

IMMIGRATION LAW PRACTITIONERS' ASSOCIATION

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Specialisation in Immigration

The Green Papers

Within the context of the recent Green Papers produced by the Lord Chancellor's Department in respect of the legal profession, the issue of specialism has not been overlooked. The Work and Organisation of the Legal Profession (Cmnd 570) poses a number of questions in respect of specialism and makes a number of recommendations. (APPENDIX 1)

The Government recognises the need for specialisation and recognition of specialism in the context of legal services. The relevant section of the Green Paper addresses four specific issues:

- (a) Which areas of work requires special expertise;

- (b) What is the appropriate level of education, qualifications and training required to be specialist in any given area;
- (c) Who is to provide the necessary education, qualifications and training?
- (d) How are appropriate standards of conduct to be set for practitioners and who is to monitor the standards?

The Government sees an important purpose of specialism as providing the public with more information to help them choose a practitioner appropriate to their needs. A necessary corollary of this is that specialists should be able to advertise themselves as such. However, the creation of specialisms should not create new entry barriers, put up costs, deprive clients of choice or protect those within the specialism from competition from those outside it.

The Government expects that there will be "a variety of providers of such specialist services" thereby encompassing not only professionals other than those with legal qualifications but also the possibility of lay specialists. The Advisory Committee on Legal Education of the Lord Chancellor (ACLE) is suggested by the Government as the appropriate body to approve specialism schemes.

Clearly, where a specialist area has established procedures on specialism already in operation, it is unlikely the ACLE will wish to dismantle that structure. Accordingly, it is in

the interests of specialist associations to prepare and, where appropriate, implement specialist schemes sensitive to the needs of practitioners and clients as quickly as possible.

The Law Society

The Law Society is currently considering the extension and development of its specialist panels. At the moment there is a panel in respect of child care and mental health. Broadly, the criteria for membership of either of these panels is based on advocacy experience in the relevant court or tribunal; conduct of a specified number of cases over a specified period of time plus an interview with specialists. (APPENDIX 2)

The Law Society also funds a referral service run by the Association of Victims of Medical Accidents (AVMA) which determines specialists in medical negligence cases according to its own criteria.

The Law Society is also keen to develop specialisms which will encourage more solicitors to specialise in particular areas of law.

The question of whether specialist accreditation should be limited to legally qualified practitioners or open to all must be addressed. It is clear from the first stage consultation of the Legal Aid Board (LAB) on the Green Form Scheme (the Scheme) that if a franchising or contracting out scheme is put into operation in respect of the Scheme the LAB is eager that there be some form of specialism so that tenders could be limited to those with creditation. Further,

it may be possible to convince the LAB not to franchise or contract out the Scheme in respect of immigration and nationality if a specialist accreditation scheme were devised whereby only those accredited under this scheme would be entitled to payment under the Scheme.

Options

A number of proposals have been put forward in respect of how specialism should be determined.

(1) Percentage of case load:

It has been argued that practitioners with a high percentage case load in one area are prima facie specialists. The main arguments against this criteria are:

- (a) it is very difficult to verify whether a practitioner actually has the percentage claimed,
- (b) the number of cases a practitioner is dealing with in a particular area does not necessarily co-relate to his or her knowledge in respect of that area.
- (c) such a basis discriminates against those with larger case loads in favour of those with smaller ones.

The National Consumer Council, which has commissioned a substantial amount of research into the area of specialisation, is unconvinced about the case load criteria.

(2) Examinations:

Practitioners who take and pass certain examinations would be entitled to specialist accreditation. The advantage to this system is its relative objectivity though administration costs are high. The examination would need to be an open book one as it would be unrealistic to expect practitioners to return to that stage of their education when information needs to be learned by rote.

The main problem with examinations is that in the area of immigration the number of practitioners is relatively small and could not justify the expense of administration.

(3) Interview plus case summary examination:

A specialist panel could interview practitioners seeking specialism perhaps along the lines of an informal oral examination and be expected to present summaries of a specified number of recent cases they have dealt with. The panel could then assess the practitioner's general knowledge together with his or her approach to specific problems. This option has the advantage of a certain flexibility.

