

# Call-Off Schedule 20 (Call-Off Specification)

This Schedule sets out the characteristics of the Deliverables that the Supplier will be required to make to the Buyers under this Call-Off Contract

## A. BACKGROUND AND SCOPE

1. The Supplier shall provide a claims handling service, particularly in relation to the pre-action stage of claims as set out below.

### Background

2. The Ministry of Justice (the **Contracting Authority**) is one of the largest government departments, with around 70,000 people and a budget of £10 billion.
3. The MoJ works in partnership with many other government departments and agencies to reform the criminal justice system, to serve the public and support victims of crime. During in the contract period the Contracting Authority may look to add other entities of the MoJ that have a similar requirement to the scope outlined below.
4. Each year the Contracting Authority receives more than one thousand pre-action claims and other claims of varying degrees of importance, value and sensitivity. On average, 1200 new pre-action claims a year are received by HMPPS. At present, there are 1650 'live' claims requiring action (other cases are still within the limitation period but essentially dormant).
5. Case numbers suitable for handling under the proposed contract with the Supplier are expected to be based on the above yearly average but cannot be guaranteed. The work covered includes the claims for compensation arising out of ill-health, loss of property, motor vehicle claims, unlawful detention, personal injury and human rights, occasioned on HMPPS premises and received from members of staff, prisoners and members of the public, either directly or via solicitors.

### Scope

6. The Supplier shall provide a claims handling service for claims made during the period confirmed in the Call Off Contract against, and recoveries on behalf of, the Contracting Authority in respect of, but not limited to:
  - 6.1. Employer's liability
  - 6.2. Public liability
  - 6.3. Third Party motor/ uninsured loss recovery

The presumption is that the Supplier shall take over the end to end management of all pre-action claims. In the event the claims are sent to the courts, the court will forward to the

Authority's legal representatives, the Government Legal Department (GLD)

Whilst motor/insured loss recovery claims form only a small part of the contract receiving on average only 100 motor claims in 2019, the supplier is requested to deal with motor claims if the HMPPS vehicles are 'Crown vehicles'. These are vehicles that are not covered under the MoJ insurance policy but instead are under 'crown indemnity'

## **B. CLAIMS HANDLING PROCESS**

7. The Supplier shall manage the claims handling process in accordance with [Schedule 1](#).
8. The Contracting Authority will confirm with the supplier certain types of claims that should not be handled by a Claims Handler. These should be identified out the outset of a claim where possible (hard exemptions) and will not be charged for by the Claims Handler. There are instances where claims will need the scrutiny of the HMPPS case worker to decide if claims are to be handled by the Contracting Authority or the Claims Handler. These are referred to as soft exemptions. The Contracting Authority will decide as to whether the claim has met the criteria for a soft exemption within a deadline of two weeks. The types of claims that the Claims Handler would not be expected to manage (hard exemptions) are listed in [Schedule 3](#).

- 9.1 For those cases raising matters without apparent legal basis or merit or which might properly be the subject of an internal complaint, the following specific hard exemption categories of work should be sent to GLD:

[Schedule 3](#); outlines the full criteria for sifting private law claims

- 9.2 The Contracting Authorities contracted requirement is based solely on the HMPPS caseload having claim adjusters handling the cases without a legal grade.

- 9.3 Where Pre-Action Disclosure (PAD) headings are issued, they are currently transferred to GLD to manage who act on behalf of HMPPS in court proceedings. If the successful bidder has a provision for legal grade delivery, the contracting authority may at some point in the future consider an additional option for the Supplier to manage the PAD process on behalf of HMPPS as part of an end to end service.

Pricing for this is requested in the commercial envelope (not a scored question). If a suitably provisioned supplier was successful in bidding, any such option would be agreed between the Contracting Authority and Supplier and subject to a formal contract variation to reflect the additional requirements.

## **C. STANDARDS, SERVICE LEVELS AND KEY PERFORMANCE INDICATORS**

9. The Supplier shall provide the services in accordance with the standards and service level targets levels set out at [Schedule 2](#).

