



Response to the Bar Standards Board's Consultation Paper on The Structure of Self-employed Practice

Q.1 Do you agree with the proposal in paragraph 8? In particular, do you agree with the text of paragraph 403.2 of the Code of Conduct suggested in Annex A?

The Commissioner agrees, in principle, with the proposal in paragraph 8 of the paper. However, she is not clear as to how the Board proposes to monitor that there be no general referral arrangements or understanding between the barrister and other person or persons sharing office facilities.

The Commissioner agrees with the text of paragraph 403.2, and the texts of paragraphs 403.3 and 403.4.

Q.2 Do you agree with the proposal in paragraph 11?

The Commissioner has no comment

Q.3 Do you agree with the proposals in paragraph 16?

The Commissioner believes that the Board needs to give further consideration to how this is likely to work in practice. Also more thought and guidance should be given as to what should happen if a barrister finds that the evidence is disputed.

Q.4 Do you agree with the proposals in paragraphs 17 to 19?

In principle, yes, although the Commissioner is not clear from the paper who will be providing the training, who will be doing the supervising, what the Board regards as appropriate supervision and how long a person is expected to spend working under supervision before attending interviews.

The Commissioner believes that the Board needs to clarify these matters before implementing these proposals.

Q.5 Do you agree with the proposals in paragraphs 20 to 30?

Yes. The Commissioner agrees with the National Consumer Council that the present restrictions on the conduct of correspondence by self-employed barristers are not in the interests of consumers. The Commissioner finds the safeguards acceptable.

Q.6 Do you agree with the text of paragraphs 401(b) (ii) and (iii) of the Code of Conduct suggested in Annex A?

Regarding paragraph 401 (b) (ii), the Commissioner considers that the Board should provide some examples of what is meant by "inter-partes work". This would be consistent with what is written in paragraph 401A.1 where some



examples of inter-partes correspondence are provided. She also notes that there is a duplicated “or” in the first line.

Regarding 401 (b) (iii), the Commissioner believes that the Board needs to give further consideration to the content of this clause (see response to question 3). For example, consideration is needed as to whether a barrister should be obliged to withdraw from a case if the opposing side raises issues regarding his/her conduct in collecting evidence.

Q.7 Do you agree with the text of paragraph 401A.1 of the Code of Conduct suggested in Annex A?

The Commissioner agrees with the paragraph.

She further considers, with reference to sub-clause (a) (ii), that the Board should provide some guidance on what it considers to be “adequate systems, experience and resources” for managing the conduct of correspondence appropriately. A similar issue arises with reference to the term with “adequate insurance cover” mentioned in sub-clause (b).

Q.8 Do you agree that guidance is needed as suggested in paragraph 30? If so, what do you suggest should be its content?

The Commissioner agrees that guidance is needed on the issues set out in paragraph 30, but she considers that the content of the guidance is a matter for the Bar.

Q.9 The proposals in paragraph 16, and those in paragraphs 20 to 30, apply to both civil and criminal work. Do you consider that different provisions would be appropriate in those types of work? If so, what should the differences be?

The Commissioner sees no obvious need to make different provisions in civil and criminal cases. Having the same paragraphs apply to both criminal and civil work would ensure clarity and consistency in application.

A handwritten signature in black ink, which appears to read 'Suzanne McCarthy', is located below the text of the response.

Suzanne McCarthy
Immigration Services Commissioner

17 September 2009