(4) Continuing education points:

As immigration is a rapidly changing and developing area of law it may be desirable to require practitioners with specialist accreditation to remain up to date. As part of a specialisation scheme, those accredited could be required to obtain a specified number of continuing education points on immigration related courses each year.

Any specialism scheme would have to encompass the views of organisations representing the client base most particularly the JCWI. Further, any specialism scheme would need to be open to all solicitors and/or practitioners whether or not they were members of a separate body.

These are no more than some initial considerations in respect of specialisation. The options are put forward for debate and are not comprehensive.

EHG



Lord Chancellor's Department

The Work and Organisation of the Legal Profession

3 Legal Education and the Growth of Specialisation

The objective of legal education

3.1 The Report of the Committee on Legal Education published in March 1971 (Ormrod) (Cmnd. 4595) concluded that:-

“Legal education should not attempt to equip the lawyer at qualification with a comprehensive knowledge of every subject he may encounter in practice; instead, it should concentrate on providing him with the best possible general introduction so as to enable him, with the help of experience and continuing education after qualification, to become a fully equipped member of the profession.”

The Government believes this objective for legal education is still valid today.

3.2 The Government also believes that it is consistent with its objectives for the provision of legal services that practitioners must be able to show their clients that they possess the necessary competence to perform the particular service sought from them, especially where the service requires the possession of specialist expertise. The Government believes that it is not of itself sufficient for practitioners to belong to a particular branch of the legal profession, or, in some cases, to other professions.

Current position

3.3 Entry to the legal profession requires completion of three training stages, an academic, a vocational and a practical stage. Entrants normally complete the academic stage by taking a law degree. Thereafter, barristers and solicitors have separate systems of vocational and practical training.

3.4 Both branches of the profession are in the process of conducting reviews of their own training arrangements with the aim of making these more relevant to the needs of practice. The Bar intend to introduce a new finals course in the autumn of 1989 which will emphasise practical skills such as advocacy, drafting, advising and negotiating; and there are at present moves to formalise the minimum contents of pupillage. The Law Society are considering including additional specialist law options during the finals course, training in management and communication skills and the extension of compulsory post-qualification training beyond the first three years, in order to keep solicitors abreast of developments in the law.

The growing importance of specialisation

3.5 The thrust of these changes is to emphasise the growing importance, which has been noted over the past decade, of the acquisition of specialist skills by practitioners. The need for this was recognised by the Royal Commission on Legal Services as long ago as 1979 when it recommended that the formal introduction of specialisation into the solicitors' profession would of significant benefit to the public (paras 22.55 and 27.23). In 1987, in the White Paper “Legal Aid in England and Wales: A New Framework” (Cm 118 para 58), the Government stated that it was desirable that solicitors doing legal aid work

should have special skills in the area concerned, and that it was attracted by the idea that legal aid work should be done by panels of solicitors with specialist experience in each category. In 1988 the Civil Justice Review (Cm 394 para 212) recommended that specialisation schemes should be established for all the main areas of litigation; and Marre (para 16.17) recognised that "specialisation is inevitable."

Existing specialist panels of solicitors

3.6 The Law Society have already established specialist panels for child care and mental health work. The Child Care Panel was set up in 1984 and currently has around 1,500 members. The Mental Health Panel was set up in 1983 and currently has around 200 members. Membership of both these panels is dependent on experience in advocacy before the relevant tribunals, attendance on approved courses and interviews. Also under the duty solicitor schemes there are some thousands of solicitors (and their representatives) who provide duty solicitor services. They need to have a minimum of 12 months' advocacy experience and are interviewed by local practitioners to confirm their suitability. The Law Society are also currently considering the extension of specialist panels into other areas of work such as planning, personal injury and medical negligence.