## **D. MANAGEMENT INFORMATION AND PERFORMANCE REPORTS**

10. The Supplier shall provide timely, full, accurate and complete management information to the Contracting Authority which incorporates the data, in the correct format, required by the MI Reporting Templates. The initial MI Reporting Templates are set out in [Schedule 2](#), however this is potentially subject to change once the Supplier is awarded, mainly focused around breakdowns of data and the visualization.
11. Furthermore the Contracting Authority require there may be up to a maximum of three MI data changes per year. This is subject to change depending on contract trends and will be expected to be free of charge from the supplier.

### **Monthly Management Information Reports**

12. The Supplier shall provide, within 7 working days of the last day of each calendar month, Monthly Management Information Reports in respect of that month just ended to include, but not limited to, the following:
  - 12.1. overall statistics
    - all open and closed claims (a **Spreadsheet of All Claims** in a format agreed between the Supplier and the Contracting Authority)
  - 12.2. number and reasons for PADs, number of working days taken to notify Government Legal Department (GLD) and if the PAD documents were submitted to GLD in a satisfactory format
  - 12.3. number of complaints made against the Supplier (new and unresolved), number of working days taken to acknowledge a complaint and number of days taken to give a final or interim response and if the resolution of the complaint was satisfactory
  - 12.4. the success rate against Key Performance Indicators (KPIs) 1, 2, and 7 ([Schedule 1](#)),
  - 12.5. any additional data or further reports in a format agreed with the Contracting Authority and its authorised representatives as requested.

### **Quarterly Performance Reports**

13. The Supplier shall provide, within 7 working days of the last day of each quarter, a Quarterly Performance Report in respect of the last 3 months to include, but not limited to, the following:
  - 13.1. total number of open and closed claims
  - 13.2. total claim costs and payments
  - 13.3. top 5 claim subject types
  - 13.4. top 5 prisons with the highest number of claims
  - 13.5. regions listed from highest to lowest claims
  - 13.6. total number of PADs
  - 13.7. total number of complaints

- 13.8. total claims successfully defended
- 13.9. total number of claims which went to full legal proceedings
- 13.10. total number of claims settled out of court
- 13.11. total number of claims repudiated
- 13.12. total number of claims that have been offset and the amount offset
- 13.13. the success rate against KPIs 1, 2, 3, 4, 6 and 7 ([Schedule 1](#)).

## **Annual Performance Report**

14. The Supplier shall provide, on an annual basis, by the last day of January, an Annual Performance Report in respect of the 12 months just ended to include, but not limited to, the following:

- 14.1. executive summary
- 14.2. total number of live claims
- 14.3. total number of closed claims
- 14.4. total number of new claims
- 14.5. total payments made against reserves
- 14.6. total paid in damages in the last 12 months
  
- 14.7. HMPPS legal costs in the last 12 months
  
- 14.8. Supplier costs in the last 12 months
  
- 14.9. Total adverse costs paid in the last 12 months
  
- 14.10. costs and payments broken down by region and claim type ranked highest to lowest
- 14.11. total number of PADs and
- 14.12. total cost of PADs
- 14.13. total number of complaints
- 14.14. total number of fraudulent claims<sup>1</sup>
- 14.15. lessons learned from claims
- 14.16. total number of claims where offsetting was applied and the total costs recovered
- 14.17. The success rate against all KPIs (1-8) ([Schedule 1](#))

15. The Supplier shall provide to the Contracting Authority or its appointed representative, promptly and upon request, reports of an ad hoc nature which may be required for financial or risk management purposes.

16. The Supplier shall provide information to the Contracting Authority or its appointed representative to enable it to reply to Parliamentary Questions, Public Inquiries, FOI requests, Treat Official correspondence or any other similar requirement in timescales that will be notified by the Contracting Authority or its appointed representative.

