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Dear Chris

QASA: Fourth consultation paper

The Panel has consistently supported the development of a quality assurance scheme for advocates. The benefits for consumers include bolstering confidence in the quality of advocacy, helping them to choose the best advocate for their needs, clarifying what they can expect from their advocate and promoting competition between advocates on quality grounds.

This is the fourth and last consultation paper before the scheme is submitted for approval to the Legal Services Board. As the document states, the fundamentals of the scheme have been settled following previous consultations; the purpose of this exercise is to seek views on a relatively small number of outstanding issues. Therefore, the Panel will not unpick previous decisions, but seeks to make constructive points on those remaining issues affecting consumers. For the record, we consider that the scheme fundamentals are sound and acknowledge that the Joint Advocacy Group (JAG) has addressed some of the concerns we identified in previous consultations, in particular around the assessment process. We remain concerned about the absence of consumer input in various aspects of the scheme, including in governance, the advocacy standards and assessment of advocates. The Panel is looking to JAG for a clear public commitment that it will bolster consumer input following its planned review of the scheme, ideally much sooner.

Below we make some brief points on issues in the order they appear in the consultation document:

- Consistency – we share concerns about consistent application of the scheme by each regulator; from the consumer perspective the key risks are that the minimum competency thresholds will be differently interpreted and that consumers cannot compare like with like (this is increasingly an issue as direct access to barristers becomes more common). The scheme review exercise should gather evidence on consistency among regulators.
- Client notification – we agree it is important for clients to be aware of how far their advocate will be able to progress their case so they can decide whether to proceed or choose someone else, although we recognise that the approved regulators' existing rulebooks should cover this eventuality. The Panel would hope that in many cases advocates should have the

experience to anticipate when a case is likely to escalate beyond their grade and advise clients they are not competent to act. The emphasis should be on advocates to make a judgement and advise clients accordingly.

- Youth Court work – since Youth Courts involve vulnerable groups it is highly unsatisfactory that JAG has apparently been forced to take a pragmatic decision to allow Level 1 advocates to undertake work that it earlier deemed as requiring an advocate accredited at Level 2. We welcome a commitment by the regulators to undertake research as a matter of priority to identify the risks and implement remedial measures. The regulators should also give this high priority in relation to ongoing monitoring of assessments.
- Client choice – this raises some difficult issues around allowing people to make free choices and protecting clients from themselves. This would have benefited from consumer research to test the legitimacy of the proposal and establish the appropriate safeguards. The Panel has commissioned some qualitative research on the broad theme of risk and regulation which should provide some useful insight, although this will not be available until the start of 2013. For now, on balance the Panel supports giving clients the limited option of choosing an advocate accredited one grade below their case level. We are concerned this could be abused, for example by advocates making misleading claims, but we agree that the proposed information and consent controls should help to mitigate the risks. Implementation of this policy should be monitored closely by the regulators.
- Accreditation of silks – the Panel wishes to signal its strong support for the inclusion of silks within QASA and the re-accreditation requirement. Silks are just as vulnerable to deterioration in performance over time as other advocates and should be regularly assessed. The fact they undertake high complexity work only strengthens this argument.
- Scope of the review – the overarching focus of the review should be the impact of QASA on standards of advocacy. However, JAG can only provide an incomplete answer to this central question since the scheme does not involve input from clients, witnesses, victims or other court users as part of the process for assessing advocates. Finding the right mechanism to obtain this unique lay perspective should be a key priority for the review. The review should also consider (if it is not overtaken by events) how QASA can be adapted to cover additional areas of law.

Finally, we note the absence of user input in the governance of QASA; neither JAG nor the Advisory Group has user representation. This is a key omission and goes against the general positive trend seen in other areas of regulation. Users in their various forms are intended beneficiaries of QASA and have a uniquely valuable contribution to make. We consider user representation is vital to underpin public confidence that QASA is operating in the public interest. This needs to be urgently addressed and certainly before the 2015 review.

Yours sincerely



Elisabeth Davies
Chair