



Chris Handford  
Legal Services Commission  
85, Gray's Inn Road  
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15<sup>th</sup> December 2005.

Dear Chris,

**Accreditation - Review of the work restrictions**

I write on behalf of ILPA to respond to the above named document that was circulated at the stakeholder meeting on the 11<sup>th</sup> of October 2005. We have discussed your proposals amongst our members including at our AGM held at the end of November.

We are aware of the report made to the Standards Board of the Law Society.

ILPA believes that there are amendments needed to the work restrictions to make the scheme more flexible without risking the quality of service that we provide to the Client.

**Probationers prior to completion of the MCT (under close supervision)**

ILPA believes that all the work currently permitted should continue to be permitted. In addition we believe probationers should be permitted to do the following:

*Take initial instructions from an asylum seeking client but limited to the completion of the legal help form, instructions relating to identity, the applicant's personal detail (Part A of SEF), the applicant's family details (Part B of the SEF) and the outline of the factual basis for the claim to asylum for consideration by supervisor. We believe that this is suitable work for a probationer because it is essentially fact gathering. It is beneficial to a probationer to learn as soon as possible the skills of basic fact gathering. To enable a probationer to do this limited work would assist clients in accessing legal services. Often potential clients will turn up at a solicitors office without an appointment needing to be seen that same day due to the time limits that apply in these cases and the real problems faced by clients finding advisers undertaking work under the publicly funded scheme. We believe it is appropriate for probationers to be able to see clients in these situations. If they are not allowed to do so it is more likely than not that the potential client will be told that the firm cannot assist them because the Level 1 or 2 advisors are unable to free themselves from other work to see that potential client. Currently probationers are allowed to advise on support provisions for asylum seekers and to prepare them for interviews*

seems to us inconsistent that they should not be allowed to also undertake a basic fact gathering exercise in respect to the asylum claim itself.

In addition we believe there should be a special regime for **Trainee Solicitors**. Trainee solicitors have to work in three different areas of law during their two year training contract. These are commonly known as "seats". If they have to be put through the process of accreditation to do an immigration seat this will be a disincentive to firms to provide training contract seats in immigration. This will impact on the number of future solicitors doing immigration work. Not every firm can offer training contracts – they have to be approved by the Law Society – so there is a safeguard against poor quality training and supervision. All Trainee Solicitors require a named solicitor supervisor. So what do we propose?

ILPA believes that where a Trainee Solicitor is undertaking the immigration seat of their training contract they should be allowed to do all Level 1 tasks from the start under the supervision of a *solicitor* who has both Level 2 *and* supervisor accreditation, rather than be limited to the probationer tasks. They should take the MCT after 3 months like others and if they pass the MCT they should be able to then do both Level 1 *and* Level 2 tasks under the same supervision arrangement. ILPA believes that Trainee Solicitors must get the broadest experience possible under appropriate supervision since the purpose of the Training Contract is to learn all the skills and substantive law to equip them to work as a solicitor on qualification. They should be supervised by a solicitor rather than a Level 2 caseworker because they are undergoing training in more than immigration law – in how to be a solicitor. Since they will move to another area of law after 8 months they should not be required to complete the Level 1 or 2 exams within 12 months (other than the MCT) but should be able to sit them at any time during their training contract or within 3 months of its completion.

ILPA believes that LSC training grants should be made available nationally for Trainee Solicitors and firms/organisations offering seats in immigration law – at present they are not available in London. Given that there are real disincentives for London based firms to expand into this area, and for the accreditation scheme to work successfully, it will be an imperative for new recruits to the profession be able to develop fully in this area. The LSC will be all too well aware that many of the highly regarded practitioners have ceased or reduced the amount of legal aid work undertaken in immigration. Lack of incentives for firms to train in this field will do little to halt the decrease in numbers of competent providers, an issue causing concern for ILPA as well as the LSC.

