

LEGAL SERVICES CONSULTATIVE PANEL

SUMMARY OF WORK

1 JANUARY TO 31 DECEMBER 2003

Introduction

During 2003 the Legal Services Consultative Panel ('the Panel') considered eight referrals from the Secretary of State for Constitutional Affairs for rule or regulation changes. The Panel also considered an application from the Institute of Legal Executives for extended Rights of Audience. In addition, the Panel considered an application from the Association of Law Costs Draftsmen seeking designation as a body able to grant rights of audience and rights to conduct litigation to its members.

The Panel's statutory duty

The statutory duties of the Panel are set out at section 18A(3) of the Courts and Legal Services Act 1990 as amended by section 35 of the Access to Justice Act 1999 ('the Act'). The Act provides that the Panel shall have –

- (a) *The duty of assisting in the maintenance and development of standards in the education, training and conduct of persons offering legal services by considering relevant issues in accordance with a programme of work approved by the Secretary of State and, where the Consultative Panel considers it appropriate to do so, making recommendations to him;*
- (b) *The duty of providing to the Secretary of State, at his request, advice about particular matters relating to any aspect of the provision of legal services (including the education, training and conduct of persons offering legal services); and*
- (c) *The functions conferred or imposed on it by other provisions of this Act or any other enactment.*

Chairman and Members

Lord Justice Potter has continued as Chairman of the Panel. Members of the Panel during the period 1 January to 31 December were:

Professor John Bell QC (Hon)
Professor Hugh Brayne
Lady Elizabeth Finsberg
Mr Ian McNeil
Ms Karen Mackay
Mr Richard Moorhead
Mr Charles Plant

Mr John Randall QC
Mr Simon Sapper
Mr Alan Street
Ms Peta Sweet
Dr Matthew Weait

The following members retired from the Panel with effect from 31 December 2003:

Mr Ian McNeil, former President of the Institute of Chartered Accountants in England and Wales.

Mr Charles Plant, senior partner Herbert Smith, solicitors.

Their wealth of knowledge and commitment to the work of the Panel was greatly appreciated.

Working groups in 2003

Legal Education and Training

Ms Sweet (Chair)

Professor Bell

Professor Brayne

Lady Finsberg

Mr Street

Dr Weait

Developments in Community Legal Services

Mr Moorhead (Chair)

Ms Mackay

Mr Sapper

Ms Sweet

Conditional Fees

Mr Plant (Chair)

Lady Finsberg

Mr McNeil

Mr Moorhead

Mr Randall

Public Defenders and Criminal Defence Services

Ms Mackay

Dr Weait

Meetings

The Panel has met 11 times during the year and there have been additional meetings of most of the working groups.

Referrals

The bulk of the Panel's work has been to consider and advise the Secretary of State for Constitutional Affairs ('the Secretary of State') on applications from the legal professional bodies to amend their rules and regulations under the provisions of Schedule 4 to the Courts and Legal Services Act 1990. Referrals are given priority in the Panel's work programme. In considering any referral made to it, the Panel has had regard to the principle established by the Courts and Legal Services Act 1990 and the Access to Justice Act 1999, of developing legal services in England and Wales (in particular advocacy, litigation, conveyancing and probate services) by making provision for new or better ways of providing such services and a wider choice of persons providing them, while maintaining the proper and efficient administration of justice.

Referrals during 2003:

Referral No 1 of 2003 – *Application by the Council for Licensed Conveyancers to amend its Compensation Fund Rules.*

Referral No 2 of 2003 – *Application by the Council for Licensed Conveyancers to amend its Training Rules.*

Referral No 3 of 2003 – *Application by the General Council of the Bar to approve amendments to its Code of Conduct which relax the existing prohibition on direct access.*

Referral No 4 of 2003 – *Application by the General Council of the Bar to amend its Continuing Professional Development Regulations (Annex C of the Bar's Code of Conduct).*

Referral No 5 of 2003 – *Application by the General Council of the Bar to amend Regulation 45 of its Consolidated Regulations.*¹

Referral No 6 of 2003 – *Application by the General Council of the Bar for amendments to the Code of Conduct concerning the Practising Certificate Rules and the Registered European Lawyers Rules.*

Referral No 7 of 2003 – *Application by the Association of Law Costs Draftsmen seeking designation as a body able to grant rights of audience and rights to conduct litigation to any of its members.*

Referral No 8 of 2003 – *Application by the General Council of the Bar to approve amendments to the Code of Conduct concerning Registered European Lawyers and the duty of confidentiality.*

Referral No 9 of 2003 – *Application by the General Council of the Bar to approve amendments to the Code of Conduct concerning the definition of "professional client" to include Scottish and Northern Ireland solicitors.*

¹ Note: This application was withdrawn by the General Council of the Bar, before publication of the Panel's advice.