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<sup>1</sup> Those claims found to be brought using fraudulent evidence

## **Invoices**

17. The Supplier shall provide an invoice every quarter, by the 7<sup>th</sup> of the first month of the next quarter, along with the Spreadsheet of Claims with accurate and complete data as per [Schedule 2](#).
18. The Contracting Authority reserves the right to reject the invoice if the Supplier provides inaccurate or incomplete data in the Spreadsheet of Claims (applicable in circumstances where data has been previously provided to the Supplier but has not been captured on the spreadsheet or if the data is within the Supplier's control).
19. The Supplier shall work with the Contracting Authority to develop the management reporting requirements, including the identification of trends and trouble spots within the Contracting Authority.

## **E. AUDIT OF CALL OFF CONTRACT**

20. The Contracting Authority and / or their appointed representatives shall undertake audits of the Supplier's performance and financial governance of the contract in order to ensure that the Services are being adequately met.
21. The Contracting Authority reserve the right to undertake an audit and / or follow up audits, subject to a minimum of 48 hours' notice to the Supplier.
22. The Supplier shall provide unhindered right of access to the Contracting Authority and / or their appointed representatives during normal business hours, subject to prior notice, to all relevant case files and data collected in relation to the Call Off Agreement.
23. The Supplier shall comply with the recommendations resulting from such audit.
24. The Supplier shall complete the actions from any associated audit within 30 days, unless otherwise agreed with the Contracting Authority.

## **F. CONTRACT MANAGEMENT**

25. The Supplier shall appoint a Senior Official (at Director Level) to act as Senior Account Manager with responsibility for overseeing and managing the Contract.
26. The Supplier shall provide the Authority with a named Account Manager to ensure that all the requirements of the Framework Agreement and Call-Off terms are met.
27. The Senior Account Manager shall ensure that handling and settlement practices and procedures are consistent with the best industry standard as well as ensuring that an efficient and effective plan is in place with the Contract that has effective measures in place to identify claims recovery services such as offsetting.
28. The Supplier shall attend monthly meetings or conference calls with the Contracting Authority to ensure the contract is ran in a pro-active manner.

29. Regular performance review meetings shall take place at the Contracting Authority' premises or through conference call and skype throughout the Call Off Contract period. It is anticipated that the frequency of the review meetings shall be quarterly. The Contracting Authority and Supplier shall be flexible about the timings and location of these meetings.
30. The purpose of the review meetings shall be to review the Supplier's performance. The agenda for each review meeting shall be set by the Contracting Authority and communicated to the Supplier in advance of that meeting, allowing for relevant additions by the Supplier.
31. The review meetings shall be attended, as a minimum, by the Contracting Authority and the Supplier's Senior Account Manager and the Contracting Authority's Contract Manager.
32. Further meetings may be required as appropriate to discuss risk management, claims loss data and case specific matters, the timings of which shall be mutually agreed by the Supplier and Contracting Authority.
33. The Contracting Authority shall receive prompt, courteous and helpful attention by appropriately trained Supplier Personnel.
34. The Supplier shall act at all times to maintain the reputation of the Contracting Authority.
35. The Supplier shall be required to provide dedicated case handler contact details to the Contracting Authority unless otherwise agreed. This shall be confirmed by the Contracting Authority in the Call Off Agreement.
36. The Supplier shall take active measures to ensure a full understanding of the operational context and resulting additional needs required by the Contracting Authority to manage litigation.
37. All written communication from the Supplier shall be clear, courteous and identify the appropriate contact for the Contracting Authority.

## **G. COMPLAINTS HANDLING**

38. All formal complaints shall be acknowledged and processed in accordance with directions given by the Contracting Authority. Directions will be given on a case by case basis depending on the nature of the complaint raised.
39. A final or interim written response shall be given within five working days. If there are appeals or unresolved complaints, then, the complaint should be resolved (final or interim response) within a further 5 working days.
40. If a complaint is unresolved, an appeal can be submitted and a final or interim written response shall be given within a further five working days.
41. Serious complaints or breaches of contract shall be referred to the HMPPS National Litigation Team (NLT) and Commercial & Contract Management Directorate (CCMD) at the same time as the complaint is submitted to the Supplier or by the Supplier when such a complaint or breach has arisen.