**Accredited caseworkers (and probationers after successful completion of the MCT under close supervision)**

ILPA believes that all the work currently permitted should remain. In addition the following should be permitted:

*Instructing a Barrister or advocate to appear at the AIT or other court. At present an accredited caseworker is allowed to instruct a Barrister or Advocate to advise and to draft grounds of appeal. Instructing Counsel to represent at a hearing is a very similar task. Duplication of work occurs where an accredited caseworker has lodged and prepared an appeal but they then have to pass the file to a Level 2 caseworker to prepare the instructions to counsel. Instructions to Counsel are often a summary of the history of the matter to date and a summary of the issues. This is clearly within the competency of accredited caseworkers (given that they are allowed to prepare chronologies and lodge appeals including drafting complex grounds of appeal).*

### **The assessment process**

In your discussion paper you suggested that the Commission might see the assessment process structured as follows:

*"A more complex multiple choice test (MCT) for candidates applying for the scheme that involves a mixture of Level 1 and 2 questions. The results of the MCT would then allow candidates to make a more informed choice about which level of assessment that subsequently take.*

*One written examination covering immigration, asylum and managed migration that would be taken by all candidates, the results from which will determine whether the requirements of the paper have been met at Level 1 or 2. The drafting assessment to be taken in the specialism, ie immigration, asylum or managed migration.*

*No change to the interview or supervisor assessment"*

ILPA believes the current method of assessment is too lengthy, too ambitious and places too much stress on individual practitioners. We believe it unreasonable to expect practitioners to sit a 3 hour written exam in the morning and then to sit a 3 hour drafting assessment in the afternoon. We believe it is unnecessary to have such lengthy assessments on the same day. We believe it is possible to have shorter assessments to judge whether someone is suitable to be accredited. Whilst there is no other area of publicly funded work that requires an individual to be accredited before undertaking any work in the area, it is our understanding that even for membership of other panels, the requirements are less onerous, and of course the benefits far greater

We continue to have concerns about exams being the sole judge of competence. Often good candidates do badly due to poor exam technique or poor memory – in practice very few practitioners carry the detail of statute or case law in their head but they can identify when and where they need to look the detail up.

We believe there should be consistency with other accreditation schemes. For example, the police station accreditation scheme has one 2 hour written exam, a critical incident test (comparable to the interview assessment) and a portfolio.

ILPA believes that the written exam and drafting assessment could be combined into one 3 hour exam. ILPA believes this should be divided into two parts. The first part should be a multiple choice test and the second part should be a short series of optional written problems to which candidates draft their answers. These problems would test both knowledge and drafting skills. An issue we have with the current drafting assessment is that there is far too much information to be taken in and documents to be read. It is noteworthy that there are many candidates who have done very well in the written examination and only just passed (or failed) the drafting assessment. This reflects the fact that the drafting assessment requires too much information to be digested in too short a period of time.

We have concerns about testing both Level 1 and Level 2 candidates in the same exam. We believe if the work restrictions remain so too should the separate assessments for each Level – only the assessments should be shorter and geared towards the work restrictions.

The assessments should not be on the same days or at the same times (as is presently the case). ILPA would like to see them spread out over 1 week so that particularly good candidates could decide to do both the Level 1 and the Level 2 assessments in each round (rather than having to choose). If two assessments are to remain for each Level (ie the written exam and drafting assessment) they should be on different days – 6 hours of exams in one day is just too much.

As to the assessments ILPA would propose the following:

1. The current MCT test should remain for probationers.
2. For Level 1 there should be one exam of not more than 3 hours at most and an interview of not more than 15 minutes. The interview should test skills only and not knowledge. The skill should simply be "is this person capable of taking instructions and advising a client in a coherent understandable way".
3. For Level 2 there should be one written exam of not more than 3 hours and an interview of not more than 15 minutes. For those who have already passed the

interview skills at level 1 we would invite you to consider whether a further interview at this stage is necessary. The written exam at Level 2 should test those things that a Level 2 caseworker can do which cannot be done under Level 1. This might mean testing the drafting of skeleton arguments, fast track work, procedure on first instance and onward appeals including essential case law required if you are to be an advocate. It is however the case that many Level 2 caseworkers do not do any advocacy by choice – preferring to instruct Counsel – and only certain firms do fast track work, so some thought would have to be given to this. The intention however is to ensure that the test is appropriate for the type of work being undertaken and so that the public and the profession can see a real benefit to the accreditation scheme rather than it merely being a panacea for the perceived ills and abuses within the immigration field (which may have moved away from the publicly funded sectors in any event)

If the above proposals were adopted, ILPA believes that anyone coming new to the field who wished to work at Level 2 would need to sit the multiple choice test for a probationer, pass the written exam and interview for Level 1 and then pass the written exam for Level 2. They should not simply sit the Level 2 exam. If the assessments were done on different days it would be possible for the better candidates who are keen to do advocacy as soon as possible to sit both Level 1 and Level 2 in the same round. If this is adopted it would give a clear career progression to new people to the field. It is the new people that we are concerned about from now on since those already practicing would have become accredited.

