of termination of the retainer, under Paragraph 1.2 above.

(c) Where on the day that work is carried out you are satisfied that the Funding Code Criteria are met for a grant of Emergency Representation, or other Licensed Work funding, in relation to the same matter and you grant or intend to grant such funding. Instead, all work carried out on the day of the grant of Licensed Work funding may be claimed under the resulting Certificate.

(d) Sub-paragraph (c) shall not prevent the opening of a Matter Start where Legal Help is required on matters not covered by the Licensed Work funding.

5.20 For the avoidance of doubt, where Controlled Work has already been carried out for a Client then, subject to Category Specific provisions, a separate Matter Start would not be justified in the following circumstances:

(a) Controlled Work in relation to an interim remedy in a matter on which Controlled Work has already been provided;

(b) Controlled Work in relation to enforcement, a review, or an appeal (including an application for a Licensed Work Certificate) in a matter on which Controlled Work has already been provided.

(c) If a Client seeks advice as to whether (s)he should change Supplier from a Supplier already providing Controlled Work. The provisions in Paragraphs 2.22 – 2.25 should be applied before any work is provided under a new Matter Start;

(d) Providing Controlled Legal Representation in a matter for which you have been providing Legal Help.

(e) Providing Help at Court in a matter for which you have been providing Legal Help.

(f) Any work undertaken on a case by an agent on your behalf will form part of the same Matter Start as the parts of the Case handled by you.

However, notwithstanding paragraph (b), where the Client faces enforcement proceedings because he or she is alleged to have breached the terms of a suspended or postponed order, or is alleged to have breached the terms on which proceedings were adjourned, further Legal Help may be provided under a new Matter Start;

5.21 Any advice given to a Client over the telephone before that Client has signed the application form under Paragraph 2.19 above will count as the same Matter Start as work carried out after the application form has been signed. If the Client does not, for any reason, subsequently sign the application form then you may not claim for this work or count it as a Matter Start.

5.22 For avoidance of doubt, Paragraphs 5.6 to 5.21 apply irrespective of whether you purport to limit your retainer to only part of the stages, aspects or issues of a matter or matters that should properly be covered by a single Matter Start.

Family Provisions

10.67 It is in the nature of family cases for Clients to have more than one Family Dispute at any given time. However, the family remuneration provisions, including Standard Fees, have been calculated on the basis of cases with more than one aspect. Therefore multiple cases and fees may not be claimed for a single Client, except in accordance with the provisions of this specification.

10.68 Except as provided below, you may not have more than one Legal Help Matter Start opened for a Client in the Family Category. As with other Categories of Work, where a Legal Help Matter Start has been concluded in the Family Category you may not start a new Matter Start in the Family Category for that Client unless the conditions set out in Paragraph 5.15 of the general provisions are satisfied.

10.69 The only exception to the above rule is that separate matters may be opened where they relate to Family Disputes which are entirely separate (typically because they arise out of different family relationships) and which would, if they resulted in proceedings, be issued and heard separately.

10.70 Where Legal Help has been provided, a grant of Family Help (Lower) or two grants of Family Help (Lower) in cases, which have both children and finance aspects, do not count as a new Matter Start. A Client may never be in receipt of more than two grants of Family Help (Lower) at any time.

10.71 Where Family Help (Lower) has been concluded you may not grant Family Help (Lower) for the same aspect (children or finance) for the same Client unless the conditions set out in paragraph 5.15 for new Matter Starts are satisfied.

Debt Provisions

13.2 Each individual debt does not, of itself, justify use of a separate Matter Start. Advice and assistance on a Client's overall debt management and negotiations with different creditors are generally expected to fall within a single Matter Start. Separate Matter Starts will generally be justified where:

(a) More than one debt is disputed on separate, substantive grounds;
(b) Proceedings have been issued in respect of more than one debt (for the avoidance of doubt, an application for a liability notice in respect of council tax arrears will constitute the issue of proceedings); or
(d) The Client faces separate enforcement of more than one debt, whether or not arising from a judgement in civil courts.

Employment Provisions

14.1 Where one set of circumstances give rise to a number of statutory claims (for example, unfair dismissal, sex discrimination, deduction from wages) and contractual claims (for example, wrongful dismissal) these should all be treated as one Matter Start under Legal Help.

15.4 A single Matter Start should encompass investigation, where appropriate, of both civil remedies and possible proceedings in the magistrates' court under the Environmental Protection Act 1990. A second Matter Start should be commenced only where you reach justifiable decisions both to pursue proceedings under the Environmental Protection Act and to assist the Client with civil proceedings under Legal Help because the case appears likely to be allocated to the small claims track.

Homelessness Cases

15.5 Legal Help given in relation to homelessness must be provided on a specific legal issue or issues and should not cover practical matters such as identifying accommodation agencies or making a referral to them.

