

To All Local Law Societies

8 October 2015

Dear Colleague,



MoJ Consultation: Preserving and Enhancing the Quality of Advocacy

Many of our members and local Law Societies are deeply concerned about the Ministry of Justice's (MoJ) consultation on criminal advocacy. The Law Society will be responding robustly. Before we formally respond, I want to provide you with the background and our initial concerns.

Background

The MoJ announced a review of criminal advocacy on 1 October. It follows the Jeffrey report conclusions on criminal advocacy and invites views on:

- the proposed introduction of a panel scheme;
- the proposed introduction of a statutory ban on referral fees; and
- the proposed introduction of stronger measures to ensure client choice and prevent conflicts of interest and in particular it asks whether the use of in-house advocates creates a conflict of interest. Therefore, one possible conclusion of the consultation would result in, "*restricting the ability of defence firms to instruct in-house advocates in publicly-funded criminal cases.*"

Our concerns

We support proportionate measures to enhance and ensure the continued high standards of advocacy. Regarding the proposals in the MoJ consultation:

- it is unclear what a Crown Court panel scheme would achieve that the imminent introduction of QASA would not- there is a concern that the panel would restrict the numbers of advocates able to practice and we would strongly oppose this;
- referral fees are already prohibited under our rules- so in principle no objection but we would need to ensure that legitimate business practices are not inadvertently caught; and
- we will robustly oppose any restriction on the use of in-house advocates as this goes against client choice and provided the client is advised on their advocacy options, (which solicitors are obliged to do), there is no reason why in house advocates should not be selected by the client to represent them.

Experienced advocates

The overwhelming majority of advocacy in England and Wales is carried out by solicitors. More than 11,000 solicitors appear in the criminal courts as a matter of daily routine. Most solicitor higher court advocates have been practising in the magistrates' courts for some time and many have had significantly more on-the-job experience than barristers in their early years.

Solicitors provide vital support and continuity at a time of stress and anxiety for clients. They have a first hand understanding of clients' previous histories as well as any outstanding and ongoing matters. It can be extremely beneficial to have a solicitor-advocate on the case for client and case familiarity, which is why many clients choose to instruct a solicitor to represent them throughout a case.

Next steps

You can download the MoJ consultation from their website:

<https://www.gov.uk/government/consultations/enhancing-the-quality-of-criminal-advocacy>

The Law Society is calling on you and your members to respond robustly to the consultation and in particular to oppose any restriction on the use of in-house advocates.

I will update you when the Law Society has responded, closer to the deadline of 27 November. In the meantime, please do encourage your members to submit responses to the MoJ.

Yours faithfully

Jonathan Smithers
President
The Law Society