Merits of specialist panels

3.7 The main advantage of specialist panels to the public is to give them an easier and more informed choice of practitioners who they can be assured are skilled in a particular field of law. At the same time, not every area of law requires specialist expertise. Care must be taken to ensure that only those areas of law which need to be specialisms are designated as such, and that the criteria for recognition as a specialist are high enough to ensure competence and maintain standards but no higher. The criteria must not become unnecessary obstacles which discourage practitioners from becoming specialists, or which artificially limit the supply of legal services to the public in a particular field.

Increasing the supply of specialists

3.8 The Government considers that the way to ensure that the expertise of practitioners is best matched to the particular demands of the work in question, and that the public has the widest possible choice of competent practitioners in the various fields of law, is for areas of specialist expertise to be developed, with standards of education, training, qualifications and conduct appropriate to each. It may be that some of these specialisms will not require the services of lawyers. The following questions then arise:

- (a) which areas of work require specialist expertise;
- (b) what is the appropriate level of education, qualifications and training required to be a specialist in any given area;
- (c) who is to provide the necessary education, qualifications and training; and
- (d) how are appropriate standards of conduct to be set for practitioners and who is to monitor these standards.

These questions are addressed in paras 3.11 to 3.13 below and in Chapter 4.

Advertising of specialisms

3.9 An important purpose of specialisms is to provide the public with more information to help them choose a practitioner appropriate for their needs.

Accredited specialists should therefore be able to advertise themselves as such to the general public. The Bar and the Law Society already operate a limited form of advertising through listings in their professional directories; and the Law Society permits also the circulation of lists of members on, for instance the Mental Health Panel, to interested organisations such as CABx, social services departments, psychiatric units and the courts. Further consideration should, however, be given by both individual practitioners and the relevant professional bodies to allowing those practitioners who qualify as specialists (see also Chapter 13 below) to advertise themselves as such. This does not mean that non-specialists should not be allowed to advertise their services; merely that only those who are recognised specialists in a particular field should be able to hold themselves out as such to potential clients.

Exclusive specialisms

3.10 The Government does not believe that practice in an area which has been designated as a specialism should be restricted to those recognised as specialist practitioners alone. Such an approach could create new entry barriers, put up costs, deprive clients of choice and protect those within the specialism from competition from those outside it. An exception is advocacy, where the Government believes that the needs of the administration of justice require special arrangements to be made. This is considered in Chapter 5 below.

Recognition of specialisms

3.11 The Government believes that a formal mechanism should be established to advise on the matters outlined in para 3.8. The Government believes also that, in order to ensure that the public know that recognition as a specialist practitioner has real value, the requirements for the education, training and qualifications of recognised providers of specialist services should in future be approved by the Lord Chancellor, after he has taken advice from his Advisory Committee on Legal Education. The arrangements for codes of conduct are set out in Chapter 4. The Government expects there will in future be a variety of providers of such specialist services.

The Lord Chancellor's Advisory Committee on Legal Education and Conduct

3.12 The Lord Chancellor's Advisory Committee on Legal Education (the Advisory Committee) was set up in 1971 as a result of recommendations in the Report of the Committee on Legal Education (Ormrod, Cm 8595). In order that it may carry out the new functions the Government now proposes for it, the Advisory Committee should be reconstituted as a vigorous and active standing committee, dealing with both education and conduct, which would meet regularly. To accord with its new role this Committee should in future be known as the Lord Chancellor's Advisory Committee on Legal Education and Conduct. The Committee's terms of reference should be:

- (a) To keep under review the education and training of lawyers at the academic, vocational and post-vocational stages to ensure that that education and training is relevant to the needs of practice and to the efficient delivery of legal services to the public. (A possible framework for the academic and vocational training of lawyers is set out at Annex C, which the Advisory Committee would be invited to consider at an early stage);
- (b) To consider, whether on its own initiative or when requested to do so by the Lord Chancellor:

- (i) what areas of legal services require specialist expertise and whether that specialist expertise needs to be provided by a fully trained lawyer; and
 - (ii) what the education, qualifications and training of specialists, both legal practitioners and others, should be in the various areas designated as requiring specialist expertise;
- (c) To keep under review, whether on its own initiative or when requested to do so by the Lord Chancellor, the accredited specialisms and the education and training requirements for these to ensure that they continue to meet the needs of the public for the efficient delivery of legal services; and
- (d) To advise the Lord Chancellor on the appropriate codes of conduct which should be followed by lawyers and other practitioners recognised as suitable to undertake work in the recognised specialisms. (It is envisaged that at least two separate codes of conduct will be needed to cover:
- (i) advice work; and
 - (ii) advocacy. This last area is considered further in Chapter 4.)