15.6 The general rule is that all steps within the course of a homelessness application should be dealt with under a single Matter Start. This is subject to the detailed provisions below:

(a) A potential interim application for judicial review, such as in relation to the failure of the local authority to accept an application, make enquiries, provide interim accommodation or notify a decision, will not justify a separate Matter Start. However, where both:

(i) the prospects of success of the proposed challenge appear to satisfy Funding Code Criteria 7.4.5 or would justify seeking counsel's opinion under Funding Code Criteria 5.6.4; and

(ii) it is justifiable to dispense with the pre-action protocol for judicial review (e.g. because the Client is street homeless or otherwise in imminent danger)

then the work relating to the proposed judicial review may be carried out under an emergency grant of Legal Representation.

(b) Where following a request for a review under section 202 Housing Act 1996 ('the Housing Act'), the local authority remits the decision for further consideration or investigation, Legal Help pending the further decision should be provided under the existing Matter Start.

(c) Where following a request for review under section 202 of the Housing Act the local authority reaches a decision that confirms the original decision on any issue against the interests of your Client or confirms a previous decision in relation to a referral of your Client to another authority, or fails to notify a decision within the period required by regulations under section 203(7) of the Housing Act:

(i) A new Matter Start would not be justified in relation to an appeal under section 204 of the Housing Act. If the prospects of success of such an appeal appear to satisfy Funding Code Criteria 7.4.5, or justify obtaining counsel's opinion under Funding Code Criteria 5.6.4, you may pursue or grant an immediate emergency grant of emergency Legal Representation.

(ii) A separate Matter Start would not be justified in relation to an appeal or potential appeal under section 204A of the Housing Act in relation to interim accommodation.

(iii) If, following the issue of an appeal under section 204 of the Housing Act the decision is subsequently remitted for reconsideration by the local authority by order or agreement, a new Matter Start may, subject to sub-paragraph (v), be justified to provide further Legal Help.

(vi) Where on appeal under section 204 of the Housing Act the decision of a local authority is varied by order or agreement, Legal Help required in relation to enforcement of any duty arising from the new decision may be provided under a new Matter Start.

(v) A new Matter Start will not be justified where an appeal issued pursuant to section 204(1)(b) is compromised on the basis that the local authority completes its review and notifies its review decision.

(d) Subject to the sufficient benefit test, a new Matter Start may be opened to assist the Client in requesting a review, under section 202(f) of the Housing Act, of accommodation offered by a local authority, but not to provide general advice as to the risks of refusing an offer of accommodation or the Client's rights in relation to requesting a review of such an offer.

(e) Any issues relating to compliance by a local authority with any duty arising from its decision under section 184 or section 202 of the Housing Act should be addressed under the existing Matter Start. However, where the matter is reasonably closed on the basis that it appears that the local authority is complying or has stated how it will comply with such duty or duties, and subsequently further significant legal work is justified as a result of the authority's persistent failure to do so, further Legal Help may be carried out under a new Matter Start.

15.7 Where justified under the provisions of the general provisions at Paragraphs 5.6 to 5.22, and subject to the sufficient benefit test, a separate Matter Start may be opened in relation to the protection of the Client's property under sections 211 and 212 of the Housing Act.

15.8 For the avoidance of doubt:

(a) Legal Help relating to the terms and conditions (in particular alleged rent arrears) of the Client's occupation of accommodation provided under Part VII of the Act should not be carried out under Matter Starts relating to the Client's homelessness application, other than where this work concerns questions under the Housing Act of the suitability of such accommodation or otherwise to the discharge of an interim duty of the local authority;

(b) Legal Help in relation to a decision by a local authority that its duty towards the Client has been discharged under section 193(6) or 195 (4) of the Housing Act, and/or any subsequent fresh homelessness application, may be provided under a new Matter Start.

15.9 A separate Matter Start should not be opened simply to confirm that your Client wishes to apply for accommodation under Part VI of the Act at the same time as pursuing his or her homelessness application. Separate Matter Starts for concurrent applications under Part VI and Part VII of the Act will only be justified where substantially different issues arise in the two applications (see Paragraphs 5.6 –5.22) and there is sufficient benefit to the Client in carrying out work concurrently in respect of both applications.

Welfare Benefit Provisions

16.6 Legal Help on a welfare benefit review and any request for a revision or supersession or appeal constitutes the same matter as previous advice in relation to the relevant benefit (see Paragraph 5.8 (b)).

16.7 Separate Matter Starts in relation to problems with different benefits will be justified only where the conditions in Paragraphs 5.6 to 5.22 of the general provisions are satisfied.

Appendix 2 - Q&A on Case Splitting/Duplicate claiming

To be read in conjunction with section C2.

