



BAR COUNCIL MOVES TOWARD JUDICIAL REVIEW OF GOVERNMENT'S CONSULTATIONS ON CRIMINAL LEGAL AID

The Bar Council has taken the first step toward a judicial review (JR) of two consultations on Advocates Graduated Fees and Very High Cost Cases (VHCCs) which are being conducted by the Ministry of Justice (MoJ) and the Legal Services Commission (LSC) respectively. The Bar Council has instructed solicitors to write to the MoJ and the LSC, in accordance with the pre-action protocol for judicial review claims. The principal basis for the Bar Council's claim is that the consultation exercise is inadequate and unfair.

The Bar Council's decision to proceed with an application for JR has not been taken lightly. It has been more than twenty years since the Bar Council last instituted JR proceedings against the Government, despite a series of poorly handled reviews and efforts to reform the legal aid system. Only this week, in their 9th Report (HC 322), the Public Accounts Committee heavily criticised the MoJ and the LSC for the confusion and uncertainty about their respective roles in relation to legal aid, the absence of a clear strategic direction and poor management of legal aid changes at the Commission and the LSC's lack of understanding of the legal services market. Because of the Commission's lack of basic information about its supplier base, it is unable to demonstrate it offers the taxpayer good value for money. These findings, which follow last year's highly critical report of the Justice Committee on family legal aid reform and a series of botched efforts to reform criminal legal aid, have systematically undermined the justice system. Despite these failings, the Bar Council has consistently put forward proposals designed to safeguard and promote the administration of justice, without seeking recourse to legal action.

However, the Bar Council considers that, despite its requests for a change of approach which recognises that the two latest consultations are inextricably linked, the conduct of the consultation by the MoJ and the LSC has been so flawed that judicial review is the only option left open to the Bar.

Commenting on the decision, Bar Chairman Nick Green QC said:

'The Bar Council has thought long and hard about this decision but the reform of legal aid is in a chaotic state. Our decision to take the first step towards bringing proceedings for judicial review has been taken after very careful consideration of the options available to us. We asked the MoJ and the LSC for market data to support their view that the market is ready for a single graduated fee but there has been no response. The Bar does not have the

information it needs to respond adequately to the two consultations. ' Having taken legal advice, we are therefore taking the first steps toward judicial review. The principal basis of our claim will be that the consultation exercise is unfair and, in our view, unlawful.'

Paul Mendelle QC, Chairman of the Criminal Bar Association, added:

'Our concern is not simply about fee levels or the interests of the profession – it is about the need to ensure that the justice system functions well, and that criminal trials are carried out effectively and in the public interest. We must protect the justice system and ensure that this process, which underpins the Rule of Law and our democratic way of life, convicts the guilty and acquits the innocent. These consultations affect the future of the criminal justice system including some of the most lengthy and complex criminal cases. The Government is undermining the system it claims to protect; we cannot stand by and let this happen.'

ENDS

Notes to Editors:

1. For more information please contact the Bar Council Press Office on 020 7222 2525
2. The General Council of the Bar is the Approved Regulator of the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board. It represents the Bar by:
 - Promoting the specialist advocacy and advisory services of barristers;
 - Ensuring access to justice on terms that are fair both to the public and practitioners;
 - Promoting the high quality training and professional development of all barristers to ensure the highest standards of practice and ethical behaviour;
 - Working for the efficient and cost-effective administration of justice;
 - Encouraging access to, and diversity within, the profession so that it is open to all people of ability whatever their background; and
 - Strengthening and developing the work and the values of the Bar at home and abroad.
3. The Criminal Bar Association exists to represent the views of the practising members of the criminal bar in England and Wales. It has over 3,800 members and is the largest of the specialist bar associations in this country.