## **H. CONFLICTS OF INTEREST**

- 42. The Supplier shall not accept instructions to act against the Contracting Authority. This requirement shall apply during the term of the Call Off Agreement, and shall survive after the Call Off Contract is terminated in respect of any matter on which the Supplier has advised or acted for the Contracting Authority.
- 43. The Supplier shall carry out conflict of interest checks on an ongoing basis and take all reasonable steps to remove or avoid the cause of any conflict of interest.

## **G. SECURITY**

- 44. The supplier should follow NCSC guidance for configuring their email system. If the supplier follows that guidance, and correctly configure their encryption, DMARC and DKIM settings, that will provide an end to end encrypted service that is secure for OFFICIAL information (including OFFICIAL-SENSITIVE)
- 45. Alternatively, if the supplier does require a CJSM account, the supplier can apply for accounts as a civil law company, as criminal information is still being exchanged with the government.
- 46. Supplier configurations will be checked against Mailcheck, a tool that tests the security configuration for an organisation's email accounts

## SCHEDULE 1 – CLAIMS HANDLING PROCEDURES

### New Claims

- Upon receipt of notification of a new claim the Supplier shall first identify whether the claim is a hard exemption that should be passed directly to GLD before work begins on the claim (as per [Schedule 3](#)). For all claims that the claims handler will initially manage, the Supplier shall:
- Input relevant details onto its claims management system/database which shall allocate a unique claims reference number;
- Set up and manage a claims portal on behalf of the Contracting Authority, as required under MoJ legal reforms, (unless otherwise agreed);
- Acknowledge and record all incoming correspondence regarding the claim upon receipt and unless otherwise stated issue a response **within five working days**;
- **Within two working days** of receipt, register all details on the appropriate claims management system;
- Make contact with the claimant or their representatives;
- If the letter of claim has been sent directly to the Supplier, the Supplier shall make contact with the claimant or their representatives **no later than two days of the date on the letter of claim**; and
- If the letter of claim has been sent to the Contracting Authority or its legal advisors and is forwarded to the Supplier, the Supplier shall make contact with the claimant or their representative **no later than two days after receipt by the Supplier**.
- Provide a full copy of the litigated claim file to the appointed solicitor within two working days. Full cooperation shall be given to assist with the preparation of a defence to the action;
- Ensure that telephone, e-mail or fax messages from Contracting Authority are answered **within one working day of receipt**, unless otherwise stated; and
- Assign relevant reserves to claims and review reserves at regular intervals of **no longer than six months**.

### Settlement of Claims

If a claim is one to settle, contact is made with appropriate person to agree both liability and quantum and provide details for payment to be issued, this must only be acted on once authorisation from the authority has been approved. Any claims from prisoners that require settlement must be checked for any offsetting sums prior to settlement. Any outstanding debts must be offset where possible. For repudiations contact should be made with the Contracting Authority point of contact to seek authority. If case litigates, KPI 2 shall be adhered to.



## **Closure of claims**

- 1) The Supplier shall use its best endeavours to ensure claims are settled in a timely manner where there is a proven legal liability with the aim to settle claims within the portal timeframes.
- 2) The Supplier shall be responsible for managing all claims received in the period of the Call Off Agreement.
- 3) The Supplier shall close denied employer liability and public liability claims where there has been no claimant/solicitor contact after six months.
- 4) The Supplier shall close the claim upon finalisation of all payments and recovery efforts as agreed with the Contracting Authority.
- 5) Upon closure of the claim the Supplier shall reduce all outstanding reserves to nil (zero). Where claims are re-opened after a period of inactivity they will be considered a continuation of the original claim and therefore not subject to additional charging but managed under the original fees levied.

