



ANSWER SHEET for the

CONSULTATION ON CONTRACTUAL TERMS

OF WORK FOR THE SUPPLY OF LEGAL SERVICES

BY BARRISTERS TO SOLICITORS

How to respond

The Bar Council would like your views on the introduction of new Contractual Terms of Work for barristers receiving instructions from solicitors. If more convenient to you, you can use the attached answer sheet to respond by following these steps:

1. Please type and save your answers using this MS Word Answer Sheet. Put in X in the Yes/No text boxes as appropriate.
2. Return the answer sheet to the Bar Council by attaching it to an email and sending to: contractconsultation@barcouncil.org.uk or posting it to Janice Marshall, Bar Council, 289-293 High Holborn, London WC1V 7HZ (DX 240 London Chancery Lane). You may find it easier to save your answer before sending it to the Bar Council.
3. **Please ensure your response is received by the Bar Council by the 31 July 2010**

If you have any difficulties in accessing this Answer Sheet or have queries relating to this consultation, please contact Janice Marshall on contractconsultation@barcouncil.org.uk or ring her on 020 7611 1375.

DEADLINE FOR ALL RESPONSES IS 31 JULY 2010



THE CRIMINAL BAR ASSOCIATION

www.criminalbar.com

289-293 High Holborn

London WC1V 7HZ

DX 240 LDE

020 7 242 1289

**CONSULTATION ON CONTRACTUAL TERMS OF WORK FOR THE
SUPPLY OF LEGAL SERVICES BY BARRISTERS TO SOLICITORS:
RESPONSE OF THE CRIMINAL BAR ASSOCIATION**

Question 1

- a. **Should the existing (non-contractual) Terms of Work and the (contractual) 2001 Terms now be abolished?**

Yes

No

- b. **If so, should they be replaced by the proposed New Contractual Terms?**

Yes

No

- c. **If the answer to either a. or b. above is in the negative, what alternative suggestions do you have?**

Question 2

a. Do you agree that the draft New Contractual Terms should become the de facto default terms of work for barristers, in the absence of alternative terms having been agreed?

Yes

No

b. If not, what alternative(s) do you suggest?

Response to 2A: Bar wide adoption of these terms would promote the public interest. The more chambers that adopt the new terms, the more likely the terms are to be effective in achieving their main goal of protecting the commercially most vulnerable sets/barristers. We suggest that the new terms be actively supported to promote universal adoption.

Question 3 Should the Code be amended as proposed so that barristers are not obliged to accept instructions other than on the New Contractual Terms?

Yes

No

Response to 3: Yes, for the reasons given in the consultation document. In particular, we recognise that adding a further exception to the Code is necessary to protect the youngest and commercially most vulnerable members of the Bar.

Question 4

a. Do you think it is appropriate that the existing Withdrawal of Credit Scheme be abolished and replaced with an Advisory List of Defaulting Solicitors?

Yes

No

b. Do you agree that, unless payment accompanies the instructions, barristers should not be obliged to accept work from solicitors' practices named on the Advisory List of Defaulting Solicitors?

Yes

No

- c. If you consider that the answer to either a. or b. should be in the negative, what alternatives do you suggest?

Response to 4A: Yes, for the reasons set out in the consultation document.

Response to 4B: We are strongly of the view that the prohibition should be retained. The course proposed would dilute the protection of the vulnerable. The prohibition is a faceless shield behind which the young and vulnerable can presently shelter without risk of disfavour. When a bad payer is minded to exploit, he is automatically thwarted, without offence or personal recrimination by the blanket prohibition. If the shield is discarded, a solicitor on the ALDS may seek counsel to work on credit on terms less favourable than the new default terms, and the barrister, although not obliged to accept, may - in direct proportion to his youth or vulnerability in chambers or in the general market place - feel pressurised to accept. We urge the Bar Council to maintain this shield in the public interest and in the interest of those barristers least able to protect themselves from market exploitation. We cannot identify any merit in promoting 'competition in the provision of legal services' if that is achieved only at the expense of facilitating exploitative business arrangements [paragraph 31 of the consultation document].

Response to 4C: Solicitors who have had financial difficulties in the past may overcome them and reach a position where they can again safely instruct counsel. If so, they should do so only by paying in advance or on the approved contractual terms. An acceptable compromise might be achieved by preserving the prohibition in an amended form so that barristers were still obliged to refuse instructions from solicitors on the ALDS *unless* the instructions were offered on the new default terms with payment in full and in advance.

Question 5 Do you agree that barristers should be able to lodge complaints to the Bar under the scheme for the Advisory List of Defaulting Solicitors for publicly funded matters where barristers are prevented from being paid due to solicitors' failure in carrying out their obligations?

Yes

No

Response to 5: Yes, for the reasons given in the consultation document.

Question 6

- a. Do you think there will be any negative consequence for any group arising from the proposed changes and, if so, how might they be mitigated?

Yes

No

Response to 6A: In so far as commercial vulnerability coincides with age, gender, sexual orientation, religion, ethnicity or any other characteristic, there will be a disproportionate effect on members of an identifiable group if the exception in the Code in relation to the refusal of instructions from solicitors with recorded financial difficulties is abolished. This is an additional reason for favouring the suggestions we make in answer to question 4 above.

- b. Do you think that there are opportunities to promote greater equality?

Yes

No

Response to 6B: A compulsory and prescriptive approach to the new terms will protect the most vulnerable and promote greater equality across the Bar. By ensuring that the new default terms are uniformly and universally adopted by all chambers we would promote equality and ensure that the terms were effective and sustainable.

It would also be appreciated if you could comment on how you consider that the proposed changes would affect you, or your colleagues or (where appropriate) the members of your organisation.

For the reasons given by the authors of the consultation document we agree that these changes are likely better to protect the vulnerable, subject to the amendments suggested.

We intend to publish a report on all the responses to this consultation on our website unless a respondent expressly requests that a specific part of the response, or its entirety, should be kept confidential. With confidential responses, we will record the identity of the respondent and the fact that they have submitted a confidential response. If you prefer any part or all of your response to be treated as confidential, please ensure that you advise us accordingly.

Name of Respondent Patrick Gibbs Q.C., Neil Saunders, Anthony Metzger, Patrick Duffy

Organisation (if relevant) Criminal Bar Association

Address 289 – 293 High Holborn
London WC1V 7HZ

Please email your response to contractconsultation@barcouncil.org.uk or post it to Janice Marshall, Bar Council, 289-293 High Holborn, London WC1V 7HZ (DX 240 London Chancery Lane). The closing date is 31 July 2010.