1. Client presents with:

(a) appeal or review procedure arising out of a Disability Living Allowance (DLA) application

(b) ICB/ESA (Incapacity Benefit / Employment Support Allowance) application

Can concurrent matters for these two types of benefits reasonably be regarded as separate?

To start with there should be a single Matter Start under Paragraph 5.12 for general advice on both benefits - that will remain the case if only one case proceeds to an appeal. However, if appeals are necessary in respect of both, two Matters will be appropriate. The criteria for awards of the two benefits are completely separate, and they would be heard separately.

Also, providers cannot justify general advice where there is no indication that there will be a problem requiring resolution with the assistance of Legal Help (16.1); form filling is likely to be allowed only for DLA (16.3), so there could be a DLA matter but would not be justification for a separate Matter for advice/form filling on other benefits (16.7).

2. Would advice given concurrently but on separate claims for the same benefit justify separate starts?
Example 1: overpayment on old Income Support (IS) claim and backdating of new one:
Example 2: appeal re last DLA claim and submission of new application

This would depend on the relationship between the claims. It's possible for two separate Matters to involve entirely different matters of fact and law in relation to the same benefit covering different periods. This looks doubtful in the examples above, as they look like a "belt and braces" exercise of appeals against ending of a claim, and submission of a new claim. They look like matters that would, if necessary, be heard together and thus a single matter under 5.8(b)(i).

3. Client has 2 matters:

(a) Housing (or debt) matter opened in respect of rent arrears

(b) WB matter opened in respect of backdating Housing Benefit, which may not clear all the arrears.

Is this reasonable? Does it make a difference if the client is a tenant of the council responsible for paying benefit?

In principle, they are likely to be separate matters. Ultimately, the two matters would go to different courts - possession/debt proceedings and judicial review. The question would generally seem to be one of whether there is sufficient benefit in a Matter dealing with the landlord, which will depend to some extent on the position the landlord has taken. The most extreme situation is where there are actual proceedings for possession or recovery of rent. At the other extreme it is unlikely that the landlord would take no interest at all in the tenant being in arrears; however, in some cases it might be that a simple letter keeping the landlord informed would be sufficient and which could reasonably be sent from the WB file, negating the need for a second matter.

It's unlikely to make too much difference whether or not it's a local authority tenant, unless the same housing office deals with both the rent account and housing benefit. It may to some extent depend on the nature of the housing benefit problem. If it is alleged that the local authority is wholly at fault then it would be possible to argue this as a defence of abuse of process to any debt/possession proceedings they brought, and so it could be part of the same Matter. However, if the provider is trying to assist the client in substantiating the claim or requesting something discretionary such as backdating then there would need to be a separate matter.

Either way, if there are issues needing to be resolved beyond the housing benefit in relation to the landlord matter - e.g. reasonableness of a possession order in relation to admitted arrears, then there would need to be a separate landlord Matter.

4. Client presents with domestic violence issue, and a second matter is opened for a change of name deed. Is this allowable?

Only one matter is allowable under 10.69, as the issues present out of the same set of circumstances.

5. Client has 3 matters:

(a) Rent arrears - possession action threatened.

(b) Council tax liability - Magistrates court hearing and utility disconnection threatened.

(c) Credit debts and threat of county court action and Magistrates court fine.

Three questions:

(i). 13.2b of the Specification indicates debt matters can be separated where "proceedings have been issued" in relation to more than one debt. Does the "threat" of action (whether this is court action, disconnection, etc) therefore not meet this requirement? However, 13.2c indicates matters can be separated where a client "faces separate enforcement of more than one debt", - does this mean some form of action actually extracting money from the client, e.g. a visit from the bailiffs, or enforcement of a charging order?

There has to be either proceedings issued or definite enforcement action to be dealt with - otherwise, providers would always be able to claim separate matters on the basis of vague threats. Generally, paragraph 13.2 states that negotiations with different creditors are expected to be dealt with under a single Matter Start.

(ii). It seems these could meet the requirement for separation in 5.8 and 5.9 of the Specification, since contacts would probably be made with a number of other parties, but is this trumped by 13.2 which is explicit that debt matters are not split unless the requirements in 13.2a, b or c are satisfied?

Section 13 does trump Section 5: paragraph 2 of Section 1 of the Specification states that Category Specific provisions prevail in case of any inconsistency with general provisions. However, there is no inconsistency here - 5.8 and 5.9 state when Matter Starts cannot be opened, not when they can, and Section 13 simply imposes further restrictions.

(iii) if a client is contesting just one debt on substantive grounds, and proceedings have been issued in relation to just one other debt, a strict reading of 13.2 suggests that remains one matter. Is this correct?

A second Matter would seem reasonable here. 13.2 (a) to (c) are exceptions for when separate Matters are allowed, but are not stated to be the only situations. Your situation would not seem to fall foul either of Section 5 provisions or the general statement in the first part of 13.2.