## **Reserves**

1. The Supplier shall reserve on a realistic and accurate basis, and monitor and amend reserves to take into account any additional information received.

## **Fraudulent claims**

2. The Supplier shall work closely with the Contracting Authority to identify and manage any claims identified as fraudulent.
3. The Supplier shall provide:
  - Fraud awareness training to the Contracting Authority's staff;
  - Fraud training materials, including risk indicators and crib sheets, to be issued to the Contracting Authority's staff; and
  - Referral forms for the Contracting Authority to utilise in order for suspect claims to be investigated.

## **Legal Services**

4. The Supplier shall:
  - 4.1. Notify the Contracting Authority and / or the appointed solicitors (Government Legal Department (GLD) immediately of any legal proceedings (i.e. court claim form) served on the Contracting Authority that triggers the litigation process or pre-action disclosure request. The Supplier shall consult with the Contracting Authority and GLD. The Supplier shall provide the original legal proceedings and / or court documents to GLD via electronic reassignment. The Supplier shall

ensure that GLD is provided with all appropriate and relevant documentation under or in its control in accordance with KPI 2 from the SLA.

- 4.2. provide any additional information required by GLD as and when required. This may include the contact details of appropriate current or former Contracting Authority' personnel, or its predecessors for the purpose of taking witness statements etc.

## SCHEDULE 2 – STANDARDS AND SERVICE LEVELS

### STANDARDS

1. The Supplier shall provide the following Services:
  - 1.1. Investigate all claims and recoveries against the Contracting Authority;
  - 1.2. Provide an estimation of liability;
  - 1.3. Negotiations to reach settlement; and
  - 1.4. Settlement of claims and recoveries.
2. The Supplier shall also:
  - 2.1. Ensure that access to specialist services and information relating to current issues in legal liability and quantum, including recent court decisions, is available to the negotiators; and
  - 2.2. Take all measures to avoid PAD action including escalating individual claims in accordance with an agreed escalation process.
  - 2.3. Challenge and close off claims without merit to ensure they do not adversely affect the Contracting Authority's profile.
3. The Supplier shall notify the Contracting Authority in writing as soon as a claim is received which:
  - 3.1. Has no legal precedence for settlement;
  - 3.2. Is likely to attract media attention. The Contracting Authority shall be notified of such claims, initially by telephone, and confirmed in writing by e-mail or letter. All matters relating to press releases or disclosures shall be referred to the Contracting Authority, and the Supplier shall at all times act in accordance with the Contracting Authority's instructions; and
  - 3.3. Is settled on a provisional damages basis.
4. The Supplier shall work with the Contracting Authority to deliver savings and minimise costs without affecting the quality of service. This can include, but is not limited to, monthly (can be extended to longer if performance is satisfactory) regular review meetings (by teleconference and or meetings), risk profiling, claims analysis and reporting.
5. The Supplier shall provide the Services in accordance with the following standards:
  - 5.1. All claims shall be handled in accordance with the civil procedures rules issued by the Lord Chancellor's department in England and Wales, or as expeditiously as possible in Scotland and Northern Ireland;
  - 5.2. Personal injury claims shall be handled in accordance with the relevant pre-action protocol and liability decision made in accordance with established legal principals and taking account of prevailing case law. All personal injury claims are to be registered with the compensation recovery unit;

