

Tim Dutton QC  
Chairman of The Bar  
The Bar Council  
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17 January 2008

Dear Tim,

### **VHCC Contracts**

We are aware that a very high proportion of advocates have still to sign VHCC advocates' contracts, and although those contracts do not have to be returned until 21 January, the present indications are that a substantial number of advocates are currently intending not to do so.

The terms of the contract have been known to the advocates and the Bar Council since before the advocates put their names forward to be included in the tender process, the relatively few changes since amounting to clarification or improvements in its terms. Evidence of the apparent change of mind coincides with the correspondence from the Bar Council and, in some cases, other senior members of the Bar (12, 19 December 2007, 11 January 2008) in which the advocates have been advised that the terms are, in the view of the Bar Council, unsatisfactory and that they may now choose not to sign. In addition, we would add that reports have reached us of pressure being put on individuals not to sign, and meetings being arranged to discuss contract signature including one on Wednesday 9 January 2008 at which senior members of the Bar were present.

The advice from the Bar Council has been accompanied with advice that the decision is to be made by each advocate individually. The letters do not contain any advice, or even implication, that advocates should not, should they wish, discuss and consider a joint decision, even though it is inevitable that the contents of those letters will be discussed widely within the Bar and that decisions may well be taken jointly, particularly on a Chambers basis.

The Bar Council is, we believe, aware that it is unlawful under Chapter I of the Competition Act 1998 and a criminal offence under section 188 of the Enterprise Act 2002 for parties, including members of the Bar, to collude in the terms on which they offer their services. All that is required for a breach of the Competition Act is a "concurrence of wills" or, as recent case law has established, that information supplied by any party is supplied to another with the intention of, or knowledge that, it will facilitate the making of an anti-competitive agreement. Under the Enterprise Act secrecy concerning the steps taken to enter into an arrangement to limit the supply of services is presumed by practitioners to establish the necessary dishonesty.

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If, as we suspect, a large number of advocates are considering not signing the contract by 21 January, and do not do so, particularly on a Chambers basis, it will be an inevitable inference that some intervening event has caused a change of mind since they allowed their names to go forward in solicitors' tenders.

We strongly urge the Bar Council to ensure that members are fully aware of the reasons why the decision whether to sign or not must be made individually, and that if there has been any attempt to co-ordinate a response at Circuit or Chambers level, those responsible must take appropriate action to withdraw or retract. Where this conduct has arisen following discussions within the Bar more generally the case law indicates that a concerted practice may be inferred unless the parties have distanced themselves in writing and by their conduct. We are sure the Bar Council could receive appropriate advice from the OFT as to how these matters may now be resolved satisfactorily.

It is preferable that this advice should be provided by the Bar Council itself rather than by the LSC, but given the risk to the LSC's competitive tender process, the LSC must ensure that one way or another advocates be fully informed of the possible implications of their failure to sign and return the contract by 21 January.

Yours sincerely,



Richard Collins  
**Executive Director, Policy**