The Advisory Committee should submit an annual report covering all these areas to the Lord Chancellor. The annual report would be laid before Parliament. The Committee might also submit proposals and recommendations to the Bar or the Law Society or to other professional bodies, where it considers this appropriate or where such bodies ask for its advice.

3.13 Final decisions on whether a particular specialist area of expertise should be recognised as such and on what standards of education and training are appropriate in each case should rest with the Lord Chancellor, following advice from the Advisory Committee. In addition, before recognising any particular professional body as competent to authorise individual practitioners as specialists in a particular field, the Lord Chancellor would have to be satisfied that the professional body could:

- (a) provide the appropriate education and training, either itself or, on a repayment basis, with the assistance of appropriate educational establishments; and
- (b) provide sufficient control over its members to ensure that satisfactory standards of conduct and behaviour are maintained and enforced (This is considered further in Chapter 4).

It would of course be for the various interested professional bodies to decide what they wished to offer by way of education, training and discipline in the light of the standards set by the Lord Chancellor for the various specialisms.

3.14 Under the proposals outlined above, the Advisory Committee will in future play an important role, both in ensuring the supply of legal services of quality to the public and in maintaining the standards of conduct expected of practitioners. The Government believes that the composition of the Advisory Committee should reflect this new role by containing a majority of lay members. Accordingly the Government proposes that the new Advisory Committee should consist of 15 members, all appointed by the Lord Chancellor and comprising:-

- (a) a chairman, who should be a judge;
- (b) 2 barristers appointed after consultation with the General Council of the Bar;
- (c) 2 solicitors appointed after consultation with the Council of the Law Society;

GUIDANCE NOTES ON THE LAW SOCIETY'S PANEL OF SOLICITORS
TO ACT IN CHILD CARE CASES

The Social Services Committee in their 1984 Report on Children In Care drew attention to evidence which it received in the course of its enquiry, concluding "that it is apparent that there are still few solicitors who are child care specialists... The practice of child care law does not in general attract the calibre of lawyers which the subject deserves and as a result care proceedings are not always conducted as professionally as they should be".

In addition paragraph 104 of the Social Services Committee report welcomed the expressed intention of the Law Society to publish lists of those Solicitors who already have expertise in this field, for the use of Courts and guardians ad litem. The Society saw need for the Panel largely arising because of the vulnerability of children involved combined with evidence that the poor standards of some solicitors was due to the ignorance of the law and of the appropriate way to conduct such proceedings along with confusion about the responsibilities incumbent upon a solicitor who acts for the child

The Law Society Panel of Solicitors to Act in Child Care Cases was brought into operation in March 1985. The initial plan was to seek funding for the administration of the Panel from the Government, but when it became clear that this would not be forthcoming the Society decided that the proposals should be funded by the profession in the best interests of the public. The initial membership of the Panel was about 450 solicitors. This has now grown to 1,200 solicitors who have satisfied the Law Society that they have qualified for membership of the Panel.

Selection Procedure

Following the Beckford Inquiry Report "A Child In Trust" which praised the Law Society for the establishment of the Panel, the Society agreed, that recent experience of conducting child care proceedings was, on its own, insufficient to qualify the applicant for automatic admission to the Panel and that attendance at an approved child care training course and thereafter at an interview should be required in all cases. The old selection criteria which permitted admission on the basis of sufficient experience alone, therefore ceased to have effect on 31 December 1986 and were replaced on 1 January 1987 by the new criteria which are set out below:-

A solicitor must:

- a. hold a current unconditional practising certificate;
- b. have not less than 18 months' sufficient post admission advocacy experience
- c. undertake normally to conduct personally cases referred to him or her as a member of the panel;
- d. have attended a training course approved for this purpose; a current list of courses is attached
- e. either have relevant experience of conducting care cases or have observed one or more hearings of a contested care case as required;
- f. have satisfied an interview panel of his or her suitability to be included.

