

Toby Frost
Bar Standards Board
DX: 240 LDE

Our Ref: RW/BSB/Instructions

Date: 14 July 2008

Dear Mr Frost

Acceptance and return of instructions (second consultation)

The LSC has now received and had the opportunity to review the terms of the proposed amendments to the Code of Conduct (“the Code”) detailed in your second consultation paper entitled “Acceptance and Return of Instructions” (“ARI”), dated April 2008.

You will appreciate that our interest is in respect of publicly funded work. On acceptance, the practical consequence of the Bar Council’s resolutions in respect of our graduated fee schemes for crime and family is that the “Cab-rank rule” does not assist the vast majority of legally aided clients seeking the services of counsel, although we are not aware of any shortage of supply in reality. Our concerns in respect of the return of instructions – as set out in my letter dated 1 December 2006 - are principally aimed at seeking to limit returns and to ensure that any additional costs generated by such returns are kept to a minimum.

With this in mind, I am not convinced that 608 of the ARI either limits the circumstances in which returns may be made or that 609 provides clarity. In particular, the ambit of “professionally embarrassed” remains very widely drawn in 603 and 609 would appear to apply only to some of 603 (a) to (h) rather than limiting its ambit altogether. I am also disappointed that no mention is made of the need to consider additional costs incurred by a return, either for the public purse or more generally.

It follows that the addition of further justification in 610 to return instructions is most unwelcome. Given the apparently wide ambit of 608 I do not consider that any of the additional circumstances are necessary or indeed reasonable. I am particularly concerned about the operation of 610 (c), (d) and (f). In publicly funded cases I see no justification for further grounds for a return of instructions and would ask that an exception should be made for such cases, particularly bearing in mind issues of client vulnerability. I would also be grateful for some clarification of 610 (a). If this provision has moved elsewhere, I do not see that a blank paragraph is either necessary or desirable.

On 612, paragraph (a) should apply without qualification with an additional requirement in publicly funded cases for a written explanation to the instructing solicitor which will then be held on the file. This will enable the LSC to monitor returns and the impact on the legal aid fund.

I await the outcome of the consultation exercise with interest.

Yours sincerely

Ruth Wayte
Legal Director