

Clare Vicary
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Bar Standards Board
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15 August 2011

Dear Ms Vicary

Public access work for clients eligible for public funding

Thank you for seeking the Legal Services Consumer Panel's views about the Bar Standard Board's (BSB) review of rule 3(1).

The Panel strongly supports consumers being able to make informed choices about who will provide their legal services, and how they will access them, including whether to instruct barristers directly. However, the fundamental prerequisite is that consumers have access to, and understand, the relevant information prior to making any decision.

As noted in the consultation documentation, Rule 3(1) was developed due to concerns that consumers may not fully understand that choosing to instruct a barrister via the public access scheme means they are not able to apply for public funding, and are therefore privately responsible for case costs. The Panel considers this to be a genuine risk and the consultation documentation presents neither evidence that this has changed, or how it could be mitigated.

The Panel is concerned that the BSB's decision to review Rule 3(1) appears to be based on professional demand rather than any apparent change in the regulatory risk identified. A decision to lift the prohibition should be evidence-based and focussed on the consumer impact, rather than be based on a practitioner preference to undertake particular work. The proposed change does have potential advantages for consumers, including increased choice and increased competition in the market. On this basis, the Panel supports it in-principle, however, any alteration must be carefully considered and accompanied by consumer safeguards.

Should the BSB decide to alter the rule, it is essential that all clients clearly understand the implications of choosing direct access and the likely costs which they will incur by not accessing public funds. We would expect client care letters to explain the situation in a very clear and understandable fashion, and for clients to explicitly demonstrate their understanding by, for example, written consent that confirms they understand legal aid cannot be sought. We would also expect barristers to turn down direct access

clients where it would be in their best interest to obtain public funding and the greater case preparation and management support provided by solicitors.

Looking forward, should the rule be amended, the Panel would expect the BSB to actively monitor usage, including whether the changes results in any complaints or other consumer issues.

Finally, the Panel notes the hurried nature of this consultation. The consultation documentation fails to explain why the proposed change requires an extremely short consultation process over the holiday period. The haste of this consultation appears to be driven by practitioners, rather than the BSB's assessment of the issue or pressing access to justice concerns. The change will potentially have significant consumer impacts, both in terms of costs and access to justice. It is unclear why a rapid decision is required; the process has limited the extent to which stakeholders are able to comment.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Elisabeth Davies', with a horizontal line extending to the right.

Elisabeth Davies
Chair