We note that you propose no change to the Supervisor assessment. ILPA members believe that this assessment was too lengthy and there was far too much documentation to be read and considered. We do believe it must be possible to design a simpler test probably with a large element of MCT. The crucial things that supervisors need to know are the terms of the immigration contract and all the LSC requirements (including the work restrictions), as well as the appropriateness of delegation. Any supervisor assessments should concentrate on testing knowledge of LSC requirements rather than fictitious exercises such as drafting induction procedures for new staff which is not something that ILPA believes is suitable for testing in exam conditions, and which in some organisation will not be undertaken, but implemented by supervisors.

### **Level 2 Probationary Period**

You are proposing a Level 2 Probationer category. ILPA believes this is a good idea but is not sure of the best way forward. The ILPA members who put forward this proposal are organisations such as the Refugee Legal Centre which recruits people specifically to work as advocates. They have a comprehensive in house training

programme and a method of supervising new recruits that has historically worked and produced some of the best advocates now working in the field. They undertake a steep learning curve.

ILPA would be concerned about it *generally* being permissible for persons (other than Trainee Solicitors – see above) to pass the MCT test within three months of registration and then be able to undertake fast track work and advocacy even if under Level 2 supervision. We would propose the following possible safeguards;

(i) In addition to passing the MCT the Level 2 probationer must attend (i) a compulsory one day advocacy course if they intend to do advocacy and/or (ii) a compulsory one day fast track course if they intend to become an approved advisor for fast track work. Such courses to be approved courses; and

(ii) Be employed in a firm or organisation that has devolved powers and either Category 1 status, or category 2 where the firm or organisation has been category 1 at one of the last 2 previous audits and there is a pending appeal on category status.

#### **LSC contribution to accreditation cost and training**

ILPA believes that suppliers need some financial incentive or compensation for the costs of training and the lost chargeable hours that accreditation causes. At present the fee paid to CLT for the exam is repaid if the examinee passes – but that is only a small part of the cost. ILPA believes that on average 35 chargeable hours are lost per examinee – approximating to £2,000+ at Legal Help rates. When contracts come to be reconciled in March 2006 we urge the LSC to offset the costs of accreditation against any amounts un-reconciled, since having to spend time getting staff accredited has directly affected the ability of firms and organisations to reconcile. ILPA is aware that the LSC has entered into agreements with some NFP organisations which in effect credits them hours lost to accreditation. ILPA is concerned that all firms and organisations that can demonstrate lost hours / financial outlay be treated in the same way.

#### **Increments for Accreditation**

ILPA continues to be concerned that Level 3 has attracted so few applicants. We believe this is partly due to the onerous requirements and partly due to the low increment of 5%.

ILPA urges the LSC to increase the increment to 15% to bring Level 3 in line with the increments granted to family solicitors on the Children Law Panel and to Grade A fee earners in Crime. Only by doing this will the LSC achieve its objective of retaining the most experienced solicitors and caseworkers in publicly funded work as opposed to moving over to do more lucrative private work.

### **Accountability of the Accreditation Scheme**

On a final note we would invite the LSC to support our request that a formal body be constituted to bring all the main accreditation stakeholders together on a regular basis (perhaps quarterly) to do the following;

- Review the work restrictions
- Review the Knowledge Standards
- Review the syllabus (to be published by the Law Society we understand)
- Give a forum to raise issues that have arisen from assessment rounds

We believe this forum should be made up of the Law Society (officials and representative practitioners), the LSC, CLT and ILPA. It would not take over responsibility for the different aspects of accreditation but would be the forum to raise issues.

We hope you find these contributions useful. Please do not hesitate to contact us to discuss further or if you think a meeting would be useful.

Yours sincerely



PP Chris Randall  
Chair