The Panel has also considered **Referral No 3 of 2002**, the application by the Institute of Legal Executives (ILEX) for increased advocacy rights. Following discussions with the Panel, ILEX has decided to submit an amended application.

The Panel is considering **Referral No 7 of 2003**, the application by the Association of Law Costs Draftsmen. However, the Panel has concluded its consideration of all the other referrals, its advice having been published on the DCA Website (<http://www.dca.gov.uk/atoj/lscp/lscpr2.htm>).

Application by the Council for Licensed Conveyancers to amend its Compensation Fund Rules (Referral No 1 of 2003)

The Council for Licensed Conveyancers (CLC) makes rules under section 38 of the Administration of Justice 1985 with the concurrence of the Secretary of State. In accordance with these provisions, the CLC sought the concurrence of the Secretary of State to its amended Compensation Fund Rules. The Secretary of State referred the Rules to the Panel for advice on 27 January 2003. The Panel's advice was given in September 2003.

The Panel advised the Secretary of State that the new rules should be approved subject to the conditions. The Secretary of State has now approved the rule changes.

Application by the CLC to amend its Training Rules (Referral No 2 of 2003)

In accordance with the provisions of section 38 of the Administration of Justice Act 1985, the CLC sought the concurrence of the Secretary of State to its amended Training Rules. The Secretary of State referred the Rules to the Panel for advice on 27 January 2003. The Panel's advice was published in November 2003.

The Panel advised the Secretary of State that the new rules should be approved subject to conditions. The CLC is currently considering the Panel's recommendations, before re-submitting the rules for the concurrence of the Secretary of State.

Application by the General Council of the Bar to approve amendments to its Code of Conduct which relax the existing prohibition on direct access (Referral No 3/2003)

The Secretary of State received an application from the General Council of the Bar to approve amendments to its Code of Conduct which relax the existing prohibitions on direct access. This application was referred to the Panel on 27 January 2003. The Panel's advice was published in July 2003.

The Panel advised the Secretary of State that the application be approved, subject to a number of conditions. The Secretary of State is presently considering the advice before deciding whether this rule change should be approved.

Application by the General Council of the Bar to amend its Continuing Professional Development Regulation (Annex C of the Bar's Code of Conduct). (Referral No 4/2003)

A reference was made to the Panel by the Secretary of State on 27 January 2003 concerning an application to amend the Bar Council's Continuing Professional

Development Regulations (CPD). The application proposed the introduction of a calendar year for CPD. It also proposed to enable the Bar Council to specify the content and format of courses of CPD. The Panel's advice was given in March 2003.

The Panel advised the Secretary of State that the proposed changes should be approved. The Secretary of State is presently considering the advice before deciding whether the amended CPD should be approved.

Application by the General Council of the Bar to amend Regulation 45 of its Consolidated Regulations (Referral No 5 of 2003)

The General Council of the Bar submitted an application seeking to amend Regulation 45 of its Consolidated Regulations. The proposed amendments would enable the Joint Regulations Committee of the Bar Council to relax the requirements for a barrister to act as a pupil-master by waiving the "Second Qualified Lawyer" rule. A reference was made to the Panel by the Secretary of State in June 2003, however the application was subsequently withdrawn by the Bar Council.

Application by the Association of Law Costs Draftsmen seeking designation as a body able to grant rights of audience and rights to conduct litigation to any of its members (Referral No 7 of 2003)

A reference was made to the Panel by the Secretary of State on 22 September 2003 concerning an application from the Association of Law Costs Draftsmen (ALCD). Under the provisions of Section 29 of and Schedule 4 to the Courts and Legal Services Act 1990, the ALCD seek to become designated as a body authorised to grant rights of audience and rights to conduct litigation to any of its members in the following areas:

- Rights of audience in all proceedings being conducted under Parts 43-48 of the Civil Procedure Rules 1999 ("CPR") and under Part 52 of those rules with regard to appeals from detailed assessments hearings before a High Court Judge or a Circuit Judge;
- Rights of audience on all determinations of costs under the Community Legal Services and Criminal Services regulations;
- Rights of audience in all proceedings at first instance relating to costs before House of Lords;
- Rights of audience in all costs proceedings at first instance before Her Majesty's Privy Council; and
- Rights to conduct litigation in all proceedings under Part 43-48 of the CPR and under Part 52 of those rules with regard to appeals from detailed assessment hearings to be listed before any High Court Judge or Circuit Judge.