In addition, the solicitor's previous experience in this field, will be taken into account together with any representations made by the solicitor and any other information that is considered relevant. With the prior consent of the solicitor, the Clerk to the Justices at any of the courts where the solicitor has appeared in care proceedings previously may be consulted. Re-selection to the panel is necessary after five years.

Training

The provision of training in this area of work is regarded as being of the utmost importance in raising standards generally. Training courses are approved by the Law Society for solicitors wishing to be admitted to the Panel are organised by a variety of academic and legal organisations throughout the country. Before attendance at a course was compulsory, all applicants were encouraged to attend. Approved training courses last not less than one day and spend little time on the formal teaching of child care law. They cover the practical aspects of representing children and aim to help solicitors to deal sensitively with some of the problems peculiar to having the child as a client and acting as an advocate outside the criminal sphere. They concentrate on practical exercises which encourage as much participation as possible by those attending. Speakers represent the various professions and include a solicitor with considerable experience of representing children in care cases, a local authority representative, a social worker and guardian ad litem. Where possible an expert on communicating with children is included, although this area might be covered by the other participants. A video has been produced showing the presentation of a care case at court and is used in some of the courses.

Interviews

Interviews are based on a case study designed to raise a variety of issues common to care cases and to highlight practical problems. They are held on a regional basis and are conducted by a practising solicitor and guardian ad litem, both with considerable experience in this field.

The interviewers are asked to consider:-

- a Knowledge of the law and procedure.
- b Role of local authority.
- c Preparation of a case.
- d Taking instructions from, and ability to communicate with the child.
- e Conflict between child and guardian ad litem.
- f The use of independent experts.
- f Presentation of case and advocacy.
- g. Preference to experience already gained.
- h Evidence of other reading from the bibliography or elsewhere.
- i Any other evidence of interest in subject and general attitude towards it.

The interviewers will then write a report on the applicant recommending acceptance, deferral for further experience and/or training, or rejection. The Law and Procedure Committee then consider their recommendation, together with all relevant information. Applicants have the right to appeal to the Law Society if they wish to pursue an application which has been refused.

Distribution

The National Panel is divided into lists covering the regions corresponding to the 28 Solicitors Regional Directories. The lists are then circulated free of charge, twice a year, to Clerks to the Justices, the administrators of panels of guardians ad litem, Social Services Departments, NACAB, and a variety of advice/welfare organisations. From 1987 membership of the Panel will be indicated in the relevant volume of the Solicitors Regional Directory which has a wide ranging distribution.

Roth Clerks to the Justices and guardians ad litem are strongly encouraged to use the panel lists when choosing a solicitor to act for the child. It is suggested to the Clerks to the Justices that they use the list on a rota basis. Where a guardian instructs a solicitor on behalf of the child they clearly retain the free choice of solicitor. Although where they do not make any use of the lists that undermines the operation of the Child Care Panel in that area. You should note that membership of the Panel is not an automatic guarantee for gaining instructions in child care work.

Panel Membership

In terms of progress made in the field of child care advocacy it is clear that there are an increasing number of solicitors who see child care work as a rewarding and challenging specialism where their skill as an advocate can be thoroughly utilised. The Society believes that the instigation of the panel is a good step towards improved legal representation in child care cases. They are through their committees continuing to monitor the Panel's operation and to concentrate on the further training needs of the Panel members. In this respect they are supporting the establishment of local support groups for members of the panel in a particular area to provide a programme of meetings, training and exchange of information sessions.

If you do become a member of the Child Care Panel you will be sent a copy of your area's Panel List, together with details of any support groups in your locality.

