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Friday 21 May 2010

Dear Sirs

Response to the informal 28-Day Consultation on options for a VHCC Scheme for Litigators

This is the LSC's response to the informal consultation dated 6 April 2010 on an appropriate VHCC Scheme for Litigators from July 2010 onwards.

This informal consultation period followed a full policy consultation in which we presented two options for litigators:

- Option 1 – maintain current Panel scheme
- Option 2 – Litigators' Graduated Fee scheme extension

In our response to that consultation we set out at paragraph 150, our decision not to proceed with option 2 at this stage. However, we were persuaded by the views expressed by a number of respondents to consider further the possibility of individual case contracting arrangements for litigators as a long-term solution.

Therefore, we decided to run an informal 28-day consultation on a revised option 1:

- Option 1 (revised) – individual case contracts (ICCs) for litigators

We asked the following question:

To what extent do you agree with the proposition that the LSC should contract with litigators on an individual case-by-case basis for VHCCs from 2010 onwards as an alternative option? Please give your reasons.

The consultation closed on 18 May 2010. A total of 11 responses to the consultation including two responses from representative bodies were received. The breakdown of the results was as follows:

- Option 1: 27.3% (3)
- Option 1 revised: 54.5% (6)
- Other: 18.2% (2)



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The two respondents marked as 'Other' reaffirmed their response to the full policy consultation expressing their preference for Option 2 – Litigators' Graduated Fee scheme extension.

Those respondents (all of whom are Panel Members) that expressed a preference for maintaining a Panel scheme (Option 1) all made similar arguments around the potential for losing quality control of the work done on VHCCs if a Panel scheme were abandoned. In response to this point in particular, we would assert that individual case contracting arrangements would still be subject to eligibility criteria which will maintain the same level of quality control as now. Therefore, the main distinction between the Panel scheme and the ICC scheme is that under an ICC scheme, VHCC work will be available to all organisations capable of meeting the eligibility requirements when they pick up such a case.

We have taken into account the points made in the responses received and have considered these alongside the views and comments expressed in the responses to the full consultation. We too agree that individual case contracts offer the best long-term solution for litigators working on VHCCs. Whilst ensuring that we maintain an appropriate level of eligibility, in our view, individual case contracts offer the flexibility required for a system that has undergone a significant change in terms of advocacy work. Such a scheme will also give us greater flexibility to help us manage any further changes to the provision of criminal defence services in the future.

We have therefore decided that we will not be continuing with a Panel scheme when the current Panel expires on 13 July 2010. From 14 July 2010, litigators instructed on cases classified as VHCCs with representation orders dated on or after that date will operate under an individual case contracting arrangement. These contracts will apply the 2008 Panel rates (£145 per hour for a Level A litigator on a category 1 VHCC).

We highlighted in our consultation letter published on 6 April 2010, that individual case contracting arrangements would still be subject to eligibility criteria. These criteria will form part of a separate contract consultation with the Consultative Bodies in early June 2010 where we will seek views on the terms and conditions of the individual case contract.

If you have any questions or would like to discuss the contents of this letter with us please feel free to contact Matt Shelley on 0207 783 7487.

Yours faithfully



Hugh Barrett
Executive Director, Commissioning



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