- 5.3. Admission of liability shall be the key factor in terms of handling of claims. However, it is recognised that the financial risks associated with taking claims to trial may mean that from time to time a pragmatic decision may be made with regards to the handling approach. This shall only be done with the full knowledge and prior written agreement of the Contracting Authority
- 5.4. The Supplier shall comply with all procedures, protocols, rules regulations and timeframes required under the legislation applicable to the particular claims the Contracting Authority requires it to handle. This shall include MoJ reforms, the correct use of and compliance with any relevant claims portals and their accompanying timescales. A record of all claims managed within the MoJ's portal (which shall include details of dropout rates and the reason why the claim left the portal) shall be retained;
- 5.5. The Supplier shall respect the sensitive nature of the information required for managing litigation within HMPPS and ensure that such information is not made more widely available than is absolutely necessary. This includes information on prison regimes, operational processes or any other pertinent information that may compromise security in any way.
- 5.6. All claims proceeding to trial shall be notified to the Contracting Authority;
- 5.7. All claimants shall receive prompt, courteous and helpful attention by appropriately resourced and trained staff; and
- 5.8. The Supplier shall attend case conferences and joint settlement meetings as required, at no extra cost to the Contracting Authority.

## KEY PERFORMANCE INDICATORS

### Overall Performance and Key Performance Indicators (KPIs)

6. The table below shows the KPIs that shall be measured and reported on by the Supplier on a quarterly basis, as part of the Quarterly Performance Report, in a format agreed with the Contracting Authority's representative.

| KPI             | Description   | Measure/deadline  | KPI Target Score   |
|-----------------|---|---|--|
| <b>Services</b> |   |   |  |
| KPI 1           | Timely notification of new claim to HMPPS   | Number of working days taken to notify: <ul style="list-style-type: none"> <li>within 5 working days of the claim being logged on the Contracting Authority Portal</li> <li>more than 5 working days of the claim being logged on the Contracting Authority Portal</li> </ul>   | 95% of all notifications to be made within 5 working days  |
| KPI 2           | a. Timely notification of Pre-Action Disclosure Applications (PADs) and Issued claims to GLD, and<br><br>b. Submission of documentation in a satisfactory format. | Number of working days taken to notify: <ul style="list-style-type: none"> <li>within 2 working days (or sooner if required) of the day of receipt of the PAD/Issued claim</li> <li>no more than 2 working days (or sooner if required) of the day of receipt of the PAD/Issued claim</li> </ul> Satisfactory format is measured by the number of times the Contracting Authority's representative has to make a request for missing documentation. The submission of documentation will be deemed unsatisfactory if a request for additional documentation or clarification is | If fewer than 30 PADs are received in a contract quarter, KPI 2a cannot be missed on more than 2 occasions<br>If more than 30 PADs are received in a contract quarter, 90% of all notifications within each quarter to be made within 2 working days of the day of receipt of the PAD/Issued claim<br><br>90% of all submissions within each quarter to be made in a satisfactory format |

|                |  |   |   |
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|                |  | <p>made by the Contracting Authority on more than 2 occasions.</p> <p>Files must be kept in an organized format, in an agreed order that makes sense to the Contracting Authority and Supplier.</p> <p>This is specified as</p> <ul style="list-style-type: none"> <li>Correspondence maintained in a chronological order</li> </ul> <p>Documents extracted from emails and stored separately from correspondence</p>   |   |
| <b>Reports</b> |  |   |   |
| KPI 3          | <p>Monthly Management Information Report</p> <p>a. timeliness, and<br/>b. accuracy of data</p> | <p>Number of working days taken to submit report:</p> <ul style="list-style-type: none"> <li>within 7 working days of the last day of each calendar month</li> <li>more than 7 working days of the last day of each calendar month</li> </ul> <p>Accuracy of data is measured by the number of times the Contracting Authority's representative makes a request for missing information or rectification of errors. The report will be deemed inaccurate if a request is made by the Contracting Authority on more than 1 occasion in respect of a report</p> | <p>75% (3 out of 4) of reports in a 3-month period to be submitted within 7 working days of the last day of each calendar month</p> <p>75% (3 out of 4) of reports submitted in a 3-month period must be accurate</p> |
| KPI 4          | <p>Quarterly Performance Report</p> <p>a. timeliness, and<br/>b. accuracy of data</p>          | <p>Number of working days taken to submit report:</p> <ul style="list-style-type: none"> <li>within 7 working days of the last day of each quarter</li> </ul>   | <p>75% (3 out of 4) of reports in a 12-month period to be submitted within 7 working days of the last day of each quarter</p>   |

