



**THE CHAIRMAN
TIMOTHY DUTTON QC**

To: Heads of Chambers
Senior Clerks and Practice Managers
Circuit Leaders

7th March 2008

Dear Colleague,

Very High Cost (Criminal) Cases

Further to my letter of 12 February 2008, the Legal Services Commission has now revised the Panel Contracts for Advocates and Panel Members and given a deadline of 14 March for barristers to sign the revised Panel Advocates' contract. The updated publications from the Legal Services Commission (dated 4 March 2008) are available on the Legal Services Commission's website at www.legalservices.gov.uk.

The amendments to the contract include the following clarification of several key clauses of the VHCC contracts:

- A Panel Advocate's acceptance of a case is dependant on his or her availability and competence (Clause 4.2A);
- Panel Advocates are not obliged to accept cases that may be considered "distant" (Clause 4.2B);
- The access to electronic diary provisions have been removed (13.3, 13.4 and 21.1.2).

The rates in the contract remain the same as those previously proposed by the LSC in January. It remains the Bar Council's view that the scheme is still a flawed hourly rates scheme, which fails to incentivise quality, efficiency, teamwork and expedient handling of cases. The scheme proposed by the LSC remains an 18 month scheme to which barristers are being invited to contract.

It is worth noting that the LSC have requested that the Bar Standards Board amend the Code of Conduct to include specific requirements relating to retention of and access to time records. Whilst good record retention relating to a case for a client is one thing, the LSC request includes a request that summary information regarding the total number of hours worked per day by

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barristers across all cases (e.g. private, legal aid, prosecution), be made available to the LSC or CPS. This matter will be carefully examined by the Standards Committee of the BSB, then the BSB, before a consultation with the profession should any changes be recommended. There is no need for anyone else to write to me about this topic – I know the profession's views on it!

The Legal Services Commission has reiterated in its letter of 4 March that advocates who do not accept the contracts will be permitted to undertake VHCC work as non-panel advocates when there is no Panel Advocate available to accept instructions on a VHCC. If the LSC's proposed scheme goes ahead, the Bar Council will work to produce a Protocol to assist non-panel advocates when dealing with solicitors (see below).

Clause 1.5 of Annex 9 to the Panel Members contract controls the power to instruct a non-panel advocate. Panel Members are obliged to inform the LSC when no Panel Advocate is available, upon which the Complex Cases Unit at the LSC will then email all Panel Advocates to invite expressions of interest in a case. It would appear that if a Panel Advocate is available the Panel Member will be obliged to accept that Panel Advocate as the advocate on a contracted case.

If no Panel Advocate expresses an interest in joining the defence team within 21 days the Complex Cases Unit will then contact all Panel B advocates. It is not clear from the contract what the criteria are for being a Panel B advocate. If no Panel B advocate is willing or able to conduct the case then Panel Members will be able to instruct a non-panel advocate, provided that the CCU has given prior written agreement.

As mentioned above the Bar Council is currently in the process of drafting a protocol, setting out terms, so that the protections available to advocates through the contract (protections relating to the proper discharge of professional obligations under the Code, fee levels and payment, case management, working process etc.) are made available to those who choose to accept work as non Panel advocates.

Members of the criminal bar will be provided with the Protocol once it has been finalised and it will be made available on the Bar Council website. There will be no compulsion to use it: the Protocol will simply provide certain minimum provisions which the Bar Council advises will best serve criminal justice.

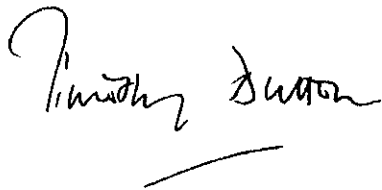
The Bar Council remains concerned about the implications that this scheme has for quality, choice of advocate and the ability of a defence team to work together to provide the client with the best service. We have written to the LSC and to the Lord Chancellor and Secretary of State for Justice on the 12th February (copy available on the Bar Council website) making these points. As yet we have received no substantive response.

The Bar Council has, on several occasions, invited the LSC to work closely with us on a more appropriate scheme for these cases: a scheme which pays by outputs, not by the hour, and therefore encourages the expedient and efficient handling of cases in a high quality manner and which provides fair reward for both solicitors and barristers. Such a scheme would encourage early instruction of counsel and would remove any incentive to have cases running on too long. We wrote to the LSC on 26th February to request data on VHCC expenditure from Richard Collins, in order to enable Professor Martin Chalkley to build on our ideas for an improved scheme. As yet, we have only received a holding reply. Once the essential statistical data has been provided, we hope to work in a collaborative atmosphere with the LSC and with the Law Society representatives to ensure a better, more cost effective scheme which has quality and efficiency at its heart.

The Bar Council will be providing the LSC with a response to the latest round of contract amendments. The Bar Council's response will be made available on the Bar Council website in due course.

I reiterate that the decision of whether to sign the new contract remains a personal one for every practitioner.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Timothy Dutton". The signature is written in a cursive style with a long horizontal line underneath.