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Janice Marshall
Bar Council
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By email: contractconsultation@barcouncil.org.uk

Dear Sirs

Consultation on Contractual Terms of Work

We write in order to respond to the Bar Council's Consultation Paper dated April 2010 on contractual terms of work for barristers. We shall comment only on those aspects of the Consultation Paper that concern commercial solicitors, principally questions 1 and 2, rather than matters internal to the Bar.

We agree with the view expressed in the Consultation Paper that the present non-contractual basis on which barristers are instructed is anachronistic and should be replaced. Barristers should be instructed in the same commercial manner as all other professionals.

We also agree that it is not practicable to negotiate on each occasion that a barrister is instructed the full terms upon which those instructions are given. There should, therefore, be standard terms that barristers and solicitors can, subject to any amendments they wish to make, incorporate into a contract, whether that contract is between solicitor and barrister or between barrister and lay client.

The draft contract in Annexe 4 to the Consultation Paper is, however, not fit to be those standard terms. The contract proposed by the Bar Council is one-sided, and fails to reflect market realities or reasonable client expectations. It is unacceptable. To take one example, the terms say that barristers are obliged to deliver fee notes within three months of being requested to do so. Solicitors are only likely to request a fee note from barristers in order to include it in a bill to their client, perhaps being rendered at the request of the client. A delay of three months in receiving a bill from a barrister may well make it impracticable for the solicitors to bill their client for barristers' fees, apparently leaving the solicitors to pay those fees personally because of barristers' delays. This is manifestly contrary to reasonable commercial practice.

There are numerous other instances in which the Bar Council's proposed terms are unacceptable (eg acceptance of instructions, the time within which work must be undertaken, use of other barristers and pupils, retention of papers, assessment of costs, conflicts of interest and so on). We considered whether to send a version of Annexe 4 re-

written in order to make it fit for purpose, but concluded that nothing would be gained by doing so unless we could be sure that there will be negotiations in good faith between interested parties on all sides of the issue. That is the way in which contracts that are intended to become industry standard agreements are customarily prepared, and we consider that barristers' standard terms should be prepared in the same way. Seeking to impose terms unilaterally is a wholly inappropriate way to proceed. Indeed, we consider that the Legal Services Board should refuse to permit any necessary amendments to the Bar's Code of Conduct unless and until the Bar Council agrees terms of business with all other interested parties.

We would be keen to take part in any negotiations on barristers' contractual terms of work that may occur.

Yours faithfully



Simon James
Chair, Litigation Committee

**THE CITY OF LONDON LAW SOCIETY
LITIGATION COMMITTEE**

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The CLLS responds to consultations on issues of importance to its members through its 17 specialist committees. This response has been prepared by the CLLS Litigation Committee.

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