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|                            |   | <ul style="list-style-type: none"> <li>more than 7 working days of the last day of each quarter</li> </ul> <p>Accuracy of data is measured by the number of times the Contracting Authority's representative makes a request for missing information or rectification of errors. The report will be deemed inaccurate if a request is made by the Contracting Authority on more than 1 occasion in respect of a report</p> | 75% (3 out of 4) of reports in a 12-month period must be accurate  |
| KPI 5                      | Annual Performance Report timeliness and accuracy of data                     | by the last day of January   | 100% to be submitted by deadline   |
| <b>Invoices</b>            |   |  |  |
| KPI 6                      | Quarterly invoice submission<br><br>a. timeliness, and<br>b. accuracy of data | <p>Number of working days:</p> <ul style="list-style-type: none"> <li>by the 7<sup>th</sup> of the first month of the next quarter</li> <li>after the 7<sup>th</sup> of the first month of the next quarter</li> </ul> <p>the Contracting Authority's representative makes a request for rectification of errors/missing information on more than 1 occasion in respect of a report</p>                                    | <p>75% (3 out of 4) of invoices in a 12-month period must be submitted by the agreed date</p> <p>75% (3 out of 4) of invoices in a 12-month period must be accurate</p>  |
| <b>Complaints Handling</b> |   |  |  |
| KPI 7                      | Timely acknowledgement resolution of complaints                               | <p>Number of working days taken to give final or interim response:</p> <ul style="list-style-type: none"> <li>within 5 working days</li> </ul> <p>If appeals or unresolved complaints, then, number of days taken to give final or interim:</p> <ul style="list-style-type: none"> <li>within a further 5 working days</li> </ul>  | <p>If fewer than 20 complaints are received in a contract quarter, KPI 7 must not be missed on more than 1 occasion</p> <p>If more than 20 complaints are made per contract quarter, 90% of complaints in each respective quarter received to be dealt with within the relevant deadline</p> |

|       |                      |   |   |
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| KPI 8 | Serious SLA failures | <p>No serious SLA failures (see below)</p> <p>A serious SLA failure means a significant failure in the performance of the contract and shall include, but is not limited to, the following:</p> <ul style="list-style-type: none"> <li>• 3 or more incidences of the Supplier failing to advise on liability within the PAP date resulting in a PAD being issued which in turn means increased or additional costs and resource for the Contracting Authority (where this failure is the sole responsibility of the supplier)</li> <li>• The Supplier acting outside of the scope of the contract or this SLA and agreeing or negotiating compensation or costs outside of the amount approved by the Contracting Authority.</li> <li>• Information, security, data loss or handling error by the Supplier and/or failure to report such events to the Contracting Authority. A data loss is qualified as any circumstance or events that have occurred where the loss of sensitive or personal data is considered to have been highly likely to have occurred. This includes if the supplier sends inadequately redacted or encrypted data to either an intended third party recipient or an unintended third party in error without authorisation from the Contracting Authority. A data handling error is qualified as any circumstance where adequately redacted and encrypted data has been shared with a third party in error without authorisation from the Contracting Authority.</li> </ul> <p>Repeated (3 or more) instances of missing (see para 10 below) any key performance indicators by the Supplier annually as specified in the KPI tables.</p> | <p>No serious failures. Please see below for steps to take regarding data breaches and handling errors.</p> |
|-------|----------------------|---|---|