The Panel is considering the ALCD's application and anticipates finalising its advice to the Secretary of State during the course of 2004.

Application by the General Council of the Bar to approve amendments to the Code of Conduct concerning Registered European Lawyers and the duty of confidentiality (Referral No 8 of 2003)

A reference was made to the Panel by the Secretary of State on 27 October 2003 concerning an application to amend paragraph 702 of the Bar Council's Code of Conduct. The amendment would permit a Registered European Lawyer to seek advice from another lawyer without being in breach of the existing Rules concerning confidentiality. In addition, it would permit confidential papers to be revealed to a Registered European Lawyer for the purposes of Paragraph 5(3) of the Bar's Code of Conduct. The Panel's advice was given in November 2003.

The Panel advised the Secretary of State to approve the rule change. The Secretary of State is presently considering the advice before deciding whether this rule change should be approved.

Application by the General Council of the Bar to approve amendments to the Code of Conduct concerning the definition of "professional client" to include Scottish and Northern Ireland solicitors (Referral 9 of 2003)

A reference was made by the Secretary of State on 27 October 2003 concerning an application to amend Paragraph 1001 of the Bar Council's Code of Conduct to alter the definition of "professional client" to include Scottish and Northern Ireland solicitors. The Panel's advice was given in November 2003.

The Panel advised the Secretary of State to approve the rule change. The Secretary of State is presently considering the advice before deciding whether this rule change should be approved.

Copies of the Panel's full advice to the Secretary of State on the concluded referrals can be obtained from the DCA website at <http://www.dca.gov.uk/atoj/lscp/lscpfr2.htm> or in hard copy from the Panel Secretariat (telephone: Ms Louise Joyce on 020 7210 8816).

Work Programme

The Secretary of State approved the Panel's programme of work for 2003/2004² in accordance with section 18A(3)(b) of the Courts and Legal Services Act 1990. The Panel carries out its duties under the work programme largely by means of ad hoc meetings of its working groups who report to the full Panel for approval and/or for modification of their provisional conclusions and advice.

Legal Education and Training

During 2003, the Legal Education and Training working group played a leading role in the organisation of the Secretary of State's Standing Conference on Legal Education. The working group was also involved in continued discussions about the membership of the Standing Conference. Recommendations regarding membership were subsequently accepted at the last Standing Conference, which took place on 17 November 2003.

Developments in Community Legal Services

The working group has had several meetings with representatives of the Legal Services Commission (LSC). A variety of issues were discussed at these meetings, including the level of support available for students and trainees and the future of regulation of legal services. These meetings also provided the opportunity for the Panel to gain more information about the LSC's National Occupational Standards project.

Conditional fees

The Panel established a working group to consider the operation of conditional fee agreements (CFAs). The Panel reviewed the Fenn, Gray, Rickman and Carrier report on the Impact of Conditional Fees on Litigation. The Panel also consulted Master Hurst, Senior Costs Judge, Professor John Peysner, (a member of the Civil Justice Council and Chairman of the Costs and Access to Justice Committee) and Professor Paul Fenn (co-author of research into conditional fees). In the light of these consultations, the Panel advised the Secretary of State that a number of complex issues had been generated by CFAs which the Panel noted were being considered by other interested parties. In these circumstances, the Panel concluded that detailed consideration by the Panel would simply duplicate the work of others. However, the Panel informed the Secretary of State that it would be willing to assist in reviewing any discrete issues on CFAs on which it was considered that the Panel's assistance was desirable.

Public Defenders and Criminal Defence Services

The Panel established a working group to consider the operation of the Criminal Defence Service and the use of Public Defenders. The working group, which has yet to meet, kept a watching brief of developments in this area in 2003. During 2004, the working group will monitor the interim results of the public defender pilot project.

² Published on the DCA website <http://www.dca.gov.uk/atoj/lscp/lscpfr2.htm>

Research

The Panel's proposal for research on the training and regulation of those providing legal services was included in the DCA's 2003 Research Priorities Document and has been accepted by the Department. Panel members will be involved in the research as the work progresses.

The Future

Referrals

The Secretary of State has indicated that referrals are likely concerning:

- An application by the Institute of Money Advisers for designation as a body authorised to grant rights of audience to its members.
- The Law Society's review of its Code of Professional Conduct.

Work Programme 2004/2005

The Secretary of State has approved the Panel's work programme for the 2004/2005 year. The work programme is published on the DCA website (<http://www.dca.gov.uk/atoj/lscp/lscpfr2.htm>).

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