



4 February 2010

Dear Colleagues

VHCC and AGFS consultations

We wrote to you in December about two important consultations on fees:

- The LSC's consultation on VHCCs (revised closing date – 8 February); and
- The MoJ's consultation on reforming AGFS (closing date – 24 February 2010).

In the seminars in Birmingham, London, Cardiff and Manchester we have urged you to respond to the consultations, but not until you have seen the Bar Council and the CBA's response. We are now writing to update you on the current position.

On 21 January we sent a joint letter to Lord Bach, Minister for Legal Aid, and to the Legal Services Commission explaining that we were unable to respond to the two consultations until a further proposed consultation which the MoJ had referred to in paragraph 29 of their paper concerning the introduction of a single graduated fee had been both issued and addressed. It was our considered view that all of the various consultations had now become so inextricably linked that the only sensible course was that they be coordinated. In particular we pointed out that logically it was not sensible to respond to the present consultations until the MoJ had arrived at a decision on the single graduated fee proposal. We also asked for the research held on the market to support the view that the market is ready for a single graduated fee.

On 1 February we received a response to our letter from Lord Bach sent on behalf of the MoJ and the Legal Services Commission. In that letter Lord Bach accepted that there is a very close relationship between the consultations. However, he did not believe it was necessary to extend the deadlines for responses. He did not reply to our request for market information.

We remain firmly of the view that because the consultations are so very closely connected and interdependent upon each other and on an as yet unpublished consultation (the OCOF

consultation trailed in Paragraph 29 of the MoJ paper) we simply do not have the information which is necessary to enable us to respond in a sensible manner to the LSC's consultation on VHCCs by the deadline of 8 February. We will be in the same position so far as concerns a response to the MoJ's consultation by 24 February.

In the circumstances we have today instructed solicitors to take the first step towards bringing proceedings for judicial review by writing to the MoJ and the Legal Services Commission in accordance with the pre-action protocol for judicial review claims. The principal basis of our claim will be that the consultation exercise is inadequate and unfair.

We will not therefore be responding substantively to the Legal Services Commission on 8th February 2010. We will be explaining more fully just why requiring us to respond in these circumstances is unfair and in our view unlawful.

You will of course wish to determine for yourselves how you should respond. In the hand-out accompanying the road shows, Paul urged you to respond to the paper but this was drafted at a time when we had asked for the dates for responding to be coordinated. That request has just been refused. You might respond on 8th February by saying that, although you prefer GFS Plus, it is not at present possible to submit a reply to the Legal Services Commission paper because it is so interconnected with, and the choices dependent upon, both the MoJ paper and the as yet unpublished consultation on single graduated fees that is anticipated in paragraph 29 of that document.

Yours



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