7. The Supplier shall not be deemed to have failed to meet a KPI if the Contracting Authority is satisfied that the failure was outside of the Supplier's control, for example, due to the actions or omissions of the Contracting Authority. The Supplier must notify and provide evidence to the Contracting Authority's representatives as soon as practicable, if not, before a quarterly review meeting if it seeks to rely on this mitigation, including evidence of escalations made within the Contracting Authority's agreed process.
8. If the Supplier fails to meet a KPI target score, the Supplier shall provide a performance improvement plan on the specific KPI(s) within 10 working days of notice issued by the Contracting Authority's representative. The Contracting Authority's representative shall review the performance improvement plan and provide confirmation that this is acceptable and/or suggest amendments.
9. The Contract Authority may from time to time conduct a Customer Satisfaction Survey to determine areas for improvement and obtain feedback from Regional Litigation Teams (RLTs), NLT and GLD in relation to the Supplier's performance.
10. Any serious contract failures or breaches relating to information, personal data, other data loss or compromise by the Supplier including security breaches must be investigated by the Supplier and reported to the Contracting Authority. The Supplier must inform the relevant Contracting Authority representatives immediately after such an event is discovered and follow an internal action plan agreed with the Contracting Authority.
11. The Supplier shall produce an Incident Report and send it to the relevant Contracting Authority representatives.
12. The Incident Report must be provided as soon as practicable or within 5 days of the incident occurring. The report must contain the following information and steps that must be taken by the Supplier:
  - 12.1. numbers and status of individuals affected
  - 12.2. type of data compromised
  - 12.3. circumstances of the incident
  - 12.4. full assessment of the possible risks arising, covering risks to data subjects, the public, Ministry of Justice or government operations and reputation
  - 12.5. the risk of additional loss from a vulnerability being further exploited, and
  - 12.6. media and communications issues.

## Schedule 3 Criteria for sifting private law claims

### Criteria for sending pre-action claims to Claims Handlers

Claims Handlers will handle pre-action private law claims arising from employer's liability, public liability, lost property (all managed by RLT/NLT) and damage to motor vehicles (managed locally).

The presumption should be that all pre-action private law claims may be sent to the Claims Handlers except the following types of claim which should be sent to GLD:

- Those which may bring reputational risk to the MoJ, specifically, but not limited to :
  - claims which involve high profile offenders where high profile is normally defined as being with the National Press in the last 5 years (please note this may be the claimant or another individual connected to the claim)
  - claims which challenge national policy or raise cross cutting issues for HM Govt;
  - where the offence(s) of the claimant are deemed to be of high public interest at the time of claim (e.g. terrorism)
- Those which bring greater financial risk to the MoJ, specifically but not limited to:
  - claims which are likely to attract an award of damages in excess of £30,000 (this includes damages, special damages and Compensation Recovery Unit liabilities);
  - where emerging trends in claims have been identified collectively by all stakeholders involved and a corporate approach is required which should be handled by GLD; or
  - where the claim forms part of a Group action (a number of Claimants raising the same issue or incident, to be identified collectively by all stakeholders involved)
- Complex claims, specifically claims which:
  - involve defendants other than the MoJ;
  - are made by serial litigants or those subject to a Civil Restraint Order (where 3 or more claims have been received in the last 12 months);
  - involve suspected fraudulent activity from staff (it is expected that most potentially fraudulent claims from prisoners can be handled by the Claims Handler)
  - include Court involvement (e.g. Pre-Action Disclosure, or Part 8 Hearings)
  - Save for those cases raising matters without apparent legal basis or merit or which might properly be the subject of an internal complaint, the following specific hard exemption categories of work should be sent to GLD:

- Death in Custody matters (managed by the Safer Custody team);
- Industrial disease/exposure;
- Equalities;
- HRA, misfeasance or malfeasance claims;
- Breaches to DPA/GDPR legislation;
- Full search related claims or claims which raise matters of sexual impropriety on the part of staff
- Medical Negligence and/ or delay in providing access to medical treatment;
- Stress claims from staff
- Rule 39 claims
- Unlawful detention claims that involve recalls to prison

It is anticipated that there will be some instances where the Claims Handlers may initially manage the claim, but may need to pass this to GLD during the life of the claim (soft exemptions). When a claim is passed to GLD, the case worker must provide a detailed explanation of why the claim can no longer be managed by the Claims Handlers.