Lynda Young
Legal Practice
November 1987

GUIDANCE NOTES ON THE LAW SOCIETY'S
MENTAL HEALTH REVIEW TRIBUNAL PANEL

Mental Health Review Tribunals were introduced by the Mental Health Act 1959. The powers and duties of these Tribunals were then changed and extended by the Mental Health Act 1983, which included provision for the widening of powers in respect of legal representation for all patients.

In addition Section 40 of the Mental Health (Amendment Act) 1982 requires hospital managers to automatically refer patients to a Tribunal hearing where patients have not, on their own accord, applied to a Tribunal within the first six months or the previous three years. These patients are likely to be the most seriously debilitated, lacking in awareness of their rights and the ability to initiate them since the Mental Health Act 1983. It is now an established practice for hospitals to inform patients of their rights and for the patients to be assisted to obtain legal help.

To assist hospitals in this task, the Law Society has established a Panel of solicitors who have experience of Mental Health Review Tribunal work, and who have passed the selection criteria set out below. The administration of the Panel, is funded by the profession in the best interests of the public. The Panel has been in existence since 1984, and now has over 200 members throughout England and Wales.

It should be made absolutely clear that the existence of the Panel does not in any way limit patients right to instruct a solicitor of his or her choice whether or not that solicitor is on the Panel. The Panel does exist though to guide patients to solicitors who have experience in this type of work.

Selection Criteria

The criteria for selection of the Members of the Mental Health Review Tribunal Panel includes the following:-

1. Completion of a questionnaire by the applicant disclosing details of experience of Tribunal cases.
2. If a solicitor does not have sufficient recent experience of Tribunal cases i.e representation of at least five clients before the Tribunal in the last 12 months they will be asked to attend Tribunal sittings and the Tribunal Offices can help with this. The attendance should cover at least two sittings with a minimum of three cases where patients are represented, of which one is unrestricted, one is restricted and the third either restricted or under Section 2 of the Mental Health Act 1983.
3. Willingness to prepare cases and appear before the Tribunal personally.
4. Attendance at an approved training course.
5. Willingness to attend an interview.

A solicitor's membership of the Panel is reviewed every three years.

Training

All applicants of the Panel are asked to attend an approved training course because utmost importance is given to ensuring the raising of standards generally in this area of work. The course will enable a person to gain necessary skills to prepare a case and to represent a client at Tribunals. The course will also usually involve a role play exercise which many participants find to be a useful learning experience and helps to reinforce the knowledge gained by them throughout the day. Once a solicitor becomes a member of the Panel there are also a number of other more advanced courses on offer in this very specialised area of law.

Interviews

Interviews are based on a case study designed to raise a variety of issues common to representing patients at Mental Health Tribunals and to highlight practical problems. They are held throughout the country and conducted by two practising solicitors with considerable experience in this field. Below is a checklist of the aspects which the interview seek to cover:-

1. Knowledge of Law and Procedure.
2. Preparation of the case.
3. Expert evidence (eg psychologist, Psychiatrists and social workers).
4. The reasons for pursuing the application (eg discharge or transfer).
5. The role of a representative in Tribunal proceedings.
6. Difference between restricted and unrestricted cases.
7. Method of challenging medical and where appropriate Home Office evidence.
8. Reason for interest.

Distribution

The Panel is distributed free of charge to almost 400 psychiatric hospitals and psychiatric units in general hospitals. These hospitals are asked to keep copies of these lists on their wards, so that they are freely available to patients who might require them. Approximately another 100 copies of the Panel are distributed to organisations such as MIND, Social Services Departments and Mental Health Act Commission Offices as well as a variety of advice and welfare organisations. Membership of the Panel is also indicated in the relevant volume of the Solicitors Regional Directory which also has a wide ranging distribution.

Legal Aid: Assistance by way of representation

Legal Aid is available for legal representation at Mental Health Review Tribunals in the form of assistance by way of representation (ABWOR). This assistance covers all the work undertaken by a solicitor including paying for an independent medical report when this is considered necessary. Details of ABWOR can be found in the 1988 Legal Aid guide.

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